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NATIONAL LABOR RELATIONS BOARD

5 CFR Part 7101

RIN 3209–AA57

Supplemental Standards of Ethical Conduct for Employees of the National Labor Relations Board; Correction

AGENCY: National Labor Relations Board.

ACTION: Final rule; correction.

SUMMARY: The National Labor Relations Board (''NLRB'' or ''Board''), with the concurrence of the U.S. Office of Government Ethics (OGE), is correcting a final rule that appeared in the **Federal Register** on July 20, 2020. This final procedural rule amends the Supplemental Standards of Ethical Conduct for Employees of the National Labor Relations Board (NLRB Supplemental Ethics Regulations) to eliminate an out-of-date and unnecessary reference to the identity of its Designated Agency Ethics Official (DAEO) and Alternate Designated Agency Ethics Official (ADAEO) from its regulations.

DATES: Effective August 28, 2020.

FOR FURTHER INFORMATION CONTACT: Roxanne Rothschild, Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570–0001, (202) 273–1940 (this is not a toll-free number), 1–866–315–6572 (TTY/TDD).

SUPPLEMENTARY INFORMATION: In FR Doc. 2020–14544 appearing on page 43681 in the **Federal Register** of Monday, July 20, 2020, the following correction is made:

§ 7101.101 [Amended]

■ 1. Amend newly redesignated § 7101.101(b) by removing the words ''Agency designees'' and adding in their place ''Agency designee.''

Dated: July 28, 2020.

Roxanne L. Rothschild,

Executive Secretary, National Labor Relations Board.

[FR Doc. 2020–16669 Filed 8–27–20; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 12

[Docket ID NRCS–2018–0010]

RIN 0578–AA65

Highly Erodible Land and Wetland Conservation

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: The United States Department of Agriculture (USDA) is issuing a final rule for the Highly Erodible Land and Wetland Conservation provisions of the Food Security Act of 1985, as amended (the 1985 Farm Bill). USDA published an interim rule, with request for comments, on December 7, 2018, to clarify how USDA delineates, determines, and certifies wetlands located on subject land in a manner sufficient for making determinations of ineligibility for certain USDA program benefits. USDA received comments from 65 commenters who provided 354 comments in response to the interim rule. Additionally, one of the 65 comments was submitted by an organization that submitted a spreadsheet of 15,094 substantively identical comments. This rule makes permanent many of the changes made in the interim rule, responds to comments received, and makes further adjustments in response to some of the comments received.

DATES: This rule is effective August 28, 2020.

FOR FURTHER INFORMATION CONTACT: For specific questions about this rulemaking, please contact Jason Outlaw, (202) 720–7838, or by email at *jason.outlaw@usda.gov*. Persons with disabilities who require alternative means for communication should contact the USDA Target Center at (202) 720–2600 (voice).

SUPPLEMENTARY INFORMATION:

Background

Title XII of the 1985 Farm Bill, encourages participants in USDA programs to adopt land management and conservation measures by linking eligibility for USDA program benefits to farming practices on highly erodible land and wetlands. In particular, the highly erodible land conservation (HELC) provisions of the 1985 Farm Bill provide that after December 23, 1985, a program participant is ineligible for certain USDA program benefits for the production of an agricultural commodity on a field in which highly erodible land is predominant, unless such production is in compliance with an approved conservation system. Additionally, the wetland conservation (WC) provisions of the 1985 Farm Bill provide that after December 23, 1985, a program participant is ineligible for certain USDA program benefits for the production of an agricultural commodity on a converted wetland, or after November 28, 1990, for the conversion of a wetland that makes the production of an agriculture commodity possible, unless an exemption applies. The Agricultural Act of 2014 amended the 1985 Farm Bill to expand the HELC/WC requirements to encompass crop insurance benefits, and thus, USDA program participants obtaining Federally reinsured crop insurance must be in compliance with an Natural Resources Conservation Service (NRCS)-approved conservation plan for all highly erodible land; not plant or produce an agricultural commodity on a wetland converted after February 7, 2014; and not have converted a wetland after February 7, 2014, to make possible the production of an agricultural commodity. The 1985 Farm Bill, however, affords relief to program participants who meet certain conditions identified under the 1985 Farm Bill by exempting certain actions from the ineligibility provisions. The USDA regulations implementing the HELC and WC provisions of the 1985 Farm Bill are found at 7 CFR part 12.

On December 7, 2018, USDA published in the **Federal Register** (83 FR 63046–63052) an interim rule that amended 7 CFR part 12 to provide transparency to USDA program participants and stakeholders concerning how USDA delineates, determines, and certifies wetlands. The interim rule also provided information

to program participants to better understand whether their actions may result in ineligibility for USDA program benefits. The interim rule made the following changes to 7 CFR part 12:

- Added definitions, for ''Best drained condition,'' ''Normal climatic conditions,'' ''Playa,'' ''Pocosin,'' ''Pothole,'' and ''Wetland hydrology;''
- Revised the definition for ''Wetland determination'' with respect to farmed wetland, farmed wetland pasture, and prior-converted cropland (PC);
- Revised the provision related to potentially highly erodible land to encompass the use of light detection and ranging (LiDAR) or other elevation data of an adequate resolution to make slope length and steepness measurements;
- Identified that if a person disagrees with an offsite determination on potentially highly erodible soils, NRCS would make an onsite determination;
- Clarified that wetland determinations will be done on a field or sub-field basis;
- Confirmed that wetland determinations made after November 28, 1990, and before July 3, 1996, are certified wetland determinations if the determination was issued on the June 1991 version of Forms NRCS–CPA–026 or SCS–CPA–026, the person was notified that the determination had been certified, and that the map document was of sufficient quality to determine ineligibility for program benefits;
- Identified that in order for a wetland determination map to be of sufficient quality to determine ineligibility for program benefits, the map document must be legible to the extent that areas that are determined wetland can be discerned in relation to other ground features;
- Clarified that:
  - The wetland determination process includes three distinct steps,
  - Wetland hydrology consists of inundation or saturation by surface or ground water during a growing season at a frequency and duration sufficient to support a prevalence of hydrophytic vegetation,
  - When a wetland is affected by drainage manipulations that occurred prior to December 23, 1985, wetland hydrology will be identified on the basis of the best drained condition resulting from such drainage manipulations, and
  - Wetland hydrology determination will be made in accordance with the current Federal wetland delineation methodology in use by NRCS at the time of the determination; and when making a decision on wetland hydrology, NRCS will utilize a fixed precipitation date range of 1971 through 2000 for determining normal climatic conditions; and
- Identified that minimal effect determinations will be based upon a functional assessment of functions and values of the subject wetland through an onsite evaluation and that an assessment of related wetlands in the area may be made based on an onsite evaluation or through a general knowledge of wetland conditions in the area.

Summary of Public Comments

The interim rule had a 60-day comment period ending February 6, 2019. USDA received 65 timely responses to the rule. Additionally, one organization submitted 15,094 substantively identical responses which were also considered.

USDA received some comments that were either not relevant to the interim rule or lacked a direct connection to any specific component of the interim rule. Some of these comments cited the various benefits of wetlands. Others cited the benefits to humanity of increased drainage. Several alleged a lack of due process. Some wanted the Fourth Amendment to the U.S. Constitution to apply to onsite wetlands determinations. A few comments suggested specific testing criteria and alleged that NRCS carried an evidentiary burden. USDA also received comments that expressed support for the interim rule in general and comments that expressed a general lack of support for the interim rule.

USDA also received comment that provided the commenters' understanding about the history of the WC provisions, representations about Congressional intent, the nature of NRCS implementation of the WC provisions, and an overview of the purposes of particular Federal legislation, including the Administrative Procedure Act (APA), the Endangered Species Act (ESA), and the National Environmental Policy Act (NEPA). USDA does not respond to the commenters' characterization of these Federal statutes or representations about NRCS intent as far as its past implementation efforts, but has responded to comment where appropriate when this legal framework and prior NRCS implementation relates to the interim rule or this final rule.

USDA appreciates the level of public interest that comes with wetlands. They are an important resource. NRCS follows the appropriate process for issuing rules consistent with statutory language in section 1246 of the 1985 Farm Bill. Onsite wetland determinations and aerial imagery do not constitute an unreasonable search or seizure. Wetland determinations conducted for eligibility in voluntary USDA programs is not a part of a criminal law proceeding. A USDA program participant or applicant consents to the review of his or her land for HELC/WC purposes by applying for assistance from USDA. USDA appreciates the comments in support of the interim rule. For any comments that lacked a direct application to the interim rule and were not addressed in this preamble, USDA appreciates the consideration with which such comments were developed and provided, and, to the extent practicable, will consider those comments in the development of future rulemakings or applicable policies.

In this preamble, the comments have been organized alphabetically by topic. The topics include:

- Abandonment;
- APA;
- Appeals;
- Area of request for certified wetland determinations;
- Best drained condition;
- Certification map quality;
- Certification status of pre-1996 wetland determinations;
- Climate references in rulemaking;
- Commenced conversion;
- Definitions;
- Endangered Species Act consultation;
- Farmed under natural conditions;
- Mitigation;
- National Environmental Policy Act;
- Navigable Waters Protection Rule applicability;
- Normal climatic conditions;
- Offsite analysis of potentially highly erodible land;
- Offsite analysis of wetland minimal effect;
- Seasonal wetlands;
- Setback distances; and
- Wetland hydrology indicators.

The topics that generated the greatest response include the certification status of wetland determinations between 1990 through 1996, wetland hydrology indicators, normal climatic conditions, and the offsite analysis of wetland minimal effect. This final rule responds to comments received during the public comment period and incorporates changes, as determined appropriate by USDA.

Abandonment of Farmed Wetland and Farmed Wetland Pasture

Comment: USDA received comment expressing concern that a person has a right to maintain hydrologic conditions on farmed wetland and farmed wetland pasture that was converted to crop

production prior to the 1985 Farm Bill, regardless of abandonment.

Response: No changes were made in the interim rule with respect to abandonment of farmed wetlands and farmed wetland pasture (7 CFR 12.33(c)). Abandonment applies to farmed wetland and farmed-wetland pasture when wetland conditions return after December 23, 1985, unless certain conditions are met. This is a part of long-standing policy and regulation. USDA also affirms that USDA program participants may continue to farm farmed wetlands and farmed wetland pasture under natural conditions without risk of losing their eligibility for USDA program benefits, as long as additional hydrological manipulations do not occur.

Administrative Procedure Act (APA)

Comment: USDA received comment related to the applicability of the APA to USDA implementation of the highly erodible land and wetland conservation provisions.

Response: USDA is not required by any statute to promulgate 7 CFR part 12 pursuant to notice and comment rulemaking under the APA. Section 1246 of the Food Security Act of 1985, as amended by the Agricultural Act of 2014, specified that the promulgation of regulations and administration of programs under this title shall be made as an interim rule effective on publication with an opportunity for notice and comment. The APA requirements for notice and comment, 5 U.S.C. 553, do not apply to a matter relating to public property, loans, grants, benefits, or contracts (5 U.S.C. 553(a)(2)). The matters identified in the December 2018 interim rule relate to USDA program grants and other benefits and thus notice and comment rulemaking are not required under the APA even without the specific statutory exemption.

Comment: USDA received comment that wished to remind NRCS that NRCS must respond in a reasoned manner to comments that raise significant issue with rules, and that failure to do so would be arbitrary and capricious.

Response: USDA has reviewed the comment received to the interim rule, summarizes the significant comment, and responds to such herein.

Appeals

Comment: USDA received comment concerned with which delineation methodology for wetland determinations would be used following a successful appeal. USDA also received comment that sought a right for taxpayers other than the USDA program participants to have a right to appeal wetlands determinations by NRCS.

Response: As detailed in the NRCS appeal procedures at 7 CFR part 614, an initial certified wetland determination is issued as a preliminary technical determination which is made using the delineation methodology in place at the time it is issued. If the preliminary wetland determination is appealed, then it may remain unchanged or be revised by NRCS and issued as a final technical determination. If any changes are made between the preliminary and final technical determinations, the original delineation methodology is used even if procedures have changed. However, if the final technical determination is appealed to the USDA National Appeals Division and is remanded to NRCS due to agency error, a new preliminary determination would be conducted following the current delineation methodology (assuming any changes in methodology had occurred). The same principle would apply to any wetland determination remanded to NRCS through Federal court proceedings.

With respect to taxpayer appeals, taxpayers (aside from the affected producer) are not party to wetland determinations. The entire framework of 7 CFR part 12 relates to the eligibility of persons to receive USDA program benefits. As such, there is no right set forth in either statute or case law for someone other than the affected person to challenge final agency action on an administrative decision such as a wetlands determination. The administrative appeal procedures are predicated upon review of an adverse decision that affects persons as USDA program participants, and taxpayers in general do not have standing for purposes of the appeal procedures.

Area of Request for Certified Wetland Determinations

Comment: USDA received comment identifying that a USDA program participant should be able to request a certified wetland determination for their entire tract. Comment also raised concern that the interim rule implied that the reference to field/subfield meant that NRCS would apply this scope of a certified wetland determination retroactively.

Response: USDA confirms that a certified wetland determination may be conducted for an entire tract if requested to do so by the USDA program participant. The change in the interim rule of identifying that certified wetland determinations would be made on a field or subfield basis was made in order to remove the strict ''whole tract'' requirement. Due to limited resources, NRCS has commonly prioritized certified wetland determination requests to those fields on which USDA program participants are planning to conduct, or have already conducted, land manipulations which may affect their eligibility, and this practice is expected to continue. USDA did not intend to imply that the scope of a certified wetland determination would be applied retroactively. Therefore, this final rule adds language to § 12.30(a)(3) to clarify that wetland determinations, delineations, and certifications may be done on a tract, field, or sub field basis, and has adjusted the language in § 12.30(c)(1) accordingly.

Best Drained Condition

Comment: USDA received comment related to the definition and use of the term ''best drained condition,'' including comments that expressed: General support for the definition; concerns that identification of the best drained condition be based on sound documentation; that the benefit of the doubt should be given to the USDA program participant; and concern that the interim rule preamble reference to abandonment contradicts the statutory interpretation that once land is identified as PC, it remains always as PC, ''once PC, always PC.'' The comment further recommended that USDA clarify this principle and that under the rule that PC is no longer considered wetland.

Response: The interim rule introduced and defined the term ''best drained condition'' to provide clarity regarding a long-standing and practiced statutory concept that is fundamental to the identification of wetlands that experienced drainage manipulations prior to enactment of the 1985 Farm Bill, and to meet congressional intent to provide certainty to persons concerning the status of such land and its future use. This long-standing concept provides that a person has the statutory right to maintain those hydrologic conditions that existed on wetlands that were converted to crop production prior to the 1985 Farm Bill to the extent that those conditions existed on or before December 23, 1985, due to drainage in its ''as-built'' condition.

Regarding the identification of the best drained condition, NRCS makes this decision based upon the best available evidence, which can include remote resources such as historical aerial imagery or other evidence such as drainage records found in USDA records or provided by a USDA program participant.

Section 12.31(c) is clarified as to the limited instance when abandonment

occurred before and existed as of December 23, 1985; in such instance, NRCS will not consider best drained condition. NRCS will not identify wetland hydrology based on the best drained condition when a wetland supported woody vegetation such that production of an agricultural commodity was not possible on December 23, 1985. This is in keeping with the definitions of ''prior-converted cropland'' and ''farmed wetland'' established in the interim rule published on September 6, 1996, (61 FR 47019–47038), which specifies that PC and farmed wetland cannot support woody vegetation as of December 23, 1985. By excluding the consideration of best drained condition on such lands, section 12.31(c) ensures that they are properly identified as wetland in step one of the wetland identification process described at 7 CFR 12.30(c)(7), and thus outside the definition of either ''prior-converted cropland'' or ''farmed wetland''.

This final rulemaking is not intended to change past implementation of the ''once PC, always PC'' concept and provides a narrow scope to which abandonment applies to the consideration of best drained condition which is consistent with the September 6, 1996 interim rule and which was not affected by the December 2018 interim rule. NRCS understands the desire to simplify regulatory criteria utilizing short-hand language that seems to explain a concept more readily, such as ''once PC, always PC''. However, the statutory structure identifies particular actions that will either result in a person being determined ineligible for USDA program benefits or result in them being determined exempt from ineligibility. The regulation reflects this structure. However, NRCS can confirm that as long as land remains in agricultural use, lands identified as PC in an NRCS certified wetland determination will not be considered converted wetlands for purposes of determining program ineligibility under the WC provisions.

Regarding the concern that PC is no longer wetland, USDA agrees that this is the case in the majority of situations, but a blanket statement as such cannot be made. Even so, as the WC provisions do not impose ineligibility with respect to the use of PC, there is no reason for USDA to identify whether PC is any longer a wetland.

Certification Status of Pre-1996 Wetland Determinations

Comment: USDA received comment related to the certification status of wetland determinations conducted before July 3, 1996. These comments:

- Expressed concern over the quality of data used to make determinations before 1996 and that such determinations are thus inaccurate, and that any action to accept as certified any pre-1996 ''inventory maps'' was contrary to Congressional intent;
- Suggested that NRCS should deem pre-November 28, 1990 determinations as certified as well or consider criteria for which a determination conducted prior to 1990 could be considered certified;
- Expressed concern that the interim rule failed to provide clarity on the commenters' understanding of the impetus for the rulemaking, namely the status of pre-1996 ''official'' wetland determinations; and
- Expressed support for the interim rule on this issue. Several comments simply sought further clarification.

Response: As a reminder, this rulemaking is intended as a codification and clarification of existing practice rather than a substantive change of overall regulatory framework or policy with regard to the certification status of wetland determinations. The interim rule did not change the legal status of any certified wetland determination made between 1990 and 1996, nor does NRCS have discretion to change any previously issued certified wetland determinations except under the limited circumstances identified in the regulations.

Certification of wetland determinations was initiated in the Food Agriculture Conservation and Trade Act of 1990 (1990 Farm Bill), which made all determinations completed after the 1990 Farm Bill's enactment date that were provided with a certification statement by a USDA official and appeal rights certified as a matter of law. The 1990 Farm Bill defined certification by directing, upon providing notice to affected owners or operators, the Secretary shall certify each such map as sufficient for the purpose of making determinations of ineligibility for program benefits and shall provide an opportunity to appeal such delineations to the Secretary prior to making such certification final. Further, the conference report to accompany the 1990 Farm Bill provided that the Managers agree that the certification process is to provide farmers with certainty as to which of their lands are to be considered wetlands for purposes of Swampbuster. On April 23, 1991, USDA issued regulations implementing the changes to the WC provisions in the 1990 Farm Bill. Language on certification was contained in § 12.30(c) which stated, the wetland determination and wetland delineation shall be certified as final by the SCS official 45 days after providing the person notice or, if appeal is filed with SCS, after a final appeal decision is made by SCS. Beginning in June 1991, certification was accomplished by completion of the SCS–CPA–026 form. This form required that the District Conservationist certify by signature that ''I certify that the above determination is correct and adequate for use in determining eligibility for USDA program benefits . . .'' and provided appeal rights on the back side of the ''Person Copy'' of the form.

The Federal Agriculture Improvement and Reform Act of 1996 (1996 Farm Bill) further clarified certification by, among other items, providing that a final certification . . . shall remain valid and in effect as long as the area is devoted to an agricultural use or until such time as the person affected by the certification requests review of the certification by the Secretary. In turn, these 1996 Farm Bill clarifications were codified in the September 6, 1996 interim rule in 7 CFR 12.30(c)(1). The 1996 interim rule specified that all wetland determinations made after July 3, 1996, will be done on a tract basis and will be considered certified wetland determinations. The 1996 interim rule also specified that determinations made prior to July 3, 1996 were subject to the regulations in place at the time of the determination, and the preamble emphasized that if NRCS certified a wetland determination prior to July 3, 1996, the certification will remain valid.

The language in the 2018 interim rule with respect to the certification status of pre-1996 wetland determinations simply clarified their status as it exists and has existed under the regulations in place at the time the wetland determinations were originally conducted and certified, irrespective of any hindsight determination as to the quality of data upon which those determinations were made. Unlike the assumption by commenters, one of the purposes of the interim rule was to correct misunderstandings regarding the certification status of pre-1996 wetland determinations and was not to change the legal status of wetland determinations conducted prior to 1996. Certified wetland determinations conducted today, as well as those that have been certified since 1990, are completed using the methods and data required at the time of issuance, and any subsequent judgement as to their sufficiency as certified wetland determinations solely based on these methods or data is not authorized under the applicable legal framework.

This principle applies even when the Soil Conservation Service (SCS) or NRCS issued a certified wetland determination which may have been supported by a ''wetland inventory'' prepared prior to 1996. The process for conducting wetland inventories began in the late 1980's as a means for USDA to better meet the workload demand and assure timely response to requests for wetland determinations and was only completed in some States. The primary sources of information used to develop wetland inventory maps were USDA soil survey and hydric soils lists, United States Fish and Wildlife Service (USFWS) National Wetland Inventory maps, United States Geological Survey Topographic maps, and aerial imagery. Following the 1990 Farm Bill amendments, when the SCS or later the NRCS received a wetland determination request, the agency would review wetland inventory maps, if available, for completeness and accuracy. The Agency could use a wetland inventory map as the basis for preparing a certified wetland determination, after adjusting the depiction of the presence of potential wetlands based on additional information such as a field visit, evidence provided by the farmer such as drainage records, and other information such as new aerial imagery or updated soil surveys. It is clear that Congress was aware of this process from the conference report to accompany the 1990 Farm Bill:

The Managers note that the current USDA wetland delineation process involves the use of substantial materials to make an initial determination in the field office, developed in consultation with other appropriate Federal and State agencies. Wetlands identified in this process are delineated on maps which are then mailed to producers for review. If the producer finds such map to be in error, and the USDA agrees that an error has been made, then the map is corrected. If the USDA does not agree that there is an error in the map, and the producer continues to believe so, then the producer may appeal such determination. The Managers find that this process is adequate for certification of any new maps delineated after the date of enactment of this Act.

Rather than rejecting this process in 1996, Congress confirmed that a producer could rely upon prior certified determinations regardless if they were supported by wetland inventory maps or onsite data collected during a field visit. In fact, section 1222(a) as amended by the 1996 Farm Bill stated explicitly that no person shall be adversely affected because of having taken an action based on a previous certified wetland delineation by the Secretary. The delineation shall not be subject to a subsequent wetland certification or delineation by the Secretary, unless requested by the person. Further, in the 1996 Farm Bill, Congress also removed the previous requirement for periodic review and update of wetland delineations, demonstrating Congressional support for the concept of certification first enacted in the 1990 Farm Bill.

The interim rule was silent with respect to the certification status of pre-1990 wetland determinations. The certification of wetland determinations requirement was established in the Food, Agriculture, Conservation, and Trade Act of 1990 (1990 Farm Bill). When conducting new certified wetland determinations, NRCS considers all available information, including pre-1990 wetland determinations and the documentation associated with any field visits that occurred associated with any appeal and onsite review.

Comment: USDA received comment that expressed concern over whether NRCS followed NEPA in 2013 for an alleged policy change, identified in a March 2013 Decision Memorandum, to deem these determinations as certified.

Response: NRCS developed the March 2013 Decision Memorandum to obtain Secretarial approval to: (1) Update immediately NRCS internal agency policy to describe more fully, but not change, the wetland determination methods as they were being implemented by staff across the Nation; and (2) develop an interim rule for the Secretary's consideration. There was no basis in law to prepare NEPA documentation for the preparation of a decision memorandum about whether to conduct rulemaking or to clarify existing policy. The 2013 Decision Memorandum made clear that NRCS was only clarifying the long-standing national policy instituted under the statutory mandate of certification so plainly provided in the 1990 Farm Bill and revised in the 1996 Farm Bill.

Comment: USDA received comment that suggested that NRCS not decertify and conduct revised determinations based on new mapping technology unless the USDA program participant raises the issue;

Response: The interim rule did not make any changes regarding potential revision of determinations that are considered certified. NRCS confirms that certified wetland determinations are subject to revision only under limited circumstances, namely if the land in question has been removed from agricultural use, upon request of the USDA program participant, or when a violation of the WC provisions has occurred.

Comment: USDA received comment that the WC provisions provided that only those actions taken based on previous certified determinations would be exempt from adverse agency action under 16 U.S.C. 3822(a)(6) and that actions taken based upon previous ''final'' or ''official'' determinations were not so exempted.

Response: As discussed above, USDA does not agree that 1990 through 1996 determinations are ''final'' or ''official'' or any other designation other than ''certified'' or not. USDA concurs that the WC provisions specify that no person can be adversely affected because of having taken an action based on a previous certified wetland delineation by the Secretary. However, the interim rule did not change the ability of a producer who has a non-certified determination to seek equitable relief under 7 CFR 12.11. A producer's ability to seek equitable relief under 7 CFR 12.11 was first established in the April 23, 1991 regulations which provided that an action of a person which would form the basis of any ineligibility under this part was taken by such person in good-faith reliance on erroneous advice, information, or action of any other authorized representative of USDA, the appropriate agency may make such benefits available to the extent that similar relief would be allowed under 7 CFR part 718.

Comment: USDA received comment that the interim rule restates NRCS's established policy that pre-1996 determinations are considered certified if the person was notified that the determination had been certified, and the map document was of sufficient quality to determine ineligibility for program benefits, but fails to identify the requirement that the producer must have been given notice of their appeal rights when the determination was issued. The comment also opined that any policy NRCS would consider implementing that would allow the agency to accept as certified pre-1996 wetland determinations without additional evidence of their accuracy or that appeal rights were given at the time the determination was made would be contrary to Congress' intent.

Response: USDA did not fail to identify the requirement that a producer had been given notice of their appeal rights. In particular, as explained in the interim rule preamble, USDA issued in June 1991 a revised CPA–026 form that included certification language in the agency signature block and contained the applicable appeal rights on the back side of the producer's copy. Section

12.30(c)(1), as amended by the interim rule, then identified that determinations made after November 28, 1990, and before July 3, 1996, are certified wetland determinations if the determination was issued on the June 1991 version of form NRCS–CPA–026 or SCS–CPA–026, which, given the forms' content, confirms that a producer was provided their appeal rights. The interim rule then also specifies that if the wetland determination was issued on a different version of the form, that wetland determination is certified if there is other documentation that the person was notified of the certification, provided appeal rights, and the map document was of sufficient quality to make the determination. The interim rule did not certify any of these pre-1996 wetland determinations that were not already certified pursuant to the procedures under the 1991 final rule, nor is NRCS considering adopting any policy with respect to certification of wetland determinations contrary to Congressional intent.

Comment: USDA received comment asserting that when pre-1996 wetland determinations are not considered certified, there are no circumstances consistent with statute that NRCS could use outdated wetland delineation methods to review and certify an old determination and specified that NRCS should remove the provision from the interim rule and instead make clear that determinations of wetland hydrology will be made in accordance with the wetland delineation methodology currently in use by NRCS.

Response: USDA generally agrees with the comment; however, no revisions to the rule are necessary. The interim rule established that in order for a wetland determination made after November 28, 1990, and before July 3, 1996 to be considered certified, the determination must have been formally issued by NRCS, certifying the determination was of sufficient quality to determine ineligibility for program benefits, along with all appeal rights. The only exception is in situations where the previously issued certified wetland determination map document maintained by the producer or in the NRCS case file is now of such poor quality to render it impossible to locate wetlands on the farm. In these situations, a new certified wetland determination map, utilizing current methods, will be provided with appeal rights. Further, specific to 1991 through 1996 determinations, the amendments provided in the 1990 Farm Bill, as supported by the 1991 rule, directed NRCS to certify, at the time of issuance, the wetland determination meets all quality and administrative mandates in effect at the time of issuance and certification. The interim rule did not certify any pre-1996 wetland determinations, and NRCS policy has always been, and remains, that wetland determinations are made and certified as accurate and sufficient in accordance with the wetland delineation methods in effect at the time of certification, with the minor exception that is explained above under wetland determinations which have been appealed.

Comment: USDA received comment that NRCS statements contemporaneous with the 1996 interim rule demonstrate that the agency understood its statutory mandate to require a review of previous wetland determinations to ensure their ''accuracy'' and that NRCS was considering establishing a specific time frame for completing the evaluation of existing wetland determinations.

Response: The comment does not provide the full context under which such statements were made in the 1996 interim rule. In particular, as explained in the preamble of the 1996 interim rule, NRCS was considering conducting a review of wetland determinations in collaboration with other agencies who had entered into the Wetlands Memorandum of Agreement (MOA) in 1994. The 1994 MOA was to facilitate the use of NRCS wetland determinations for the Clean Water Act. The ''certification'' under the MOA aimed to ensure the accuracy of wetland delineations conducted prior to November 28, 1990 for the purposes of the WC provisions, as well as providing a useful basis for establishing reliance on wetland delineations for Clean Water Act purposes. It was in this context that the MOA agencies recognized the importance of providing certainty for the agricultural community as to the status of their wetland determinations which have not been certified for use for both the WC provisions and the Clean Water Act, and that the Agencies were considering the establishment of a specific time frame for completing the evaluation of existing wetland determinations, and that based on the evaluation landowners would be notified whether their current wetland determinations are acceptable for both the WC provisions and the Clean Water Act. (61 FR 47025). It is important to note that the discussion on the MOA and evaluation of existing wetland determinations in the 1996 rule preamble follows the statement, If NRCS certified a wetland determination prior to July 3, 1996, the certification will remain valid (61 FR 47025). As such, it is clear that the evaluation applied to wetland determinations conducted prior to 1990.

This evaluation was limited to portions of five states in the prairie pothole region of the United States and was not a comprehensive study of the WC program for purposes of WC certification. The purpose of the evaluation was to apply the different off-site wetland determination methods used in the different states at the time and to determine the consistency, not the accuracy, of the findings. The evaluation team did not review the quality of any previously issued certified wetland determinations or any older non-certified determinations. After the 1996 Farm Bill amendments definitively closed any opportunity for review and update of previously issued certified determinations, the Agency remained challenged on how to treat pre-1990 non-certified wetland determinations. Following the findings from the evaluation and facing the 1995 moratorium on wetland determinations which had been imposed by Secretary Glickman in response to bi-partisan Congressional legislation, the Agency recommended to the Department to end the practice of reviewing and updating previously completed wetland determinations. In a 1997 Informational Memorandum, the Agency proposed that wetland determinations would be conducted only on request, when a manipulation is planned, or in cases of potential violations, adhering to the 1996 statutory changes. Thereafter, the Secretary lifted the moratorium on wetland determinations.

At no point in the preamble or the regulation part of the 1996 rule did the Secretary provide NRCS the authority to review and update proactively any certified wetland determination, including those determinations issued and certified by the Agency prior to 1996. In fact, the practice was explicitly prohibited in the statement in the preamble if NRCS certified a wetland determination prior to July 3, 1996, the certification will remain valid. The certainty discussed in length in the 1990 Conference Report, enacted into law in the 1990 Amendments, and strengthened in the 1996 amendments, provided assurance to USDA program participants that once certified, a wetland determination would never be changed by USDA except for limited circumstances identified above. The clarification provided in the 2017 amendment to the NRCS National Food Security Act Manual (NFSAM), as codified in regulation in the 2018 interim rule, supports this assurance.

Certified Wetland Determination Map Quality Concerns

Comment: USDA received comment concerning the quality of wetland determination maps and requesting that NRCS clarify what constitutes a map of sufficient quality for making determinations of ineligibility benefits.

Response: In the interim rule, USDA identified that in order for a 1990 through 1996 wetland determination to be considered certified, the map document must be of sufficient quality to determine ineligibility for program benefits. The purpose of the wetland determination map is so that the USDA program participant can accurately self-certify that they are in compliance with the WC provisions, and USDA can respond to questions regarding eligibility. There are rare situations where certified wetland determination maps produced prior to development of computer map production capabilities and quality document reproduction technologies are of such poor quality that neither the person, nor USDA can accurately discern the location of wetlands on the map. As explained in the language in the interim rule, such a map would not be considered of sufficient quality for eligibility determination purposes.

Climate References in Rulemaking

Comment: USDA received comment suggesting that reference to climate and environment not be used in rulemaking.

Response: USDA will continue to use terminology that is necessary or facilitates the implementation of its responsibilities in concert with the scientific understanding of meteorological, atmospheric, hydrological, and soil health issues facing USDA program participants and agricultural operations of the United States.

Commenced Conversion

Comment: USDA received comment related to commenced conversion wetlands, identifying that it appears that the interim rule changed the original statutory commenced conversion language as the interim rule uses the term ''occurred'' when referencing wetland conversions prior to December 23, 1985, while the statute uses the term commenced.

Response: USDA did not make any change in the interim rule that affected the treatment of commenced conversion wetlands under 7 CFR part 12. As specified in the September 6, 1996, interim rule, a person seeking a commenced conversion exemption must have completed the conversion activity on or before January 1, 1995. As the commenced conversion exemption is no longer available, USDA uses the term ''occurred'' to simplify explanation of the WC provisions.

Definitions

Comment: USDA received comment seeking surety that the term ''farmed wetland'' meets all three criteria for wetland. USDA also received comment about the definitions of pothole, playa, and pocosin, which sought to expand the definition of potholes to cover the Great Plains; or to clarify the definition of a pothole. Comment on certain definitions or their aspects, such as hydrology criteria for farmed wetlands, are addressed in their own sections of this preamble.

Response: The definition of wetland is a general term, whereas farmed wetland and farmed wetland pasture are specific types of wetlands identified as having been manipulated prior to December 23, 1985, but still retaining wetland characteristics. USDA affirms that farmed wetland and farmed wetland pasture must meet all three wetland criteria: Soil, vegetation under normal circumstances, and the hydrology criteria identified in regulation. USDA does not agree that additional specificity in their definitions is needed, as each definition starts out with the requirement that they are a wetland. As described in the wetland determination process in § 12.30(c)(7), wetland type is identified in step 2, which is after the determination of the three wetland criteria, and the definition of wetland in both statute and regulation require all three criteria.

USDA appreciates the support it has received for adding definitions of potholes, playas, and pocosins. As provided in the preamble to the interim rule, the definitions of pothole, playa, and pocosin provided in the interim rule were unchanged from definitions provided in agency policy since the early 1990s. There is no scientific basis to amend the definitions set forth in the interim rule and USDA does not wish to alter the long-standing scope of protections for these types of wetlands at this time.

In order to gain consistency in the construction of the definitions of farmed wetland, farmed wetland pasture, and PC, minor adjustments are being made in § 12.2. The phrase, at least once before December 23, 1985, is added in reference to the frequency that an agricultural commodity must have been produced on farmed wetland to be consistent with the definition of PC. USDA affirms that only one instance of agricultural commodity crop production prior to December 23, 1985, is and has always been needed in order to qualify for either the farmed wetland or PC designations. Similarly, although the definition for farmed wetland pasture has always specified that it must have been managed for pasture or hayland, clarification is added that it also was not used to produce an agricultural commodity at least once before December 23, 1985, which allows USDA and the public an easier juxtaposition between this and the farmed wetland designation, and is consistent with long-standing application of these definitions. Finally, the phrase, prior to December 23, 1985, is relocated in the definition of farmed wetland pasture to be consistent with its location in the definition of farmed wetland.

Endangered Species Act Consultation

Comment: USDA received comment that USDA must undertake consultation under the ESA with respect to the potential impacts to listed species and their habitat before implementing the interim rule and alleging that USDA is currently in ongoing violation of the ESA and its implementing regulations.

Response: USDA disagrees consultation under section 7 of the ESA was required for its rulemaking action. ESA section 7(a)(2) requires agencies, in consultation with either the Secretary of the Interior or Commerce, to ensure that any action authorized, funded, or carried out by an agency is not likely to jeopardize species listed under the Act or designated critical habitat (16 U.S.C. 1536(a)(2)). As discussed further below, the procedural and substantive requirements of the Act are not triggered here because: (1) Wetland determinations are not an ''action'' that ''authorizes, funds, or carries out'' activities by producers impacting protected species or critical habitat; (2) neither the interim rule nor this final rulemaking are an affirmative ''agency action'' for the purposes of the ESA, only a clarification of long-standing policy; and (3) even if the interim rule or this final rule were an affirmative agency action, USDA does not have discretion to deviate from the requirements set forth by Congress. For these reasons, the requirements of ESA section 7(a)(2) are not triggered here.

First, NRCS provides technical assistance to USDA program participants in the form of wetland determinations to assist them to comply with the WC provisions. Producers choose whether to comply with the WC provisions based on their desire to participate voluntarily in covered USDA programs and other factors. NRCS can

neither prohibit nor permit USDA program participants from converting wetlands potentially used by ESA-listed species to agricultural production; therefore, NRCS' technical determinations are not agency actions that trigger the consultation requirements of ESA section 7(a)(2). Further, as established by a memorandum (FWS/AES/DCHR/007178) dated April 2, 2001 from the USFWS's Acting Deputy Director to the Regional Directors, ''consultation under section 7(a)(2) of the Endangered Species Act is not required when the Natural Resources Conservation Service conducts official wetland determinations or delineations on private lands under the Food Security Act of 1985, as amended.'' Additionally, section 1223 of the 1985 Farm Bill previously required consultation with USFWS on the identification of wetlands and the determination of exemptions, but such consultation was specifically removed in the 1996 Farm Bill. While the consultation referenced previously in section 1223 was not specific to ESA consultation, its removal identifies that Congress did not believe consultation with USFWS was needed on any wetland determination related concerns. Thus, wetland determinations themselves are not ''agency actions'' that trigger the requirements of ESA section 7(a)(2).

Second, because wetland determinations themselves are not agency actions that trigger the requirements of ESA Section 7(a)(2), guidance or clarification from USDA is also not an agency action that triggers the Act's requirements. Neither the interim rulemaking, this final rulemaking, nor the technical methods by which NRCS makes wetland determinations have the potential to adversely impact protected species or critical habitat. Additionally, the interim rule and this final rule are codifying long-standing policy and this codification does not alter the status quo. Thus, NRCS has determined that the rule would have no effect on any listed species. When an action will have ''no effect'' on listed species, consultation requirements are not triggered.

Third, ESA only applies to actions over which the agency has discretionary control sufficient to impose measures for the benefit of protected species. Most of rule implements statutory requirements prescribed by Congress, such that NRCS has no discretionary control. Further, NRCS' provision of technical assistance to agricultural producers in the form of a wetland determination carries no authority to prevent producers for converting wetlands to agricultural production. Where an agency is required to act in particular manner, there is no utility in ESA consultation and the requirement is not triggered.

Comment: USDA received comment that stated that by permitting producers to certify inaccurate wetland determinations and convert improperly delineated wetlands to agricultural use without penalty, NRCS's actions at the very least ''may affect'' listed species by facilitating the destruction of important habitat for endangered migratory birds and other animals that frequent agricultural wetlands. The comment also asserts that the interim rule, as a change in policy, reversed the incentive to preserve such wetlands and thus necessarily affects listed species.

Response: As described above, the interim rule and this final rule do not facilitate the destruction of habitat or otherwise affect listed species because USDA is not authorizing producers to take any activities, these rulemakings are only a clarification of long-standing policy and not a change in policy, and USDA does not have discretion to deviate from the requirements set forth by Congress. The comment mischaracterizes the certification process as the producer does not ''certify'' wetland determinations, whether the commenter considers such wetland determination accurate or not. Comment may be based upon misinterpretation of the internal 2013 Decision Memorandum that made reference to producer review of pre-1996 certified wetland determinations (discussed above). NRCS certifies wetland determinations in accordance with statutory, regulatory, and policy guidance. The 2013 Decision Memorandum simply reflected this legal framework where prior certified wetland determinations remain certified unless a new determination is requested by the producer; however, the new determination process that follows any such request is conducted by the agency and such review does not in any way mean that the producer is certifying the wetland determination.

Further, as previously noted above, a memorandum (FWS/AES/DCHR/007178) dated April 2, 2001 from the USFWS's Acting Deputy Director to the Regional Directors stated, ''consultation under section 7(a)(2) of the Endangered Species Act is not required when the Natural Resources Conservation Service conducts official wetland determinations or delineations on private lands under the Food Security Act of 1985, as amended.'' Additionally, as described elsewhere in this preamble, the interim rule did not effect a change in policy, and therefore does not meet the definition of ''action'' under ESA section 7.

For all these reasons, the agency has not taken an action that would affect listed species and trigger the consultation requirements of ESA section 7(a)(2). USDA thus has determined that the rule will have no effect on listed species.

Farmed Under Natural Conditions

Comment: USDA received comment related to farmed under natural conditions requesting that NRCS reiterate that farming under natural conditions is allowed.

Response: USDA affirms that USDA program participants may continue to farm wetlands under natural conditions without risk of losing their eligibility for USDA program benefits. As first stated in the 1986 interim rule and still existing in § 12.32(b)(1), destruction of herbaceous hydrophytic vegetation shall not be considered an action that destroys a natural wetland characteristic.

Mitigation

Comment: USDA received comment urging NRCS to encourage mitigation efforts, and in doing so, amend its regulations generally not to require more than a one-to-one ratio for mitigation.

Response: In the Agriculture Improvement Act of 2018 (2018 Farm Bill), Congress reauthorized the availability of funding for NRCS to support wetland mitigation banks, and such funds have been made available. USDA believes the availability of wetland mitigation banks for WC mitigation purposes will greatly encourage wetland mitigation efforts. The WC statutory provisions identify that wetland and the wetland values, acreage, and functions must be mitigated, and that a person can appeal any ratio greater than a one-to-one. No changes were made in response to this comment.

Navigable Waters Protection Rule

Comment: USDA received comment expressing confusion about the wetland conservation provisions of the 1985 Farm Bill and the Federal Clean Water Act.

Response: It should be emphasized that this final rule, in part, governs the identification of wetlands for the purpose of implementing the wetland conservation provisions of the 1985 Farm Bill. This rulemaking does not affect the identification of waters subject to the Federal Clean Water Act or the

implementation of any other Federal, State, or local provision protecting or regulating wetlands or any other land or water resources. At times, NRCS wetland determinations may encompass wetlands that are also subject to Clean Water Act regulations, including Clean Water Act section 404 discharge of dredged or fill material permitting requirements. However, due to the unique statutory provisions of the 1985 Farm Bill, while NRCS wetland determinations may identify certain areas as exempt under the 1985 Farm Bill, those same areas may have the potential to be jurisdictional under the Clean Water Act.

The U.S. Environmental Protection Agency (EPA) and the Department of the Army (Army) have recently revised the definition of ''waters of the United States'' in the Navigable Waters Protection Rule, which establishes the scope of Federal jurisdiction under the Clean Water Act. See 85 FR 22250–22342 (April 21, 2020). In the rulemaking to revise the definition of ''waters of the United States,'' the EPA and the Army have retained their long-standing definition of ''wetlands'' and have defined ''prior-converted cropland'' for purposes of the Clean Water Act, including when these lands would no longer be excluded from the definition of ''waters of the United States.'' NRCS notes that this rule defines ''prior-converted cropland'' differently for 1985 Farm Bill purposes than the definition that is identified in the EPA and the Army ''waters of the United States'' rulemakings for Clean Water Act purposes. Further, NRCS also notes that this final rule for 1985 Farm Bill purposes is entirely separate from the EPA and the Army ''waters of the United States'' rulemakings.

USDA recognizes that USDA program participants may be confused between the sometimes-differing requirements of the 1985 Farm Bill and the Clean Water Act. To avoid confusion, NRCS clearly informs USDA program participants that NRCS wetland determinations are for purposes of implementing the 1985 Farm Bill's wetland conservation provisions only, and that the participant should contact the U.S. Army Corps of Engineers for clarification about whether a particular activity will require a Clean Water Act section 404 permit.

National Environmental Policy Act (NEPA) Compliance

Comment: USDA received comment on the Environmental Assessment (EA) for the interim rule that it had failed to meet its NEPA responsibilities by not identifying sufficient alternatives, failing to conduct an Environmental Impact Statement (EIS) due to several factors the commenters' identified that should have triggered such analysis, failure to provide a ''hard'' look, and failing to meet other NEPA requirements.

Response: Much of this criticism rests upon the mischaracterization of the interim rule. The provisions of the rule regarding certification of wetland determinations made between 1990 and 1996, only clarify existing policy that itself implements statutory language that NRCS lacks discretion to change. The remainder of the rule clarifies and codifies existing NRCS policy and procedures with regard to the methods NRCS uses to identify wetlands and does not change the status quo. Thus, NRCS properly prepared an EA and reached a Finding of No Significant Impact (FONSI).

In the 1990 Amendments to the Farm Bill, Congress directed USDA to establish a process for certifying wetlands determinations. To implement this mandate, SCS developed the process of certification through completion of the SCS–CPA–026 form, which certifies that the maps are sufficient for determination of ineligibility and notifies the farmer of his or her appeal rights. In 1996, Congress expressly circumscribed NRCS's discretion to revise prior determinations, providing that a previous certified wetland delineation shall not be subject to a subsequent wetland certification or delineation by the Secretary unless requested by the person.

While NRCS had some initial discretion to establish a process for certifying wetland determinations in the wake of the 1990 Amendments—discretion it used to develop the SCS–CPA–026 form process—Congress expressly removed any discretion to revisit those certifications in the 1996 Amendments. Thus, if a determination was certified between 1990 and 1996 under the criteria applicable at that time, the 1996 Amendments left the NRCS with no discretion except to continue recognizing those determinations as certified.

One discretionary addition made in the interim rule is for NRCS to continue to use the 1971 through 2000 precipitation dataset in its decisions on whether wetland hydrology criteria are met under normal circumstances rather than begin to use the currently available 1981 through 2010 precipitation dataset and establish a precedent to continue to update the dataset used every 10 years. Because the 1971 through 2000 precipitation dataset has been the one NRCS has used since it began making certified wetland determinations, codifying the continued use of that dataset also does not represent a change from the status quo. Further, because the term ''normal circumstances'' as used in the 1985 Farm Bill includes hydrology manipulations that occurred before the date of enactment, NRCS must have enough years of pre-1985 precipitation data available to use in making decisions on wetland hydrology.

NRCS was not required to prepare an EIS because the interim rule only clarified and did not change existing NRCS policy and procedures and because NRCS lacks discretion to change policy in a manner that would revisit certifications made between 1990 and 1996. Further, NEPA has no specific requirement regarding the number of alternatives an agency must develop and analyze; at a minimum, an agency must carry forward one action alternative and the no-action alternative. An agency is not required to consider alternatives that have substantially similar consequences. As described in the EA, a 1991 National Resources Inventory (NRI) completed a wetlands survey that confirmed wetland conversions to agriculture had slowed compared to those occurring before the 1985 Farm Bill and noted that agricultural activities seemingly had less impact on wetland conversions than expected (Schnepf 2008). The EA also cites the 2010 NRI Summary Report (Sucik and Marks 2014) analysis of data showing the status and recent trends of wetlands in four regions of the U.S. The report documents wetland losses in the northeast and southeast, primarily resulting from urban development, not conversion to agriculture. Further, the central and western regions have experienced a gain in wetland acres, primarily on agricultural lands.

Because conversion to agriculture is only one cause of wetland losses, and NRCS has no information indicating conversion to agriculture is currently a primary cause, NRCS does not expect the precipitation dataset used to help make determinations on the presence or absence of wetland hydrology to make a significant difference in the amount of wetlands identified as subject to the wetland conservation provisions. Because an alternative that considered decadal updates to the precipitation dataset would have substantially similar environmental consequences as the proposed action retaining use of the 1971 through 2000 dataset, the no action and proposed action alternatives were sufficient.

Normal Climatic Conditions and Precipitation Data

Comment: USDA received comment on the information that NRCS uses to determine ''normal circumstances'' to meet the hydrology component of the wetland definition that the land ''under normal circumstances'' does support a prevalence of hydrophytic vegetation. In particular, USDA received comment related to:

- Support for the definition of normal climatic conditions in § 12.2(a);
- Requesting a change from hydrologic inputs to precipitation;
- Increased clarity as to when to seek information in Climate Analysis for Wetlands Tables (WETS Tables) as opposed to the Field Office Technical Guide (FOTG);
- Concern about how NRCS uses data collected by the National Oceanic and Atmospheric Administration in establishing normal climatic condition for the WETS Tables.
- Concern about maintaining current precipitation data, including—
  - Support for NRCS using the 1971 through 2000 data set;
  - Recommendation to use only pre-1985 data, including only normal rainfall data from years prior to 1985;
  - Recommendations about how to use the existing data set situationally;
  - Recommendation to use the 1981 through 2010 data set since the 1971 through 2000 data set was associated with a drier time period;
  - Use 1971 through 2000 data set for wetland determinations with pre-1985 manipulations and current precipitation data for new land being brought into production;
  - Limiting use of the 1971 through 2000 data set to only those situations where the producer can demonstrate the existence of special circumstances, such as where the use of the new dataset would create a demonstrably unfair result.
- Seeking a connection between the definitions of normal climatic conditions and normal circumstances;
- Conduct an analysis of the hydrologic conditions that occurred prior to 1985;
- Clarify how the precipitation data dates were chosen and how they will be applied.

Response: USDA appreciates the support it has received for the definition of ''normal climatic conditions'' as defined in the interim rule and will retain that language in this final rule. NRCS understands the comment about focusing on precipitation but hydrologic inputs can include other sources of water such as floodwater from an adjacent stream that may require consideration in the FOTG.

The definition of normal climatic conditions does not itself provide guidance as to when WETS Tables or the FOTG is appropriate. The determination of normal climatic conditions will typically be determined with the use of WETS Table data as provided in the NRCS Engineering Field Handbook. If other methods are used, such as those to account for hydrologic inputs other than precipitation, that data and methods for its use will be provided in the FOTG. This flexibility is necessary to assure the accuracy of wetland determinations being issued across the highly diverse ecoregions contained within the United States.

The term ''normal circumstances'' is part of the statutory wetland definition but is not defined itself in statute or in 7 CFR part 12. Agency policy explains that there are two considerations in the determination of normal circumstances. One is consideration of pre and post December 23, 1985, disturbance and the other is consideration of climate. The term ''normal climatic conditions'' is applied to the latter, and specifically requires that wetland identification be based on conditions that are present under normal climate, not those conditions which are present due to abnormally wet or dry conditions.

USDA appreciates the concerns expressed by the commenters critical of NRCS' continued use of the 1971 through 2000 data set. NRCS' National Water and Climate Center (NWCC) has prepared WETS Tables to help assess normal climatic conditions. The WETS Tables display monthly rainfall data as the monthly average (50th percentile), and the values at which there is a 30 percent chance that the rainfall will be less or more than those values (30th and 70th percentiles). The range between the 30th and 70th percentiles defines normal monthly rainfall. Rainfall records from a defined period preceding the date of onsite or remotely sensed (for example, aerial photograph) evidence can be compared with these values to determine if observed conditions were reflective of what would be expected under ''normal climatic conditions.'' This data is stored in the Agricultural Applied Climate Information System (AgACIS) which is a public repository for data collected at stations in the National Weather Service (NWS) Cooperative Network. Data and several standard summary reports are available. Historically, the most common summary reports used in NRCS are Temperature and Precipitation Summary, Frost-Free Days, Growing Season, and WETS Tables. AgACIS brings historical climate information (used for the 1971 through 2000 WETS Tables and other historical datasets) and near real-time data together under one umbrella system where they are fused into quality products to assess historical climate trends, enhance daily operational decisions, or assist with any number of climate dependent activities. USDA believes that the data quality and control processes used by the NWS are adequate and that the NWS Cooperative Network encompasses enough geographic coverage to fully represent the agricultural landscape.

For data sets that are used to document local climatic conditions, such as daily rainfall and temperature records, climatologists recognize a 30-year period of record as a minimum for statistical accuracy. Because NRCS must consider best drained conditions that existed on or before December 23, 1985, it must use the 1971 through 2000 data set to have enough years of data to evaluate observations of hydrology indicators. The 1981 through 2010 data set would not allow for enough years prior to December 23, 1985, to be able to assess normal climatic conditions for many determinations. To assure fair and consistent application of this process and predictability for USDA program participants, NRCS has maintained its use of the 1971 through 2000 data set. NRCS received comment that use of a 30-year average was reasonable, and NRCS agrees that such an average is accurate while not being influenced by shorter term climatic variability. Regarding the use of a more contemporary dataset for the evaluation of land currently being brought into production, USDA appreciates this comment but feels that providing consistency in the process and predictability for USDA program participants, correlated to the statutory date of December 23, 1985, is an important aspect of implementation of the WC provisions, and that the continued use of the 1971 through 2000 data set is appropriate in all situations.

Office of Inspector General Audit Report in 2017

Comment: USDA received comment asserting that the interim rule failed to address the 2017 Office of Inspector General (OIG) Audit Report, ''USDA Wetland Conservation Provisions in the Prairie Pothole Region.'' Some of the comment concerning the content of the OIG Report are addressed in the Certification Status of pre-1996 Wetland Determinations section of this preamble. The remainder are addressed below.

Response: As documented in the NRCS response contained in the report, USDA disagrees with much of the content of the 2017 OIG report and the report's characterizations of NRCS actions taken. As is common to all audits, matters are identified as needing improvement and if significant, warrant a recommendation. The 2017 OIG report only issued two recommendations. The first recommendation was for the Agency to issue clarity on certification. The agency agreed to release ''additional policy clarification providing specific guidance to evaluate the certification status of determinations issued prior to 1996.'' In good-faith, NRCS released its clarification in a 2017 amendment to the NFSAM, and in the December 2018 interim rule. NRCS was not required to reference the OIG report itself in the interim rule.

As noted above, NRCS has long recognized that determinations made between 1990 and 1996 on a properly completed CPA–026 form are certified. In 2010 through 2012, however, NRCS realized that staff in the four prairie pothole States were incorrectly applying national policy and not recognizing certified determinations made between 1990 and 1996. Between 2012 and 2013, NRCS National Office staff worked with these four States to better explain the statute, regulations, and policy regarding certification. In 2013, NRCS leadership in those states asked staff to align the application of certification in support of the statute and the 1991 and 1996 regulations. In 2013, NRCS proposed, in a Decision Memorandum to the Secretary of Agriculture, that the certification issue be clarified in the preamble of an upcoming proposed rule. However, in the wake of the Agricultural Act of 2014, the proposed clarification of certification policy in a rule was not made due to other priorities—namely the recoupling of crop insurance benefits to the highly erodible land and wetland conservation provision requirements.

In March 2014, OIG received a complaint alleging that NRCS officials were improperly directing officials in the prairie pothole states to treat wetland determinations from 1990 through 1996 as certified rather than making new wetland determinations. During OIG's investigation, NRCS explained to the OIG auditors the 28-year history of certification, including the initiation of certification subsequent to enactment of the 1990 Farm Bill, the amendments on certification in the 1996 Farm Bill, and the 1991 and 1996 implementing regulations. In 2017 OIG issued a report which concluded that NRCS policy had been to consider wetland determinations made between 1990 through 1996 as not certified ''unless the determination was appealed and upheld,'' and that NRCS's 2013 instructions to the prairie pothole states, that 1990 through 1996 determinations were certified if the producer had been notified of its right to appeal, represented a change in policy. While NRCS disputed the OIG's characterization of its policy, it accepted OIG's recommendation that NRCS eliminate confusion regarding certification, by issuing clarifying guidance: ''Recommendation 1—Issue official guidance reinforcing correct and current rules and clarifying procedures for making wetland determinations and certification, including the status of pre-1996 determinations.''

The report's recommended management action was not to correct erroneous agency policy, or to change agency policy. The management action was for NRCS to issue guidance clarifying that two rules (the 1991 final rule and the 1996 interim rule), apply to certified determinations. To determine the certification status of any previously issued determination, NRCS must use the rule in force at the time of the previously issued determination. NRCS acted on the OIG recommendation and issued a clarifying amendment to the NFSAM in 2017 and the interim rule in 2018; both of which met the recommendation of clarifying certification, including the status of pre-1996 determinations.

Off-Site Analysis of Potentially Highly Erodible Land

Comment: NRCS received comment related to potentially highly erodible land (PHEL), concerning the establishment of this designation, defining the resolution of the elevation data that NRCS may use, and identifying that NRCS should emphasize offsite determinations involving PHEL can be appealed.

Response: NRCS identifies highly erodible land based upon the predominant soil map unit in a field. Where soil map units have a range of slope and steepness factors that could result in a soil map unit being determined either highly erodible or not for water erosion, NRCS gives that soil map unit a designation of potentially highly erodible land, following a process first described in the 1986 interim rule and still existing in § 12.21(c). The final erodibility of a particular field that contains potentially highly erodible soil map units has been determined through onsite measurements of slope and steepness. However, USDA identified in the interim rule that NRCS could also make a determination of erodibility using new technological tools, including the use of LiDAR or other elevational data in lieu of an onsite measurement. The availability and type of elevational data varies across the United States, and NRCS has developed procedures to evaluate its use. Additionally, NRCS specifically added that if a person disagrees with an offsite determination on potentially highly erodible soils, a determination will be made onsite. No changes were made in response to these comments.

Offsite Analysis of Wetland Minimal Effect

Comment: USDA received comment related to the offsite analysis of wetland minimal effect, including the role of States in minimal effect analysis, recommending NRCS only conduct onsite minimal effect analysis, recommending NRCS conduct minimal effect analysis even after commencement of potential conversion activities, questioning how many minimal effect determinations have been issued, suggesting NRCS use yield records as evidence for offsite analysis, suggesting that any burden of establishing minimal effect post-conversion should not be on the person while other comment insisted that such burden remain with the person, recommending NRCS develop a list of categorical minimal effect activities, and suggesting that the interim rule left too much to agency discretion. Comment also asserted that NRCS could not remove the on-site evaluation requirement simply to make it easier to offer this exemption to USDA program participants and that the Agency must adopt specific criteria for when off-site methods can be used.

Response: USDA appreciates the attention and support this issue has received. NRCS considers all useful evidence in analyzing whether an activity will result in a minimal effect. While onsite analysis of minimal effect to the wetlands in the area might provide more robust data, it is not always a practicable option, as NRCS may not have the authority to visit wetlands in the area outside the site under consideration of the minimal effect request. The interim rule clarifies that offsite analysis is an option to determine the impacts of the action on wetlands in the area, while an onsite visit is required to the site under consideration of a minimal effect exemption. Minimal effect analysis must happen on a case-by-case basis and the language of the interim rule, which is not changed in this final rule,

provides a reasonable balance between clarity and discretion to allow for case-by-case analysis. Once a potential conversion activity has commenced, an accurate and fair minimal effect determination is made more difficult because of disturbance which is why the burden is on the USDA program participant to demonstrate minimal effect in that situation. While NRCS will not be adopting any list of categorical minimal effects in this rule, the option to create such a list exists for future rulemakings and States would play a role in the development of any list.

PC Any Land With Pre-1985 Drainage

Comment: USDA received comment related to land with pre-1985 drainage, identifying that if conversion had been commenced prior to 1985, including lands identified as farmed wetlands, they should not be subject to the WC provisions.

Response: Farmed wetlands have been subject to the WC provisions since 1987 and were formally defined in regulation in 1996. Congress has not altered NRCS administration of farmed wetlands since first described in regulation. Conversely, Congress has embraced farmed wetland terminology in its own explanations of the WC provisions and eligibility for conservation programs under Title XII of the Food Security Act of 1985, such as the Wetlands Reserve Program originally authorized in the 1990 Farm Bill. There have also been specific criteria for identification of commenced conversion wetlands and whether such wetlands are considered exempt or not from the wetland conservation provisions as described above. No changes have been made in response to these comments.

Seasonal Wetlands

Comment: USDA received comment that the interim rule should be withdrawn because it systematically imposes several changes to NRCS's wetlands identification policies that, when considered cumulatively with existing practices, result in the exclusion of seasonal wetlands in wetlands determinations. The comment identifies that seasonal wetlands have been excluded through the wetland maps that form the basis for producer compliance, asserting that the rule certified pre-1996 wetland determinations and that these consistently excluded seasonal wetlands. Additionally, the comment also claims that the older determinations utilize precipitation data from a historically dry period (1990 through 2000) that limits the number and size of seasonal wetlands subject to the wetland conservation compliance requirements and that there is no scientific analysis of the impact of the use of such information.

Response: As explained above, the interim rule did not make any changes, and thus does not have an impact, cumulatively or otherwise, on seasonal wetlands. Additionally, the interim rule did not certify any pre-1996 wetland determinations but simply clarified the certification status of wetland determinations made prior to 1996. With respect to the precipitation dataset used, this comment is addressed in the NEPA compliance section. In particular, because the 1971 through 2000 precipitation dataset has been the one NRCS has used since it began making certified wetland determinations, codifying the continued use of that dataset also does not represent a change from the status quo. Further, because the term ''normal circumstances'' as used in the 1985 Farm Bill includes hydrology manipulations that occurred before the date of enactment, NRCS must have enough years of pre-1985 precipitation data available to use in making decisions on wetland hydrology.

Comment: USDA received comment asserting that the interim rule unduly relies on satellite imagery from the hottest time of the year when seasonal wetlands have likely dried out. The comment recommended that any NRCS wetland determination should account for the use of summer imagery and promote investments in more accurate spring imagery to ensure that identification of seasonal wetlands which fill early in the spring, which is when they provide their most important flood storage and wildlife benefits, particularly for migrating and nesting waterfowl.

Response: Neither the interim rule nor this final rule addresses the specific timing of aerial imagery used for making wetland determinations. NRCS utilizes all available data including data collected with new technologies. While spring imagery is helpful in identifying seasonal wetlands, it does not always exist. Aerial imagery taken in the summer months is often available and used, and indicators of spring wetness are commonly evident on imagery taken later in the growing season. Guidance on interpretation of these indicators is provided in technical methods such as State Off-Site Methods for wetland identification and the U.S. Army Corps of Engineers Wetlands Delineation Manual (Corps Manual) regional supplements.

Setback Distance Concerns

Comment: USDA received comment related to setback distance concerns, recommending that NRCS adopt a system that avoids site-specific analysis to provide better notice and consistency to USDA program participants.

Response: When a USDA program participant wishes to install drainage tile in a field, NRCS provides technical assistance regarding the appropriate distance from a wetland or farmed wetland that they may install the drainage tile without risk of violating the WC provisions. Site-specific analysis is sometimes unavoidable due to the variations of soils, hydrology, and geographic position of wetlands on the landscape. While NRCS will continue to evaluate many requests using a site-specific analysis, NRCS is also currently pursuing improvements to the methods which are used to provide setback distances to USDA program participants and will consider this comment in their development.

Wetland Hydrology Indicators

Comment: USDA received comment on wetland hydrology indicators and other methods used to identify farmed wetland, farmed wetland pasture, and PC. In particular, NRCS received comment related to:

- General support for wetland hydrology indicators and criteria added to the definitions of farmed wetland and farmed wetland pasture in § 12.2(a);
- Concern that the farmed wetland definition was expanded, and conversely results in the reduction of PC;
- Concern that the use of hydrology indicators is arbitrary, and hydrology should not be determined based on a single site visit;
- Concern on the use of hydrology indicators from the U.S. Army Corps of Engineers Wetlands Delineation Manual regional supplements;
- Suggesting clarification on the analytic techniques used to identify farmed wetland and farmed wetland pasture hydrology criteria;
- Suggesting analytical techniques or scientific modeling be the only method used to identify farmed wetland or farmed wetland pasture hydrology;
- Supporting the indicator approach as scientifically sound and consistent with the statutory definition of wetland only if in practice, determinations are capturing the full range of relevant ''observable conditions resulting from inundation or saturation,'' during both the growing season, and the wet portion of the growing season to capture actual wetland hydrology;

• Suggesting the inundation criteria for pothole farmed wetlands be removed.

Response: USDA described in the interim rule how NRCS has long-determined hydrology requirements for farmed wetland and farmed wetland pasture and the methods used in order to bring transparency to USDA program participants. Additionally, USDA simplified the definition of ''prior-converted cropland'' in the interim rule by removing the previous ''was less than'' farmed wetland hydrology and stating that prior-converted cropland fails to meet the farmed wetland hydrology criteria. USDA appreciates support for the changes made by the interim rule and the expressed concerns. In response, USDA is making changes in this final rule as explained below.

The September 6, 1996, interim rule established hydrology criteria for determinations of farmed wetland and farmed wetland pasture, which were based strictly on the quantification of the number of days that the subject land experienced inundation or saturation during the growing season. Basing the identification of farmed wetland and farmed wetland pasture hydrology solely on the measurement of a number of days is both inefficient and cost prohibitive. The agency does not routinely implement long-term hydrology monitoring protocols for wetland determinations, nor was the reference to the number of days expected at the time of the 1996 interim rulemaking to be based upon such long-term hydrology monitoring protocols.

Rather, as supported by wetland science and long-standing application, NRCS predominantly used and continues to use the indicator-based approach to wetland identification. Accordingly, the agency commonly relies upon criteria that are based on observable conditions that result from such duration of inundation or saturation. Therefore, the changes made in the interim rule do not constitute an expansion of the identification of farmed wetland or farmed wetland pasture, nor a reduction in the identification of PC, but rather better describe how the agency makes decisions on the wetland hydrology criteria associated with farmed wetland, farmed wetland pasture, and PC.

In particular, the use of indicators for the identification of farmed wetland and farmed wetland pasture hydrology is one of the observable conditions that the agency has long used. Other Federal agencies with responsibilities for wetland identification also use indicators as readily observable and easily quantifiable criteria that an area supports wetland hydrology. The agency recognizes the potential challenges when using hydrology indicators observed during a single site visit that may be outside of the growing season, and emphasizes caution in the use of indicators in agency training efforts, including reference to Federal guidance documents which offer helpful guidance in the use of indicators. Even so, wetland hydrology indicators remain a reliable and readily observable method for accurately and efficiently documenting the presence of wetland hydrology, and the criteria unique to each WC label such as farmed wetland or farmed wetland pasture. In contrast to long-term onsite hydrology monitoring, this process allows for a timely and accurate response to USDA program participants.

The agency recognizes the concern raised by the use of wetland hydrology indicators as identified in other Federal guidance such as regional supplements to the Corps Manual, which may be modified in the future without consideration to its impact to the identification of farmed wetland and farmed wetland pasture hydrology. This final rule removes the required use of hydrology indicators in the regional supplements to the Corps Manual, and instead identifies that hydrology indicators used for the identification of farmed wetland that is not considered a playa, pocosin, or pothole, will be identified in the local NRCS FOTG. NRCS FOTG's contain local information such as County level soils and climate data. As such, farmed wetland and farmed wetland pasture hydrology indicators may vary be County within a State due to local conditions. The identification of hydrology indicators in the local NRCS FOTG will provide local input, through consultation with the NRCS State technical committee, transparency to the public, and allow the indicators to be reflective of local conditions which meet the required inundation for 15 consecutive days or more during the growing season or 10 percent of the growing season, whichever is less, in most years. Until such time as the updates to the NRCS FOTGs have been published and public notice provided, NRCS will continue to use Group B (Evidence of Recent Inundation) hydrology indicators from the regional supplements to the Corps Manual, as specified in the interim rule. NRCS expects to issue the local level hydrology indicators for notice and comment in the **Federal Register** on a State basis within six months of the publishing of this final rule. As detailed in the interim rule preamble, NRCS will continue to use the Corps Manual, the regional supplements to the Corps Manual, and the Food Security Act Wetland Identification Procedures located in the NFSAM, Part 514, to make wetland identification decisions as identified in Step 1 of the wetland determination process described in § 12.30(c)(7). The use of hydrology indicators for farmed wetland and farmed wetland pasture occurs in Step 2 of that process, determination of wetland type (or exemption).

When observation of wetland hydrology indicators is not reliable or possible due to disturbance or other factors, it may be necessary to use alternative information such as analytic techniques like drainage equations or the evaluation of monitoring data. Wetlands and the conditions which influence wetland hydrology are variable across the landscape and there are several methods which may be used, such as those that are provided in the NRCS Engineering Field Handbook. As previously discussed, wetland hydrology field indicators are a valid and reliable method for the identification of wetland hydrology, and it would not be an efficient use of resources to require the use of analytic techniques or onsite hydrology monitoring in every farmed wetland determination when other valid methods exist.

In response to concerns raised on the identification of farmed wetland and farmed wetland pasture hydrology, this final rule provides the means by which playa, pocosin and pothole farmed wetland and all farmed wetland pasture hydrology are identified. As established first in the September 6, 1996, interim rule, playa, pocosin, and pothole farmed wetlands and all farmed wetland pasture have required periods of inundation, ponding, or saturation. Particularly with the inclusion of the saturation requirement, almost exclusively, all playa, pocosin, and pothole farmed wetlands and farmed wetland pasture hydrology criteria evaluations have been based on whether the area in question simply meets the wetland hydrology factor. The final rule change brings transparency and codifies the method by which these determinations have been made since the establishment of the farmed wetland and farmed wetland pasture designations, by stating that areas manipulated prior to December 23, 1985, but which retained wetland hydrology, as determined through step 1 of the wetland determination process in § 12.30(c)(7) and application of the procedures described in § 12.31(c), meet

the required hydrology criteria for playa, pocosin, and pothole farmed wetlands and farmed wetland pasture.

Both inundation and saturation criteria for pothole farmed wetlands were established in the September 6, 1996, interim rule and USDA does not agree that there is a need to modify these criteria.

The 2018 Farm Bill

The 2018 Farm Bill made two modifications which affect implementation of the WC provisions. Section 2101, Duty of the Secretary, provides that no person shall become ineligible if it is determined that an exemption to the WC provisions applies, and section 2102, On-Site Inspection Requirement, provided that a reasonable effort must be made to include the affected person in an onsite visit which must be conducted prior to any determination of ineligibility. The December 2018 interim rule established in the wetland determination process in § 12.30(c)(7) that step 2 includes the determination of whether any exemptions apply, and no further modification in this final rule is needed in support of section 2101. Section 12.30(c)(4) is being amended to clarify that NRCS will continue to make a reasonable effort to include the affected person in the onsite investigation prior to making any determination of ineligibility.

Effective Date, Notice and Comment, and Paperwork Reduction Act

In general, the APA (5 U.S.C. 553) requires a notice of proposed rulemaking be published in the **Federal Register** and interested persons be given an opportunity to participate in the rulemaking through submission of written data, views, or arguments with or without opportunity for oral presentation, except when the rule involves a matter relating to public property, loans, grants, benefits, or contracts. This rule involves matters relating to USDA program benefits and therefore is exempt from the APA requirements. Further, the regulations to implement the programs of chapter 58 of title 16 of the U.S.C., as specified in 16 U.S.C. 3846, and the administration of those programs, are:

- To be made as an interim rule effective on publication, with an opportunity for notice and comment,
- Exempt from the Paperwork Reduction Act (44 U.S.C. chapter 35), and
- To use the authority under 5 U.S.C. 808 related to congressional review and any potential delay in the effective date.

For major rules, the Congressional Review Act requires a delay in the effect date of 60 days after publication to allow for congressional review. This rule is not major under the Congressional Review Act, as defined by 5 U.S.C. 804(2). The authority in 5 U.S.C. 808 provides that when an agency finds for good cause that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, the rule may take effect at such time as the agency determines. This rule is a not major rule for purposes of the Congressional Review Act, and therefore USDA is not required to delay the effective date for 60 days from the date of publication to allow for congressional review. Therefore, this rule is effective on the date of publication in the **Federal Register**.

Executive Orders 12866, 13563, 13771, and 13777

Executive Order 12866, ''Regulatory Planning and Review,'' and Executive Order 13563, ''Improving Regulation and Regulatory Review,'' 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 emphasized the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The requirements in Executive Orders 12866 and 13573 for the analysis of costs and benefits apply to rules that are determined to be significant. Executive Order 13777, ''Enforcing the Regulatory Reform Agenda,'' established a Federal policy to alleviate unnecessary regulatory burdens on the American people.

The Office of Management and Budget (OMB) designated this rule as not significant under Executive Order 12866 and therefore, OMB has not reviewed this rule.

Executive Order 13771, ''Reducing Regulation and Controlling Regulatory Costs,'' requires that, in order to manage the private costs required to comply with Federal regulations, for every new significant or economically significant regulation issued, the new costs must be offset by the savings from deregulatory actions. As this rule is designated not significant, it is not subject to Executive Order 13771. In general response to the requirements of Executive Order 13777, USDA created a Regulatory Reform Task Force, and USDA agencies were directed to remove barriers, reduce burdens, and provide better customer service both as part of the regulatory reform of existing regulations and as an on-going approach. NRCS reviews regulations and makes changes to improve any provision that was determined to be outdated, unnecessary, or ineffective.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), generally requires an agency to prepare a regulatory analysis of any rule whenever an agency is required by APA or any other law to publish a proposed rule, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule is not subject to the Regulatory Flexibility Act because no law requires that a proposed rule be published for this rulemaking initiative. Despite the Regulatory Flexibility Act not applying to this rule, the action only affects those entities who voluntarily participate in USDA programs and in doing so receive its benefits. Compliance with the provisions of 7 CFR part 12 is only required for those entities who choose to participate in these voluntary programs.

Environmental Analysis

NRCS conducted an EA of the interim rule and the assessment determined there would not be a significant impact to the human environment and as a result, an EIS was not required to be prepared (40 CFR 1508.13). NRCS reviewed the comments it received to the EA and has responded to them in this preamble. NRCS has also reviewed the changes being made in this final rule, and determined that the changes do not alter the determinations that NRCS made in its original EA. Therefore, NRCS has made a finding that this final rule will not have a significant impact. A copy of the FONSI may be obtained from either of the following websites: *www.regulations.gov* or *https://www.nrcs.usda.gov/wps/portal/nrcs/detail/national/technical/ecosciences/ec.* A hard copy may also be requested in one of the following ways:

- *Via mail: karen.fullen@usda.gov* with ''Request for FONSI'' in the subject line; or
- *A written request:* Karen Fullen, Environmental Compliance Specialist, Natural Resources Conservation Service, 9173 W Barnes Dr., Suite C, Boise, ID 83709.

Executive Order 12372

Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' requires consultation with State and local officials that would be directly affected by proposed Federal financial assistance. The objectives of the Executive order are to foster an intergovernmental partnership and a strengthened Federalism, by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance and direct Federal development. For reasons specified in the final rule-related notice regarding 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), the programs and activities in this rule are excluded from the scope of Executive Order 12372.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, ''Civil Justice Reform.'' This rule will not preempt State or local laws, regulations, or policies unless they represent an irreconcilable conflict with this rule. Before any judicial actions may be brought regarding the provisions of this rule, the administrative appeal provisions of 7 CFR part 11 are to be exhausted.

Executive Order 13132

This rule has been reviewed under Executive Order 13132, ''Federalism.'' The policies contained in this rule do not have any substantial direct effect on States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, except as required by law. Nor does this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments.'' 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 has assessed the impact of this rule on Indian Tribes and determined that this rule may have substantial direct Tribal implication that may require Tribal consultation under Executive Order 13175. Tribal consultation for this rule was included in the two 2018 Farm Bill Tribal consultations held on May 1, 2019, at the National Museum of the American Indian, in Washington, DC, and on June 26 through 28, 2019, in Sparks, NV. For the May 1, Tribal consultation, the portion of the Tribal consultation relative to this rule was conducted by Bill Northey, USDA Under Secretary for the Farm Production and Conservation mission area, as part of the Title II session. There were no specific comments from Tribes on the matter related to this rule during the Tribal consultation. If a Tribe requests additional consultation, NRCS will work with the USDA Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions, and modifications identified in this rule are not expressly mandated by legislation.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4), requires Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal Governments or the private sector. Agencies generally must prepare a written statement, including cost benefits analysis, for proposed and final rules with Federal mandates that may result in expenditures of $100 million or more in any 1 year for State, local or Tribal Governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost-effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates, as defined under Title II of UMRA, for State, local, and Tribal Governments or the private sector. Therefore, this rule is not subject to the requirements of UMRA.

E-Government Act Compliance

USDA 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 12

Administrative practice and procedure, Coastal zone, Crop insurance, Flood plains, Loan programs—agriculture, Price support programs, Reporting and recordkeeping requirements, Soil conservation.

Accordingly, the interim rule amending 7 CFR part 12, which was published on December 7, 2018 (83 FR 63046–63052), is adopted as a final rule with the following changes:

PART 12—HIGHLY ERODIBLE LAND CONSERVATION AND WETLAND CONSERVATION

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

Authority: 16 U.S.C. 3801, 3811–12, 3812a, 3813–3814, and 3821–3824.

■ 2. In § 12.2, in paragraph (a) designate the definition for ''Wetland determination'' in proper alphabetical order and revise paragraphs (4) and (5) to read as follows:

§ 12.2 Definitions.

(a) * * *

Wetland determination * * *

(4) *Farmed wetland* is a wetland that prior to December 23, 1985, was manipulated and used to produce an agricultural commodity at least once before December 23, 1985, and on December 23, 1985, did not support woody vegetation, and met the following hydrologic criteria:

(i) If not a playa, pocosin, or pothole, experienced inundation for 15 consecutive days or more during the growing season or 10 percent of the growing season, whichever is less, in most years (50 percent chance or more), which requisite inundation is determined through:

(A) Observation of wetland hydrology indicators as identified in the local NRCS Field Office Technical Guide;

(B) Procedures identified in State Off-Site Methods for wetland identification set forth in the local NRCS Field Office Technical Guide; or

(C) The use of analytic techniques, such as the use of drainage equations or the evaluation of monitoring data.

(ii) If a playa, pocosin, or pothole experienced ponding for 7 or more consecutive days during the growing season in most years (50-percent chance of more) or saturation for 14 or more consecutive days during the growing season in most years (50-percent chance or more). Wetlands which are found to support wetland hydrology through Step 1 of the wetland determination process in § 12.30(c)(7) and application of the procedures described in § 12.31(c) will be determined to meet the requisite criteria.

(5) *Farmed-wetland pasture* is a wetland that prior to December 23,

1985, was manipulated and managed for pasture or hayland, was not used to produce an agricultural commodity at least once before December 23, 1985, and on December 23, 1985, experienced inundation or ponding for 7 or more consecutive days during the growing season in most years (50-percent chance or more) or saturation for 14 or more consecutive days during the growing season in most years (50-percent chance or more). Wetlands which are found to support wetland hydrology through step 1 of the wetland determination process in § 12.30(c)(7) and application of the procedures described in § 12.31(c) will be determined to meet the requisite criteria.

* * * * *

■ 3. Amend § 12.30 by revising paragraphs (a)(3) and (c)(1) and (4) to read as follows:

§ 12.30 NRCS responsibilities regarding wetlands.

(a) * * *

(3) Make or approve wetland determinations, delineations and certifications, functional assessments, mitigation plans, categorical minimal effects, and other technical determinations relative to the implementation of the wetland conservation provisions of this part. Wetland determinations, delineations and certifications will be done on a tract, field, or sub-field basis;

* * * * *

(c) * * *

(1) Certification of a wetland determination means that the wetland determination is of sufficient quality to make a determination of ineligibility for program benefits under § 12.4. In order for a map to be of sufficient quality to determine ineligibility for program benefits, the map document must be legible to the extent that areas that are determined wetland can be discerned in relation to other ground features. NRCS may certify a wetland determination without making a field investigation. NRCS will notify the person affected by the certification and provide an opportunity to appeal the certification prior to the certification becoming final. All wetland determinations made after July 3, 1996, will be considered certified wetland determinations. Determinations made after November 28, 1990, and before July 3, 1996, are considered certified if the determination was issued on the June 1991 version of form NRCS–CPA–026 or SCS–CPA–026, the person was notified that the determination had been certified, and the map document was of sufficient quality to determine ineligibility for program benefits. If issued on a different version of the form, a determination will be considered certified if there is other documentation that the person was notified of the certification, provided appeal rights, and the map document was of sufficient quality to make the determination.

* * * * *

(4) Before any benefits are withheld, an on-site investigation of a potential wetland violation will be made by NRCS. NRCS will make a reasonable effort to include the affected person in the on-site investigation. The affected person will be provided an opportunity to appeal the on-site determination to USDA if the on-site determination differs from the original determination. Such action by NRCS shall be considered a review of the prior determination and certification of the delineation. If the prior determination was a certified wetland determination, an appeal of the NRCS on-site determination shall be limited to the determination that the wetland was converted in violation of this part.

* * * * *

■ 4. Amend § 12.31 by revising paragraph (c)(2) to read as follows:

§ 12.31 Wetland identification procedures.

* * * * *

(c) * * *

(2) When a wetland is affected by drainage manipulations that occurred prior to December 23, 1985, and did not support woody vegetation on December 23, 1985, such that production of an agricultural commodity on that date was possible, wetland hydrology shall be identified on the basis of the best-drained condition resulting from such drainage manipulations.

* * * * *

Stephen L. Censky,

Deputy Secretary, U.S. Department of Agriculture.

[FR Doc. 2020–18626 Filed 8–27–20; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–0201; Product Identifier 2020–NM–007–AD; Amendment 39–21208; AD 2020–17–03]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Airbus SAS Model A318–111, –112, –121, and –122 airplanes; Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; Model A320–211, –212, –214, –216, –231, –232, and –233 airplanes; and Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes. This AD was prompted by reports of fatigue cracks on continuity fittings at the lower framing of the front windshield on airplanes on which a certain production modification has been embodied. Additional analysis showed that certain certification requirements for damage tolerance and fatigue are not met on airplanes in a certain post-production modification configuration. This AD requires repetitive high frequency eddy current (HFEC) inspections of the central node windshield area for cracking, and applicable corrective actions if cracking is found, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective October 2, 2020.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of October 2, 2020.

ADDRESSES: For material incorporated by reference (IBR) in this AD, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this IBR material on the EASA website at *https://ad.easa.europa.eu.* You may view this IBR material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

It is also available in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0201.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0201; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Sanjay Ralhan, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3223; email *sanjay.ralhan@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2020–0005, dated January 13, 2020 (''EASA AD 2020–0005'') (also referred to as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Airbus SAS Model A318–111, –112, –121, and –122 airplanes; Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; Model A320–211, –212, –214, –215, –216, –231, –232, and –233 airplanes; and Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes. Model A320–215 airplanes are not certified by the FAA and are not included on the U.S. type certificate data sheet; this AD therefore does not include those airplanes in the applicability.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Airbus SAS Model A318–111, –112, –121, and –122 airplanes; Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; Model A320–211, –212, –214, –216, –231, –232, and –233 airplanes; and Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes. The NPRM published in the **Federal Register** on March 20, 2020 (85 FR 16011). The NPRM was prompted by reports of fatigue cracks on continuity fittings at the lower framing of the front windshield on airplanes on which a certain production modification has been embodied. Additional analysis showed that certain certification requirements for damage tolerance and fatigue are not met on airplanes in a certain post-production modification configuration. The NPRM proposed to require repetitive HFEC inspections of the central node windshield area for cracking, and applicable corrective actions if cracking is found, as specified in an EASA AD.

The FAA is issuing this AD to address fatigue cracks on continuity fittings at the lower framing of the front windshield on airplanes on which Airbus Production Modification 22058 (which is included in Airbus Modification 21999) has been embodied. Additional analysis showed that certain certification requirements for damage tolerance and fatigue are not met on airplanes in a post-production Modification 22058 configuration. The FAA is issuing this AD to address this condition, which could lead to failure of the continuity fittings at the lower node of the windshield central frame, possibly resulting in decompression of the airplane and injury to occupants. See the MCAI for additional background information.

Comments

The FAA gave the public the opportunity to participate in developing this final rule. The following presents the comment received on the NPRM and the FAA's response.

Request To Allow Alternative Repair Methods

United Airlines requested that for the threshold inspection, instead of using the inspection procedures specified in Airbus Service Bulletin A320–53–1331, dated January 14, 2019 (''Airbus SB A320–53–1331''), the final rule allow operators to substitute previous repairs done using the procedures in Airworthiness Limitation Item (ALI) task 531129 [special detailed inspection of center node continuity fittings and windshield on the left-hand and right-hand sides] of the Airbus Model A318/A319/A320/A321 Airworthiness Limitations Section (ALS), and procedures for ongoing repairs that contain unique inspection programs, which are described in Airbus SB A320–53–1331. The commenter stated that this would prevent discrepancies when operators did threshold inspections using the procedures described in Airbus SB A320–53–1331. The commenter noted that the inspection procedures in Airbus SB A320–53–1331 are based on an assumption that the area of inspection has not been repaired.

In addition, the commenter remarked that paragraph (2) of EASA AD 2020–0005 partially addresses the issue of inspections done in areas that were previously repaired. The commenter pointed out that paragraph (2) of EASA AD 2020–0005 addresses only the central lower node continuity fittings but that the required inspection involves both the windshield frame and central lower node continuity fittings. The commenter explained that the central lower node fittings are a portion of the general lower windshield frame attachment inspection area. The commenter stated that it has airplanes with reinforcement repairs on the windshield frame and that those repairs were developed by Airbus. The commenter shared that the repair design approval sheet (RDAS) provided by Airbus stated ''impact to ALI 531129'' since the repair reinforced and covered the windshield frame pockets. The commenter concluded that a new inspection method and inspection intervals were defined in that RDAS.

Furthermore, the commenter noted that windshield replacement is a substantial cost and burden to operators, and alternative repairs are highly desirable to reduce the cost of a windshield frame and continuity fitting repair.

Although the FAA acknowledges the commenter's concern about window replacement costs, the agency disagrees with the commenter's request. The FAA is not aware of a global RDAS, issued under Airbus SAS's EASA Design Organization Approval, that is applicable to the entire U.S.-registered airplane fleet. The RDAS issued to United Airlines is specific to the configuration of the airplanes in United Airlines' fleet. Therefore, the FAA cannot revise corrective actions relative to the unsafe condition identified in this AD for the entire U.S.-registered fleet based on the United Airlines' fleet configuration, which was altered by certain previously approved repairs. Paragraph (i)(1) of this AD states that operators may use the procedures found in 14 CFR 39.19 to request an alternative method of compliance (AMOC) if an airplane's configuration does not allow compliance with the requirements of an AD.

In addition, paragraph (7) of EASA AD 2020–0005 specifies that accomplishment of inspections using ALI task 531129, as specified in table 1 to paragraph (1) of EASA AD 2020–0005, is acceptable for compliance with

the requirements of paragraph (1) of EASA AD 2020–0005 for only the first inspection that is required after the effective date of that EASA AD.

EASA, the State of Design Authority for these airplane models, conducted a risk assessment, along with a cost benefit analysis, and developed corrective actions that are required to mitigate the risk of the unsafe condition addressed in EASA AD 2020–0005. The FAA finds that the service information specified in EASA AD 2020–0005, including the modification procedure in Airbus Service Bulletin A320–53–1329, dated December 21, 2018 (''Airbus SB A320–53–1329''), is necessary to address the unsafe condition. The purpose of the actions specified in Airbus SB A320–53–1329 is to prevent cracks on the front windshield frame and continuity fitting by installing reinforced parts. Therefore, the FAA has not revised this AD regarding this issue.

Conclusion

The FAA reviewed the relevant data, considered the comment received, and determined that air safety and the public interest require adopting this final rule as proposed, except for minor editorial changes. The FAA has determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for addressing the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Related IBR Material Under 1 CFR Part 51

EASA AD 2020–0005 describes procedures for repetitive HFEC inspections of the central node windshield area for cracking, and applicable corrective actions if cracking is found. The corrective actions include modification or repair. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

The FAA estimates that this AD affects 1,203 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS *

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
19 work-hours × $85 per hour = $1,615	$0	$1,615	$1,942,845

* Table does not include estimated costs for reporting.

The FAA estimates that it would take about 1 work-hour per product to comply with the reporting requirement in this AD. The average labor rate is $85 per hour. Based on these figures, the FAA estimates the cost of reporting the inspection results on U.S. operators to be $102,255, or $85 per product.

The FAA estimates the following costs to do any necessary on-condition modifications that would be required based on the results of any required actions. The FAA has no way of determining the number of aircraft that might need these on-condition modifications:

ESTIMATED COSTS OF ON-CONDITION MODIFICATIONS *

Labor cost	Parts cost	Cost per product
1,122 work-hours × $85 per hour = $95,370	$316,043	$411,413

* The FAA has received no definitive data that would enable the agency to provide cost estimates for the on-condition repairs specified in this AD.

Paperwork Reduction Act

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB control number. The control number for the collection of information required by this AD is 2120–0056. The paperwork cost associated with this AD has been detailed in the Costs of Compliance section of this document and includes time for reviewing instructions, as well as completing and reviewing the collection of information. Therefore, all reporting associated with this AD is mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to Information Collection Clearance Officer, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, TX 76177–1524.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: General requirements. Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Will not affect intrastate aviation in Alaska, and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2020–17–03 Airbus SAS: Amendment 39–21208; Docket No. FAA–2020–0201; Product Identifier 2020–NM–007–AD.

(a) Effective Date

This AD is effective October 2, 2020.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus SAS Model airplanes specified in paragraphs (c)(1) through (4) of this AD, certificated in any category, as identified in European Union Aviation Safety Agency (EASA) AD 2020–0005, dated January 13, 2020 (''EASA AD 2020–0005'').

(1) Model A318–111, –112, –121, and –122 airplanes.

(2) Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes.

(3) Model A320–211, –212, –214, –216, –231, –232, and –233 airplanes.

(4) Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Reason

This AD was prompted by reports of fatigue cracks on continuity fittings at the lower framing of the front windshield on airplanes on which Airbus Production Modification 22058 (which is included in Airbus Modification 21999) has been embodied. Additional analysis showed that certain certification requirements for damage tolerance and fatigue are not met on airplanes in a post-production Modification 22058 configuration. The FAA is issuing this AD to address this condition, which could lead to failure of the continuity fittings at the lower node of the windshield central frame, possibly resulting in decompression of the airplane and injury to occupants.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2020–0005.

(h) Exceptions to EASA AD 2020–0005

(1) Where EASA AD 2020–0005 refers to its effective date, this AD requires using the effective date of this AD.

(2) The ''Remarks'' section of EASA AD 2020–0005 does not apply to this AD.

(3) Paragraph (8) of EASA AD 2020–0005 specifies to report inspection results to Airbus within a certain compliance time. For this AD, report inspection results at the applicable time specified in paragraph (h)(3)(i) or (ii) of this AD.

(i) If the inspection was done on or after the effective date of this AD: Submit the report within 90 days after the inspection.

(ii) If the inspection was done before the effective date of this AD: Submit the report within 90 days after the effective date of this AD.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Large Aircraft Section, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the Large Aircraft Section, International Validation Branch, send it to the attention of the person identified in paragraph (j) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, Large Aircraft Section, International Validation Branch, FAA; or EASA; or Airbus SAS's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC):* For any service information referenced in EASA AD 2020–0005 that contains RC procedures and tests: Except as required by paragraph (i)(2) of this AD, RC procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(4) *Paperwork Reduction Act Burden Statement:* A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. All responses to this collection of information are mandatory as required by this AD. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Information Collection Clearance Officer, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, TX 76177–1524.

(j) Related Information

For more information about this AD, contact Sanjay Ralhan, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3223; email *sanjay.ralhan@faa.gov.*

(k) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(i) European Union Aviation Safety Agency (EASA) AD 2020–0005, dated January 13, 2020.

(ii) [Reserved]

(3) For information about EASA AD 2020–0005, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu.*

(4) You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call

206–231–3195. This material may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0201.

(5) You may view this material that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email *fedreg.legal@nara.gov,* or go to: *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued on August 6, 2020.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–18930 Filed 8–27–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–0217; Product Identifier 2019–NM–193–AD; Amendment 39–21183; AD 2020–15–20]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2019–03–11, which applied to certain Airbus SAS Model A350–941 and –1041 airplanes. AD 2019–03–11 required revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive maintenance requirements and airworthiness limitations. This AD requires revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective October 2, 2020.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of October 2, 2020.

The Director of the Federal Register approved the incorporation by reference of certain other publications listed in this AD as of March 29, 2019 (84 FR 5584, February 22, 2019).

ADDRESSES: For EASA material incorporated by reference (IBR) in this AD, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this IBR material on the EASA website at *https://ad.easa.europa.eu.* For Airbus SAS service information identified in this final rule, contact Airbus SAS, Airworthiness Office—EAL, Rond-Point Emile Dewoitine No: 2, 31700 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *continued-airworthiness.a350@airbus.com;* internet *http://www.airbus.com.* You may view this IBR material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0217.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0217; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Kathleen Arrigotti, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3218; email *kathleen.arrigotti@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2019–0288, dated November 28, 2019 (''EASA AD 2019–0288'') (also referred to as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Airbus SAS Model A350–941 and –1041 airplanes.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2019–03–11, Amendment 39–19563 (84 FR 5584, February 22, 2019) (''AD 2019–03–11''). AD 2019–03–11 applied to certain Airbus SAS Model A350–941 and –1041 airplanes. The NPRM published in the **Federal Register** on April 10, 2020 (85 FR 20206). The NPRM was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The NPRM proposed to require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations, as specified in an EASA AD.

The FAA is issuing this AD to address safety-significant latent failures that would, in combination with one or more other specific failures or events, result in a hazardous or catastrophic failure condition. See the MCAI for additional background information.

Comments

The FAA gave the public the opportunity to participate in developing this final rule. The FAA received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

The FAA reviewed the relevant data and determined that air safety and the public interest require adopting this final rule as proposed, except for minor editorial changes. The FAA has determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for addressing the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Related IBR Material Under 1 CFR Part 51

EASA AD 2019–0288 describes airworthiness limitations for certification maintenance requirements.

This AD also requires Airbus A350 Airworthiness Limitations Section (ALS) Part 3, Certification Maintenance Requirements (CMR), Revision 04, dated December 15, 2017; and Airbus A350 ALS Part 3, Certification Maintenance Requirements (CMR), Variation 4.2, dated July 26, 2018, which the Director of the Federal Register approved for incorporation by reference as of March 29, 2019 (84 FR 5584, February 22, 2019).

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

Costs of Compliance

The FAA estimates that this AD affects 13 airplanes of U.S. registry.

The FAA estimates the following costs to comply with this AD:

The FAA estimates the total cost per operator for the retained actions from AD 2019–03–11 to be $7,650 (90 workhours × $85 per work-hour).

The FAA has determined that revising the maintenance or inspection program takes an average of 90 work-hours per operator, although the agency recognizes that this number may vary from operator to operator. In the past, the agency has estimated that this action takes 1 work-hour per airplane. Since operators incorporate maintenance or inspection program changes for their affected fleet(s), the FAA has determined that a per-operator estimate is more accurate than a per-airplane estimate. The FAA estimates the total cost per operator for the new actions to be $7,650 (90 work-hours × $85 per work-hour).

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Will not affect intrastate aviation in Alaska, and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2019–03–11, Amendment 39–19563 (84 FR 5584, February 22, 2019), and adding the following new AD:

2020–15–20 Airbus SAS: Amendment 39–21183; Docket No. FAA–2020–0217; Product Identifier 2019–NM–193–AD.

(a) Effective Date

This AD is effective October 2, 2020.

(b) Affected ADs

This AD replaces AD 2019–03–11, Amendment 39–19563 (84 FR 5584, February 22, 2019) (''AD 2019–03–11'').

(c) Applicability

This AD applies to Airbus SAS Model A350–941 and –1041 airplanes, certificated in any category, with an original airworthiness certificate or original export certificate of airworthiness issued on or before August 20, 2019.

(d) Subject

Air Transport Association (ATA) of America Code 05, Time Limits/Maintenance Checks.

(e) Reason

This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is issuing this AD to address safety-significant latent failures that would, in combination with one or more other specific failures or events, result in a hazardous or catastrophic failure condition.

(f) Compliance

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

(g) Retained Maintenance or Inspection Program Revision, With No Changes

This paragraph restates the requirements of paragraph (g) of AD 2019–03–11, with no changes. Within 90 days after March 29, 2019 (the effective date of AD 2019–03–11), revise the existing maintenance or inspection program, as applicable, to incorporate Airbus A350 Airworthiness Limitations Section (ALS) Part 3, Certification Maintenance Requirements (CMR), Revision 04, dated December 15, 2017, as supplemented by Airbus A350 ALS Part 3, Certification Maintenance Requirements (CMR), Variation 4.2, dated July 26, 2018. The initial compliance time for accomplishing the actions is at the applicable times specified in Airbus A350 Airworthiness Limitations Section (ALS) Part 3, Certification Maintenance Requirements (CMR), Revision 04, dated December 15, 2017, as supplemented by Airbus A350 ALS Part 3, Certification Maintenance Requirements (CMR), Variation 4.2, dated July 26, 2018; or within 90 days after March 29, 2019; whichever occurs later.

(h) Retained No Alternative Actions or Intervals, With a New Exception

This paragraph restates the requirements of paragraph (h) of AD 2019–03–11, with a new exception. Except as required by paragraph (i) of this AD, after the existing maintenance or inspection program has been revised as required by paragraph (g) of this AD, no alternative actions (*e.g.,* inspections) or intervals, may be used unless the actions or intervals are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (l)(1) of this AD.

(i) New Maintenance or Inspection Program Revision

Except as specified in paragraph (j) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2019–0288, dated November 28, 2019 (''EASA AD 2019–0288''). Accomplishing the maintenance or inspection program revision required by this paragraph terminates the requirements of paragraph (g) of this AD.

(j) Exceptions to EASA AD 2019–0288

(1) The requirements specified in paragraphs (1) and (2) of EASA AD 2019–0288 do not apply to this AD.

(2) Paragraph (3) of EASA AD 2019–0288 specifies revising ''the approved AMP'' within 12 months after its effective date, but this AD requires revising the existing maintenance or inspection program, as applicable, to incorporate the ''maintenance tasks and associated thresholds and intervals'' specified in paragraph (3) of EASA AD 2019–0288 within 90 days after the effective date of this AD.

(3) The initial compliance time for doing the tasks specified in paragraph (3) of EASA AD 2019–0288 is at the applicable ''associated thresholds'' specified in paragraph (3) of EASA AD 2019–0288, or within 90 days after the effective date of this AD, whichever occurs later.

(4) The provisions specified in paragraphs (4) and (5) of EASA AD 2019–0288 do not apply to this AD.

(5) The ''Remarks'' section of EASA AD 2019–0288 does not apply to this AD.

(k) New Provisions for Alternative Actions or Intervals

After the maintenance or inspection program has been revised as required by paragraph (i) of this AD, no alternative

actions (*e.g.,* inspections) or intervals are allowed unless they are approved as specified in the provisions of the ''Ref. Publications'' section of EASA AD 2019–0288.

(l) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Large Aircraft Section, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the Large Aircraft Section, International Validation Branch, send it to the attention of the person identified in paragraph (m) of this AD. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, Large Aircraft Section, International Validation Branch, FAA; or EASA; or Airbus SAS's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC):* For any service information referenced in EASA AD 2019–0288 that contains RC procedures and tests: Except as required by paragraph (l)(2) of this AD, RC procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(m) Related Information

For more information about this AD, contact Kathleen Arrigotti, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3218; email *kathleen.arrigotti@faa.gov.*

(n) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(3) The following service information was approved for IBR on October 2, 2020.

(i) European Union Aviation Safety Agency (EASA) AD 2019–0288, dated November 28, 2019.

(ii) [Reserved]

(4) The following service information was approved for IBR on March 29, 2019 (84 FR 5584, February 22, 2019).

(i) Airbus A350 Airworthiness Limitations Section (ALS) Part 3, Certification Maintenance Requirements (CMR), Revision 04, dated December 15, 2017.

(ii) Airbus A350 ALS Part 3, Certification Maintenance Requirements (CMR), Variation 4.2, dated July 26, 2018.

(5) For information about EASA AD 2019–0288, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu.*

(6) For information about Airbus SAS material, contact Airbus SAS, Airworthiness Office—EAL, Rond-Point Emile Dewoitine No: 2, 31700 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *continued-airworthiness.a350@airbus.com;* internet *http://www.airbus.com.*

(7) You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. This material may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0217.

(8) You may view this material that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email *fedreg.legal@nara.gov,* or go to: *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued on July 16, 2020.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–18936 Filed 8–27–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2020–0244; Airspace Docket No. 19–AGL–1]

RIN 2120–AA66

Amendment of VOR Federal Airways V–24, V–97, and V–171 in the Vicinity of Lone Rock, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends VHF Omnidirectional Range (VOR) Federal airways V–24, V–97, and V–171 in the vicinity of Lone Rock, WI. These amendments are due to the planned decommissioning of the VOR portion of the Lone Rock, WI, VOR/Distance Measuring Equipment (VOR/DME) navigation aid (NAVAID) which provides navigation guidance for portions of the affected airways. The Lone Rock, WI, VOR is being decommissioned as part of the FAA's VOR Minimum Operational Network (MON) program.

DATES: Effective date 0901 UTC, November 5, 2020. The Director of the Federal Register approves this incorporation by reference action under Title 1 Code of Federal Regulations part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

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

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would modify the route structure as necessary

to preserve the safe and efficient flow of air traffic within the National Airspace System.

History

The FAA published a notice of proposed rulemaking (NPRM) for Docket No. FAA–2020–0244 in the **Federal Register** (85 FR 16580; March 24, 2020), amending VOR Federal airways V–24, V–97, and V–171 in the vicinity of Lone Rock, WI, due to the planned decommissioning of the VOR portion of the Lone Rock, WI, VOR/DME. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. No comments were received.

VOR Federal airways are published in paragraph 6010(a) of FAA Order 7400.11D dated August 8, 2019, and effective September 15, 2019, which is incorporated by reference in 14 CFR 71.1. The VOR Federal airways listed in this document will be subsequently published in the Order.

The Rule

The FAA is amending Title 14 Code of Federal Regulations (14 CFR) part 71 to amend VOR Federal airways V–24, V–97, and V–171 due to the planned decommissioning of the VOR portion of the Lone Rock, WI, VOR/DME. The VOR Federal airway amendments are described below.

V–24: V–24 extends between the Aberdeen, SD, VOR/DME and the Northbrook, IL, VOR/DME; and between the Peotone, IL, VOR/Tactical Air Navigation (VORTAC) and the Brickyard, IN, VORTAC. The airway segment between the Rochester, MN, VOR/DME and the Janesville, WI, VOR/DME is removed. The unaffected portions of the existing airway remain as charted.

V–97: V–97 extends between the Dolphin, FL, VORTAC and the intersection of the Chicago Heights, IL, VORTAC 358° and DuPage, IL, 101° VOR/DME radials (NILES fix); and between the intersection of the DuPage, IL, VOR/DME 347° and Janesville, WI, VOR/DME 112° radials (KRENA fix) and the Gopher, MN, VORTAC. The airspace below 2,000 feet MSL outside the United States is excluded. The airway segment between the intersection of the DuPage, IL, VOR/DME 347° and Janesville, WI, VOR/DME 112° radials (KRENA fix) and the Nodine, MN, VORTAC is removed. The unaffected portions of the existing airway remain as charted.

V–171: V–171 extends between the Lexington, KY, VOR/DME and the Roseau, MN, VOR/DME. The airway segment between the Rockford, IL, VOR/DME and the Nodine, MN, VORTAC is removed. The unaffected portions of the existing airway remain as charted.

All radials contained in the VOR Federal airway descriptions below are unchanged and stated in True degrees.

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

Regulatory Notices and Analyses

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

Environmental Review

The FAA has determined that this action of amending VOR Federal airways V–24, V–97, and V–171 due to the planned decommissioning of the VOR portion of the Lone Rock, WI, VOR/DME NAVAID qualifies for categorical exclusion under the National Environmental Policy Act and its implementing regulations at 40 CFR part 1500, and in accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 5–6.5a, which categorically excludes from further environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points). As such, this action is not expected to result in any potentially significant environmental impacts. In accordance with FAA Order 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, the FAA has reviewed this action for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis. The FAA has determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment or environmental impact study.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 6010(a) Domestic VOR Federal Airways.

* * * * *

V–24 [Amended]

From Aberdeen, SD; Watertown, SD; Redwood Falls, MN; to Rochester, MN. From Janesville, WI; INT Janesville 112° and Northbrook, IL, 291° radials; to Northbrook. From Peotone, IL; INT Peotone 152° and Brickyard, IN, 312° radials; to Brickyard.

* * * * *

V–97 [Amended]

From Dolphin, FL; La Belle, FL; St. Petersburg, FL; Seminole, FL; Pecan, GA; Atlanta, GA; INT Atlanta 001° and Volunteer, TN, 197° radials; Volunteer; London, KY; Lexington, KY; Cincinnati, KY; Shelbyville, IN; INT Shelbyville 313° and Boiler, IN, 136° radials; Boiler; Chicago Heights, IL; to INT Chicago Heights 358° and DuPage, IL, 101° radials. From Nodine, MN; to Gopher, MN. The airspace below 2,000 feet MSL outside the United States is excluded.

* * * * *

V–171 [Amended]

From Lexington, KY; INT Lexington 251° and Louisville, KY, 114° radials; Louisville; Terre Haute, IN; Danville, IL; Peotone, IL; INT Peotone 281° and Joliet, IL, 173° radials; Joliet; to Rockford, IL. From Nodine, MN; INT Nodine 298° and Farmington, MN, 124° radials; Farmington; Darwin, MN; Alexandria, MN; INT Alexandria 321° and Grand Forks, ND, 152° radials; Grand Forks; to Roseau, MN.

* * * * *

Issued in Washington, DC, on August 24, 2020.

Scott M. Rosenbloom,

Acting Manager, Rules and Regulations Group.

[FR Doc. 2020–18862 Filed 8–27–20; 8:45 am]

BILLING CODE 4910–13–P

RAILROAD RETIREMENT BOARD

20 CFR Part 200

RIN 3220–AB 74

Guidance Documents

AGENCY: Railroad Retirement Board.

ACTION: Interim final rule.

SUMMARY: To implement the executive order ''Promoting the Rule of Law Through Improved Agency Guidance Documents,'' we are amending our regulations to set forth procedures for issuing guidance documents. The amendment defines ''guidance'' document and explains the procedures that the Railroad Retirement Board will follow in issuing a guidance document.

DATES: This Interim Final Rule takes effect August 28, 2020. Comments may be submitted until October 27, 2020.

ADDRESSES: You may submit comments, identified by RIN 3220–AB 74, by any of the following three methods: Internet, fax, or mail. Do not submit the same comments multiple times or by more than one method. Regardless of which method you choose, please state that your comments refer to RIN number 3220–AB 74.

Caution: You should be careful to include in your comments only information that you wish to make publicly available as comments are posted without change, with any personal information provided. We strongly urge you not to include in your comments any personal information such as social security numbers or medical information.

1. *Internet:* Email comments to the Secretary to the Board at *SecretarytotheBoard@rrb.gov.*

2. *Fax:* Fax comments to (312) 751–7102.

3. *Mail:* Address your comments to the Secretary to the Board, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–1275.

FOR FURTHER INFORMATION CONTACT: Marguerite P. Dadabo, Assistant General Counsel, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–1275, (312) 751–4945, TTD (312) 751–4701.

SUPPLEMENTARY INFORMATION: On October 9, 2019, the President issued Executive Order 13891, entitled ''Promoting the Rule of Law through Improved Agency Guidance Documents.'' Section 4 of the Executive Order requires each agency to finalize regulations or amend existing regulations to set forth processes and procedures for issuing guidance documents within 300 days of the date on which the Office of Management and Budget (OMB) issues an implementing memorandum under section 6 of the Executive Order. OMB issued its memorandum, M–20–02, on October 31, 2019. Section 4 of the Executive Order provides that the process set forth in each regulation shall be consistent with the Executive Order and shall include:

(i) A requirement that each guidance document clearly state that it does not bind the public, except as authorized by law or as incorporated into a contract;

(ii) Procedures for the public to petition for withdrawal or modification of a particular guidance document, including a designation of the officials to which petitions should be directed; and

(iii) For a significant guidance document, as determined by the Administrator of OMB's Office of Information and Regulatory Affairs (Administrator), unless the agency and the Administrator agree that exigency, safety, health, or other compelling cause warrants an exemption from some or all requirements, provisions requiring:

(A) A period of public notice and comment of at least 30 days before issuance of a final guidance document, and a public response from the agency to major concerns raised in comments, except when the agency for good cause finds (and incorporates such finding and a brief statement of reasons therefor into the guidance document) that notice and public comment thereon are impracticable, unnecessary, or contrary to the public interest;

(B) Approval on a non-delegable basis by the agency head or by an agency component head appointed by the President, before issuance;

(C) Review by the Office of Information and Regulatory Affairs (OIRA) under Executive Order 12866, before issuance; and

(D) Compliance with the applicable requirements for regulations or rules, including significant regulatory actions, set forth in Executive Orders 12866, 13563 (Improving Regulation and Regulatory Review), 13609 (Promoting International Regulatory Cooperation), 13771 (Reducing Regulation and Controlling Regulatory Costs), and 13777 (Enforcing the Regulatory Reform Agenda).

Rulemaking Analysis and Notices: Under the Administrative Procedure Act (APA), an agency may waive the normal notice and comment procedures if the action is a rule of agency organization, procedure, or practice. See 5 U.S.C. 553(b)(3)(A). This rule qualifies for this exemption under the APA as it deals exclusively with internal agency procedures. Accordingly, the Board is issuing the regulation as an Interim Final Rule. If we receive comments that warrant change(s) in the Interim Final Rule, we will make the change(s) and will publish the revised final rule.

A. Executive Order 12866

The Office of Management and Budget (OMB) has determined that this is not a significant regulatory action under Executive Order 12866, as amended. Therefore, no regulatory impact analysis is required. This is a rule of agency procedure and practice. The railroad industry and the public will benefit from these enhanced procedures through increased agency deliberations and more opportunities to comment on rulemakings and guidance documents.

B. Executive Order 13771 (Reducing Regulation and Controlling Regulator Costs)

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

C. Regulatory Flexibility Act

Since notice and comment rulemaking is not necessary for this rule, the provisions of the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612) do not apply.

D. Executive Order 13132 (Federalism)

Executive Order 13132 requires agencies to ensure meaningful and timely input by State and local officials in the development of regulatory policies that may have a substantial, direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (August 4, 1999), and the Board has determined that this action will not have a substantial direct effect or federalism implications on the States and would not preempt any State law or regulation or affect the States' ability to discharge traditional state governmental functions. Therefore, consultation with the States is not necessary.

E. Executive Order 13175

This rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments.'' Because this rulemaking does not significantly or uniquely affect the communities of the Indian tribal governments or impose substantial direct compliance costs on them, the funding and consultation requirements of Executive Order 13175 do not apply.

F. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*) requires that the Board consider the impact of paperwork and other information collection burdens imposed on the public and, under the provisions of PRA section 3507(d), obtain approval from OMB for each collection of information it conducts, sponsors, or requires through regulations. The Board has determined there are no new information collection requirements associated with this rule.

G. Congressional Review Act

The Congressional Review Act (CRA) (5 U.S.C. 801 *et seq.*) requires that before a ''rule'' can take effect, the Federal agency promulgating such rule shall submit to each House of Congress and to the Comptroller General a report containing a copy of the rule, a concise general statement pertaining to the rule, and the proposed effective date of the rule. ''Rule'' is defined by the CRA in 5 U.S.C. 804 to have the same meaning as in 5 U.S.C. 551, except that the term does not include ''any rule of agency organization, procedure, or practice that does not substantially affect the rights or obligations of non-agency parties.'' Because this rule is a rule of agency procedure and practice that does not substantially affect the rights or obligations of non-agency parties, no report is required under the CRA.

H. Unfunded Mandates Reform Act

This rule does not include a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of more than $100,000,000 or more in any one year. Therefore, no analysis under the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*) is required.

I. Executive Order 12988

One of the stated purposes of Executive Order 12988, ''Civil Justice Reform,'' is to improve regulatory drafting to reduce needless litigation. Consistent with that purpose, the Board has reviewed this regulation to eliminate drafting errors and ambiguity.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publicizes the Unified Agenda in the spring and fall of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 20 CFR Part 200

Railroad employees, Railroad retirement, General administration.

For the reasons set out in the preamble, the Railroad Retirement Board amends title 20, chapter II, subchapter A, part 200 of the Code of Federal Regulations as follows:

PART 200—GENERAL ADMINISTRATION

■ 1. The authority citation for part 200 continues to read as follows:

Authority: 45 U.S.C. 231f(b)(5) and 45 U.S.C. 362; § 200.4 also issued under 5 U.S.C. 552; § 200.5 also issued under 5 U.S.C. 552a; § 200.6 also issued under 5 U.S.C. 552b; and § 200.7 also issued under 31 U.S.C. 3717.

■ 2. Add § 200.11 to read as follows:

§ 200.11 Guidance Documents.

(a) For purposes of this section, the term ''guidance'' document includes any statement of agency policy or interpretation concerning a statute, regulation, or technical matter within the jurisdiction of the Railroad Retirement Board that is intended to have general applicability and future effect, but which is not intended to have the force and effect of law in its own right. The term ''guidance'' document is not confined to formal written documents; guidance may come in a variety of forms, including (but not limited to) letters, memoranda, circulars, bulletins, and advisories, and may include video, audio, and web-based formats. As used in this section, ''Railroad Retirement Board'' or ''RRB'' refers to the agency, and ''Board'' refers to the three Presidential appointees who together serve as the head of the agency.

(b) ''Guidance'' document does not include the following:

(1) Advisory or legal opinions directed to particular parties about circumstance-specific questions; notices regarding particular locations or facilities; and correspondence with individual persons or entities, including congressional correspondence or notices of violation;

(2) Agency statements that do not set forth a policy on a statutory, regulatory, or technical issue or an interpretation of a statute or regulation. This exclusion excludes from the definition of ''guidance'' documents that merely communicate news updates about the agency;

(3) Regulations promulgated pursuant to notice and comment under 5 U.S.C. 553;

(4) Rules exempt from rulemaking requirements under 5 U.S.C. 553.

(5) Rules of agency organization, procedure, or practice;

(6) Decisions of agency adjudication;

(7) Legal briefs and other court filings;

(8) Contract solicitations and awards; and

(9) Purely internal agency policies or guidance directed solely to Railroad Retirement Board (RRB) employees or contractors or to other Federal agencies that are not intended to have substantial future effect on the behavior of regulated parties or the public.

(c) ''Significant guidance document'' means a guidance document that will be disseminated to the general public and that may reasonably be anticipated:

(1) To lead to an annual effect on the economy of $100 million or more or adversely affect in a material way the U.S. economy, a sector of the U.S. economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities;

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

(3) To alter materially the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) To raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866, as amended.

(d) All guidance documents require review and clearance in accord with this section. Guidance proposed to be issued by an office or bureau within the RRB must be reviewed and cleared by the Office of General Counsel (OGC). OGC's review and clearance shall ensure that each guidance document proposed to be issued satisfies the following requirements:

(1) The guidance document complies with all relevant statutes and regulations, including any statutory deadlines for agency action.

(2) The guidance document identifies or includes:

(i) The term ''guidance'' or its functional equivalent;

(ii) The issuing office or bureau of the RRB;

(iii) A unique identifier, including, at a minimum, the date of issuance and title of the document;

(iv) The activity or entities to which the guidance applies;

(v) Citations to applicable statutes and regulations;

(vi) A statement noting whether the guidance is intended to revise or replace any previously issued guidance and, if so sufficient information to identify the previously issued guidance; and

(vii) A short summary of the subject matter covered in the guidance document at the top of the document.

(3) The guidance document avoids using mandatory language, such as ''shall,'' ''must,'' ''required,'' or ''requirement,'' unless the language is describing an established statutory or regulatory requirement or is addressed to RRB staff and will not foreclose the RRB's consideration of positions advanced by affected private parties;

(4) The guidance document is written in plain and understandable English;

(5) All guidance documents include a clear and prominent statement declaring that the contents of the document do not have the force and effect of law and are not meant to bind the public in any way, and the document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

(e) In addition to the procedures governing the review and clearance of guidance documents, issuance of significant guidance documents must also be preceded by the requirements enumerated in this section unless the Board and OMB's Office of Information and Regulatory Affairs (OIRA) agree that exigency, safety, health, or other compelling cause warrants an exemption from some or all of the following requirements:

(1) Public notice of and a request for comment on the proposed issuance of a significant guidance document must be given at least 30 days before its issuance. The RRB will provide a public response to major concerns raised in comments, except when the RRB for good cause finds (and incorporates such finding and a brief statement of reasons therefor into the guidance document) that notice and public comment thereon are impracticable, unnecessary, or contrary to the public interest.

(2) A majority of the three-member Board (Board) that heads the RRB must approve the significant guidance document.

(3) OIRA makes the final significance determination for a significant guidance document. A significant guidance document must be reviewed by OIRA under Executive Order (E.O.) 12866 before issuance; and must demonstrate compliance with the applicable requirements for regulations or rules, including significant regulatory actions, set forth in E.O. 12866, E.O. 13563, E.O. 13609, E.O. 13771, and E.O. 13777.

(4) The Board may request a categorical determination that a class of guidance documents presumptively does not qualify as significant under Executive Order 13891 by submitting to OIRA a written request that is signed by the General Counsel and that explains why the proposed category of guidance document generally is only routine or ministerial, or is otherwise of limited importance to the public. Examples of documents in the category should be provided to OIRA with the written request for a categorical exemption.

(f) A member of the public may file a petition for withdrawal or modification of a particular guidance document by filing a written request with the Secretary to the Board at 844 N Rush Street, Chicago, Illinois 60611–1275. The Board will respond to each petition in a timely manner, but no later than 90 days after receipt of the petition with a decision and rationale for the decision.

(g) The Board will not cite, use, or rely on a guidance document that is rescinded, except to establish historical facts.

(h) The Board maintains on its website a guidance portal from which all guidance documents may be accessed. Unless a guidance document is on the website, it is not considered to be in effect.

Dated: August 24, 2020.

By Authority of the Board.

Stephanie Hillyard,

Secretary to the Board.

[FR Doc. 2020–18861 Filed 8–27–20; 8:45 am]

BILLING CODE 7905–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9900]

RIN 1545–BP84

Carryback of Consolidated Net Operating Losses; Correcting Amendment

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to Treasury Decision 9900, which was published in the **Federal Register** on Wednesday, July 8, 2020. Treasury Decision 9900 contained temporary regulations that permit consolidated groups that acquire new members that were members of another consolidated group to elect in a year subsequent to the year of acquisition to waive all or part of the pre-acquisition portion of an extended carryback period under section 172 of the Internal Revenue Code (Code) for certain losses attributable to the acquired members if there is a retroactive statutory extension of the NOL carryback period under section 172.

DATES: *Effective date:* These corrections are effective on August 28, 2020.

Applicability date: For the date of applicability, see § 1.1502–21T(h)(9).

FOR FURTHER INFORMATION CONTACT: Jonathan R. Neuville, at (202) 317–5363 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations (TD 9900) that are the subject of this correction are issued under section 1502 of the Code.

Need for Correction

As published July 8, 2020 (85 FR 40892), the temporary regulations (TD 9900; FR Doc. 2020–14426) contained errors that need to be corrected.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Correction of Publication

Accordingly, 26 CFR part 1 is corrected by making the following correcting amendments:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.1502–21T is amended by revising the second sentence of paragraph (b)(3)(ii)(C)(*1*), the first sentence of paragraph (b)(3)(ii)(C)(*5*)(*i*), the first sentence of paragraph (b)(3)(ii)(C)(*5*)(*ii*), the third sentence of paragraph (b)(3)(ii)(D)(*2*)(*ii*), and the second sentence of paragraph (b)(3)(ii)(D)(*4*)(*ii*) to read as follows:

§ 1.1502–21T Net operating losses (temporary).

(b) * * *

(3) * * *

(ii) * * *

(C) * * *

(*1*) * * * (See paragraph (b)(3)(ii)(C)(*2*) of this section for

definitions of terms used in this paragraph (b)(3)(ii)(C) and paragraph (b)(3)(ii)(D) of this section.)

* * * * *

(*5*) * * *

(*i*) * * * An amended statute split-waiver election must be made in a separate statement entitled ''THIS IS AN ELECTION UNDER SECTION 1.1502–21T(b)(3)(ii)(C)(*1*) TO WAIVE THE PRE-[insert first day of the first taxable year for which the acquired member was a member of the acquiring group] CARRYBACK PERIOD FOR THE CNOLS ATTRIBUTABLE TO THE [insert taxable year of losses] TAXABLE YEAR(S) OF [insert names and employer identification numbers of members]'' (amended statute split-waiver election statement).

* * * * *

(*ii*) * * * An extended split-waiver election must be made in a separate statement entitled ''THIS IS AN ELECTION UNDER SECTION 1.1502–21T(b)(3)(iii)(C)(*1*) TO WAIVE THE PRE-[insert first day of the first taxable year for which the acquired member was a member of the acquiring group] EXTENDED CARRYBACK PERIOD FOR THE CNOLS ATTRIBUTABLE TO THE [insert taxable year of losses] TAXABLE YEAR(S) OF [insert names and employer identification numbers of members]'' (extended split-waiver election statement).

* * * * *

(D) * * *

(*2*) * * *

(*ii*) * * * See paragraph (b)(3)(ii)(C)(*2*)(*v*) of this section. * * *

* * * * *

(*4*) * * *

(*ii*) * * * See paragraph (b)(3)(ii)(C)(*2*)(*ix*) of this section.

* * * * *

Martin V. Franks,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 2020–16985 Filed 8–27–20; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF LABOR

Office of the Secretary

29 CFR Part 89

RIN 1290–AA40

Promoting Regulatory Openness Through Good Guidance (PRO Good Guidance)

AGENCY: Office of the Secretary, U.S. Department of Labor.

ACTION: Final rule.

SUMMARY: This rule establishes the U.S. Department of Labor's policy and requirements for issuing, modifying, withdrawing, and using guidance; making guidance available to the public; a notice-and-comment process for significant guidance; and taking and responding to petitions about guidance. This rule will help the Department use guidance lawfully and appropriately, and it gives Americans fairer notice of and improved access to guidance. The Department expects this rule will have meaningful benefits for employers, workers, and the American public overall.

DATES: Effective on September 28, 2020.

FOR FURTHER INFORMATION CONTACT: Erin FitzGerald, Senior Policy Advisor, U.S. Department of Labor, Room S–2312, 200 Constitution Avenue NW, Washington, DC 20210; telephone: (202) 693–5076 (this is not a toll-free number). Copies of this final rule may be obtained in alternative formats (large print, Braille, audio tape or disc), upon request, by calling (202) 693–5959 (this is not a toll-free number). TTY/TDD callers may dial toll-free 1–877–889–5627 to obtain information or request materials in alternative formats.

SUPPLEMENTARY INFORMATION:

Preamble Table of Contents

I. Background and Overview
II. Discussion of the Department's PRO Good Guidance Rule: Promoting Regulatory Openness Through Good Guidance
III. Final Rule

I. Background and Overview

On October 9, 2019, the President issued Executive Order 13891 (E.O.), titled ''Promoting the Rule of Law through Improved Agency Guidance Documents,'' addressing guidance issued by federal agencies outside of the context of formal rulemaking. Among other things, the E.O. requires that federal agencies generally treat guidance as non-binding; establish processes for issuing guidance; make all guidance available to the public; take comment on significant guidance; and receive and respond to petitions for withdrawal or modification of guidance. The E.O. directs the Department to finalize regulations related to these requirements. This Promoting Regulatory Openness through Good Guidance Rule (the ''rule on guidance'' or ''PRO Good Guidance Rule'') complies with that directive.

Though informed and prompted by the E.O., the Department issues this rule under its own, independent authority. It does so expecting the rule will lead to meaningful benefits for employers, workers, and the American public. Among other things, the rule clarifies when and how agencies should speak outside the context of notice-and-comment rulemaking. It ensures that all guidance is accessible. And it enables the public to comment on significant guidance documents and submit petitions concerning guidance. Increased clarity, greater public access, and input regarding agency policy will result in more useful and effective guidance. Just as important, better delineating what is and is not legally binding will give fairer notice to regulated entities and will enhance the Department's efforts to take care that the law is faithfully executed.

Chief among its considerations, this rule is designed to take into account how powerful agency statements are. When agencies speak, Americans listen carefully and often change their behavior as a result. Ignorance of or failure to abide by agency regulations and the laws agencies enforce can have immense ramifications. In light of the stakes, the public often treats guidance from agencies as binding, even if it technically is not. Thus, it is vital that agencies promulgate, maintain, and use guidance carefully.

II. Discussion of the Department's PRO Good Guidance Rule: Promoting Regulatory Openness through Good Guidance

This rule has eight sections, each of which is explained in more detail below.

- Section 89.1 outlines the rule's scope and purpose
- Section 89.2 defines key terms
- Section 89.3 provides general requirements for issuing and using guidance
- Section 89.4 establishes a review and approval process for guidance and identifies features guidance must generally have
- Section 89.5 requires guidance to be made publicly accessible
- Section 89.6 sets up special processes for significant guidance
- Section 89.7 enables the public to petition agencies to withdraw or modify guidance
- Section 89.8 makes clear that this rule is one of agency procedure and does not create enforceable rights

Section 89.1 Scope of This Part

In § 89.1, the Department explains the scope and purpose of this rule. Paragraph (a) begins by accounting for how guidance documents—in their proper place—are valuable tools of government. The American people are

best served by agencies that speak clearly and unambiguously about existing legal obligations. Well-crafted guidance enables agencies to do so. For example, agencies use guidance to interpret existing laws or clarify how they plan to enforce existing legal requirements. Agencies also use guidance to provide compliance assistance, which helps parties understand and obey the law, and to enhance worker protections. Appropriately used, guidance is valuable.

As is explained in Section 1 of the E.O., however, agencies can also misuse guidance in ways that weaken the rule of law. For example, unless law otherwise permits, an agency using guidance to explicitly announce new standards that the agency treats as binding violates the Administrative Procedure Act (APA). When agencies misuse guidance, regulated persons have less certainty about their actual obligations.

Agencies must do more than simply refrain from explicitly purporting to establish new legal requirements in guidance. Regulated persons are aware of the possibility of enforcement actions. They accordingly have strong incentive to comply with even ostensibly ''non-binding'' agency statements that they see as attempting to regulate them. For example, an agency may use guidance to suggest or imply that a standard for behavior in guidance is the only acceptable means of complying with statutory or duly-promulgated regulatory requirements, even when the statute itself permits other means. Yet a party may feel the need to comply with an implication in the guidance irrespective of the statutory or regulatory text because it considers the cost of following the guidance lower than the cost of a fight with the agency. This is especially the case for guidance interpreting agencies' legislative rules, since tribunals often defer to such guidance.

Likewise, an agency may improperly use guidance to shape private parties' conduct beyond legal requirements by targeting those who do not follow the guidance for heightened enforcement or inspection activity. Guidance is improper when imposed on the public in this manner.[1]

To account for such considerations, this rule establishes the Department's policy and requirements for guidance. As explained in detail below, it communicates the Department's policies and procedures for issuing, modifying, withdrawing, and applying guidance; making guidance available to the public; notice-and-comment procedures for significant guidance; and responding to petitions from the public about guidance.

In paragraph (a), the Department describes how agencies should give fair notice of, and full access to, agencies' guidance. Among other things, this means making all current guidance documents publicly available.

In paragraph (b), the Department explains that its rule on guidance applies broadly to the Department of Labor and to all of its agencies involved with any phase of developing, issuing, modifying, withdrawing, using, or defending guidance documents.

Section 89.2 Definitions

In this section, the Department defines key terms for this rule. To develop its definitions, the Department took direction from E.O. 13891 and OIRA's *Guidance Implementing Executive Order 13891* (Oct. 31, 2019), *https://www.whitehouse.gov/wp-content/uploads/2019/10/M-20-02-Guidance-Memo.pdf.*

Paragraph (a) defines ''agency'' as the Department of Labor or any of its agencies, agency components, offices, or other similar organizational units. This broad definition accounts for the variety of Departmental entities that issue guidance.

Paragraph (b) defines ''agency head'' as the actual head of the respective agency within the Department.

Paragraph (c) defines ''Department'' as the Department of Labor.

Paragraph (d) defines ''guidance'' or ''guidance document'' as ''an agency statement of general applicability, intended to have future effect on the behavior of regulated persons, that sets forth a policy on a statutory, regulatory, or technical issue, or an interpretation of a statute or regulation.'' Generally, if a document is unavailable to the public, it is not guidance. This is because an agency statement is generally not intended to have future effect on the behavior of regulated persons if it is internal to an agency and not publicly available. The definition accounts for how agencies issue guidance in a variety of formats. These include letters, memoranda, circulars, bulletins, or advisories, and may include video, audio, and web-based formats. An agency statement in any format that satisfies the definition of ''guidance'' could qualify, regardless of how it is labeled.

The definition of guidance has nine exceptions. The first four reflect that Congress in the APA has already categorized certain types of agency statements and has addressed what process is needed to make them. The last five exceptions reflect common types of agency statements that typically fall outside the general definition of guidance.

Under paragraph (d)(1), guidance does not include rules promulgated by notice and comment under 5 U.S.C. 553 or similar statutory provisions. Legislative rules promulgated through notice and comment under the APA qualify for this exception, as do interpretive rules and statements of policy that go through notice and comment despite being exempt from those requirements under § 553(b) of the APA. By contrast, an interpretive rule or statement of policy not issued through notice-and-comment would not qualify for the exception and thus would constitute guidance. The last phrase in (d)(1), ''or similar statutory provisions,'' accounts for rules that may be promulgated under rulemaking procedures distinct from the APA.

Under paragraph (d)(2), guidance does not include rules exempt from rulemaking requirements under 5 U.S.C. 553(a) or similar statutory provisions. That section makes the APA's informal rulemaking requirements inapplicable ''to the extent that there is involved—(1) a military or foreign affairs function of the United States; or (2) a matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts.'' If an existing or future statute other than the APA provides for rulemaking but then exempts rules addressing these matters, a rule arising under that statute would also qualify under (d)(2) as something that is not guidance.

Under paragraph (d)(3), guidance does not include rules of agency organization, procedure, or practice. This language parallels an exception from the requirement to issue a notice of proposed rulemaking in the APA. *See* 5 U.S.C. 553(b)(A). Applying paragraph (d)(3) requires a functional test, and it does not exclude statements of agency organization, procedure, or practice that are in fact used to shape the behavior of regulated parties. For instance, a document ostensibly addressed to regional agency officials directing them

[1] This kind of coercive guidance is different from truly voluntary Department programs. A program is voluntary when a person can freely choose to enter the program or not, without governmental consequences for declining. *See, e.g.,* OSHA, ''Voluntary Protection Program,'' *osha.gov/vpp.* In an improperly coercive regime of threats and rewards, the private party's choice to follow the guidance is itself subject to government pressure in the form of, for example, more frequent inspections. *See Chamber of Commerce of U.S.* v. *U.S. Dep't of Labor,* 174 F. 3d 206 (D.C. Cir. 1999).

to make enforcement decisions based on a particular construction of a statute, but then released to the public with the predictable result of dissuading the public from taking actions inconsistent with the statute as the document construed it, would constitute guidance. This rule itself is an example of a rule of agency organization, procedure, or practice that is accordingly not subject to the definition of guidance.

Under paragraph (d)(4), guidance does not include decisions of agency adjudications under 5 U.S.C. 554 or similar statutory provisions. Under this exception, an agency judicial opinion following formal adjudication under the APA or similar law would not be guidance.

The next five exceptions, in paragraphs (d)(5) through (d)(9), contain common types of agency statements that generally fall outside the rule's definition of guidance. As illustrated in the discussion of paragraph (d)(3) above, however, in applying the definition of guidance and its exceptions, agencies should assess agency statements independent of their labels. If a document's title suggests an exception but the agency actually uses the document as guidance, that exception may not apply.

Under paragraph (d)(5), guidance does not include internal statements directed to the issuing agency or other agencies that are not intended to have substantial future effect on the behavior of regulated persons. This includes statements made solely to the issuing agency or other agencies or their personnel. For example, a memorandum addressed and sent to an agency's regional administrators, and not publicly disseminated, would presumptively be excluded. Internal agency documents made public only because of FOIA or agency disclosure policies requiring their release would be presumptively excluded as well. However, agencies should assess whether such statements will have substantial future effect on the behavior of regulated persons. If so, they would likely be guidance.

Under paragraph (d)(6), guidance does not include internal executive branch legal advice or legal opinions addressed to executive branch officials. For example, a memorandum giving legal opinions from the Department's Office of the Solicitor to client agencies would not be guidance.

Paragraph (d)(7) excepts legal briefs and other court filings. Such documents are not guidance because they are intended to inform or persuade a court, not affect the conduct of regulated persons.

Paragraph (d)(8) excepts agency statements of specific applicability. For example, advisory or legal opinions directed to particular persons about circumstance-specific questions would generally not be guidance, especially if the Department never makes the opinions public beyond the specific addressee. This exception includes documents such as case or investigatory letters, responses to complaints, and warning letters. Similarly, notices regarding particular locations or facilities—such as a memorandum pertaining to the use, operation, or control of a government facility or property—are not guidance under this rule. Nor is correspondence with individual persons or entities, such as congressional correspondence or notices of violations.

However, agency statements ostensibly directed to a particular person but also designed or used to guide the conduct of the broader regulated public may be guidance. For example, when an agency sends an opinion letter to a particular person in response to an inquiry, but then publishes or otherwise issues the opinion letter and then cites it in a letter to a different person, that letter would likely be guidance.

Paragraph (d)(9) excepts agency statements that do not set forth a policy on a statutory, regulatory, or technical issue or an interpretation of a statute or regulation. This would generally include, for example, statements that merely transmit news updates about the agency (such as a speech or press release announcing a new program), or publications that merely repeat, summarize, or put into lay language laws or regulations for a worker audience that is the beneficiary of those laws or regulations (such as a ''know your rights'' card).

The Department notes that other types of agency statements may not be ''guidance'' even if they are not listed explicitly in exceptions (d)(1) through (d)(9). For example, Information Collection Request (ICR) packages, submitted to OMB and subject to notice and comment, would not generally be guidance. Generally speaking, neither would agency homepages. However, agencies should still assess these and other documents on a case-by-case basis, since any agency statement could function as guidance depending on how it is used.

Paragraph (e) defines ''OIRA'' as the Office of Management and Budget's Office of Information and Regulatory Affairs.

Paragraph (f) defines ''person'' to include entities such as state, tribal, and local governments; corporations, companies, associations, labor unions, firms, partnerships, societies; and individuals. This illustrative list generally reflects the types of ''persons'' with which the Department interacts. This preamble also uses the term ''person'' throughout in a manner that is consistent with this definition.

In paragraph (g), the Department defines ''pre-enforcement ruling'' as a formal written communication by an agency in response to an inquiry from a person concerning compliance with legal requirements that interprets the law or applies the law to a specific set of facts supplied by the person. The term includes informal guidance under section 213 of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121 (Title II), as amended; letter rulings; advisory opinions; and no-action letters. Pre-enforcement rulings can be guidance but, as explained below, are exempt from procedures for issuing significant guidance.

In paragraph (h), the Department defines ''significant guidance'' or ''significant guidance document'' as guidance that falls into several different categories. The Department's approach codifies existing practice, developed over time in line with the definition of ''significant guidance'' in OMB's *Final Bulletin for Agency Good Guidance Practices,* 72 FR 3432, 3439 (Jan. 25, 2007), and the Department's approach to ''significant regulatory actions'' under E.O. 12866.

Under paragraph (h)(1), guidance is significant if it may reasonably be anticipated to lead to an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities. Under paragraph (h)(2), guidance is significant if it may reasonably be anticipated to create a serious inconsistency or otherwise interfere with an action taken or planned by another Federal agency (one outside the Department). Under paragraph (h)(3), guidance is significant if it may reasonably be anticipated to materially alter the budgetary impact of entitlements, grants, user fees, loan programs, or the rights and obligations of recipients thereof. Under paragraph (h)(4), guidance is significant if it may reasonably be anticipated to raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles of Executive Order 12866. Under § 89.6(a), discussed below, OIRA will determine whether guidance is

significant, and the Department will work closely with OIRA on such determinations.

Section 89.3 General Requirements

This section outlines general requirements for the issuance and use of guidance documents and reflects a central consideration of this rule: Unless law otherwise permits or the guidance is incorporated into a contract, cooperative agreement, or grant, guidance itself cannot impose binding requirements. Paragraph (a) implements as an internal rule the Department's existing obligation under the APA that all legislative rules must comply with all applicable notice-and-comment requirements set out in 5 U.S.C. 553 or with other appropriate processes under applicable law.

Under paragraph (b), all agency guidance issued after the effective date of this rule must be issued in accordance with the procedures codified in this rule. This paragraph is prospective.

Paragraph (b) also provides that, for each guidance document an agency issues jointly with other federal agencies (outside the Department), an agency may, subsequent to consultation with those outside agencies about that document, modify its approach from the requirements of part 89 as necessary. This paragraph accounts for how some agencies at the Department such as the Employee Benefits Security Administration may issue guidance jointly with other federal agencies outside the Department. When issuing such guidance, the agency should attempt to comply with the requirements of this rule to the extent possible.

In paragraph (c), the Department first limits the use of guidance in actions initiated after the effective date of the rule and then gives examples of permissible uses of guidance in such actions.

In paragraph (c)(1), the Department makes clear that enforcement actions must be based on violations of applicable legal requirements, not mere noncompliance with guidance documents. Guidance documents cannot, by themselves, create binding requirements unless binding guidance is authorized by law or the guidance is incorporated into a contract, cooperative agreement, or grant. Thus, an agency may not use noncompliance with a guidance document as itself a violation of applicable statues or regulations, and may not bring actions based solely on allegations of noncompliance with guidance documents. This limitation will not, and is not intended to, have any effect on agencies' ability to bring enforcement actions and prove violations of the law. This limitation merely prevents agencies from relying on noncompliance with nonbinding guidance rather than proving an actual violation of a binding legal standard.

Paragraph (c)(2) illustrates three recurring permissible uses of guidance in legal actions. First, if guidance describes existing legal requirements, an agency may use the guidance as evidence that a person had the requisite scienter, notice, or knowledge of the law. This example is relevant to certain types of agency enforcement actions. Second, an agency may cite guidance as evidence of its past positions or to establish the consistency of those positions with the agency's current views. For example, if a party argues an agency's position is arbitrary and capricious, the agency may use previous guidance to show its position has been consistent over time. Third, an agency may use a guidance document to show that a party has failed to meet professional or industry standards when those are relevant to statutory or regulatory requirements. For example, showing industry recognition of a condition or activity as hazardous is one way to establish an element of a violation of the general-duty clause of the Occupational Safety and Health Act of 1970. These examples are not exhaustive.

Paragraphs (c)(1) and (2) should be read together. The former strengthens the rule of law and prevents misuse of guidance by focusing agency actions on the actual bases of legal obligations. The latter provides important examples of permissible uses of guidance.

Paragraph (d) forbids using guidance issued or modified after the effective date of this rule in attempts to regulate the public beyond what the law allows. This paragraph bars the use of guidance to coerce parties into taking action beyond what the substantive terms of applicable statutes or legislative rules actually require. For instance, an agency should not use guidance to suggest that a standard of behavior in a guidance document is the only acceptable means of complying with statutory requirements if the relevant statute or legislative rule permits other means of complying. Likewise, an agency should not threaten enforcement actions against persons who do not follow substantive requirements in the guidance itself (unless the guidance is binding because binding guidance is authorized by law or because the guidance is incorporated into a contract, cooperative agreement, or grant). For example, if an agency's guidance purports to establish a standard higher than that of an underlying legislative rule and then announces the agency will increase the frequency of inspections for employers that fall short of the standard, that approach would likely violate this provision. Similarly, an agency should avoid using guidance that ''rewards'' regulated persons for compliance with substantive requirements in guidance by reducing the frequency of inspections or audits, if those rewards effectively make the guidance coercive beyond what is permitted by law. As noted earlier, these concerns do not arise with truly voluntary programs for which persons suffer no adverse consequences for declining to participate.

Paragraph (e) reminds agencies that in issuing or modifying guidance, they must comply with any applicable requirements of the Congressional Review Act (CRA). The CRA creates obligations on agencies that issue ''rules,'' which the CRA defines broadly to include certain types of guidance. *See* 5 U.S.C. 804(3).[2] Accordingly, as agencies review guidance, they should ensure that if guidance also constitutes a ''rule'' under the CRA, they comply with the CRA with respect to that guidance. In complying with this paragraph, the Department should consult with OIRA, which determines whether a rule is ''major'' under the CRA, consistent with this rule's § 89.6(a).

Section 89.4 Requirements for Guidance

This section establishes a review and approval process for guidance and other requirements for guidance documents. These provisions ensure that guidance receives appropriate approval and clearance; is clearly identified as non-binding (or binding, but only when law permits); and is more useful for employers, workers, and other members of the American public.

Paragraphs (a)(1) through (3) require that before any guidance is issued, modified, or withdrawn, it must be reviewed and approved by an agency official. These officials include (i) the appropriate agency head; (ii) an acting agency head or official otherwise leading the agency; or (iii) an appropriately designated official. By contrast to the non-delegable review and approval processes for significant

[2] *See also* OMB, ''Guidance on Compliance with the Congressional Review Act,'' (Apr. 11, 2019) (''The CRA applies to more than just notice-and-comment rules; it also encompasses a wide range of other regulatory actions, including, *inter alia,* guidance documents . . . .''), *https://www.whitehouse.gov/wp-content/uploads/2019/04/M-19-14.pdf.*

guidance documents in § 89.6(b)(2) below, § 89.4(a) retains flexibility to account for how some fairly routine guidance is issued.

Paragraph (b) requires that an official that reviews and approves guidance under paragraph (a) ensure that guidance follows all relevant statutes and regulations, including the requirements of this rule. The review required by paragraph (b) looks at all the surrounding circumstances, including the anticipated public response to the guidance, and goes beyond the four corners of the document under review.

Paragraph (c) requires that, in conducting the review required by paragraph (a), the reviewing official must evaluate whether the agency's statement in question is in fact guidance, regardless of its label. Even documents that expressly disclaim the force and effect of law could still appear to establish binding requirements or otherwise inappropriately attempt to regulate private parties. This is impermissible.

Under paragraph (d), guidance issued or modified after the effective date of this rule must include an appropriate disclaimer. The Department expects that the disclaimer language in (d)(1), derived from OIRA's Guidance Implementing Executive Order 13891, will be suitable for most guidance: ''This document does not have the force and effect of law and is not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.'' This disclaimer makes clear that any given guidance document does not itself bind the public, and exists only in relation to other authorities.

Paragraph (d)(2) authorizes modifying the language in (d)(1) if binding guidance is permitted based on underlying statute or other legal authority and the modified disclaimer language is developed in consultation with OIRA, such that OIRA has an opportunity to review and comment on the modified disclaimer. Such a modified disclaimer is appropriate when the agency's guidance is binding because binding guidance is authorized by law or because the guidance is incorporated into a contract, cooperative agreement, or grant. The modified disclaimer must explain why the guidance is binding. For example, if an agency ties a funding announcement to guidance that the successful grant applicants must agree to follow, the agency should use a modified disclaimer to explain that the guidance is binding.

Next, paragraph (d) provides general parameters for how agencies should display the disclaimer language under (d)(1) or (d)(2). These parameters are designed to ensure that disclaimers are legible and prominently displayed. These parameters are that a disclaimer should be prominently located; and should direct readers to *www.dol.gov/guidance* for questions or additional information.

These parameters generally apply, but on occasion modifications may be appropriate and make guidance more effective and useful. For example, a brochure with a cover sheet does not need a disclaimer on its cover. Breakroom posters providing guidance might need 24-point font to be legible, where wallet-sized cards would need only 6-point font. And guidance in a video or interactive web page may require other modifications. However, the Department expects the parameters will suit the vast majority of guidance.

Paragraph (d) is prospective only. Before issuing this rule, the Department fully reviewed all its agencies' guidance and placed all guidance in effect on a public website. That website's landing page has a disclaimer akin to the language in paragraph (d)(1) and already informs readers that the Department's guidance does not have the force and effect of law. Given the large amount of work that would be necessary to revise each piece of guidance to apply new disclaimer language, the Department will apply paragraph (d)(1) only to newly-issued or modified guidance.

Paragraph (e) requires that guidance documents issued or modified after the effective date of the rule avoid using mandatory language—language such as ''shall,'' ''must,'' ''required,'' or ''requirement''—to direct persons outside the Department to take or refrain from taking action. This paragraph is generally consistent with OMB's *Good Guidance Practices,* 72 FR at 3440. It gives agencies a practical means to avoid issuing guidance that appears to create binding obligations or that inappropriately attempts to regulate the public. At the same time, paragraph (e) permits mandatory language when guidance restates requirements, provisions, or holdings contained in binding legal authorities, and similarly, when binding guidance is authorized by law, or is binding by incorporation into a contract, cooperative agreement, or grant.

Paragraph (f) requires that guidance documents be written in plain and understandable language. This is consistent with the Department's goal of making guidance as useful as possible, and such clarity will effectively advance agencies' missions.

Paragraphs (g)(1) through (9) list additional features that guidance must reflect, except when not feasible. These features will increase transparency and help communicate the purpose and the nature of the document in question. For example, when agencies issue guidance through interactive online formats, small brochures, or wallet-sized cards, they may be unable to incorporate every feature in (g)(1) through (9).

Paragraph (g)(1) requires that guidance prominently display the term ''guidance.'' This will reduce potential confusion about the nature of any given agency statement—helping distinguish the guidance from an internal rule of agency procedure, for example.

Paragraph (g)(2) requires that guidance identify the agency that issued it.

Paragraph (g)(3) requires that each guidance document provide the title of the guidance and its identification number, which will be posted on the website under § 89.6. This will help keep track of and readily identify any given guidance document. It also enhances the petition process under § 89.7.

Paragraph (g)(4) requires that guidance include a date of issuance. Among other benefits, this will prevent confusion when successive guidance documents address the same topic.

Paragraph (g)(5) requires that each guidance document include, at the top of the document, a short summary of the subject matter covered. However, this feature may not always be feasible, given the formats of certain agency guidance (for example, brochures). Under such circumstances, agencies need not include a summary.

Paragraph (g)(6) requires that guidance identify the activities to which and the persons to whom the guidance applies. This is a requirement that agencies can readily satisfy even when guidance applies broadly. For example, a guidance document from the Wage and Hour Division about internships could include language as simple as: ''This guidance is intended for employers covered by the FLSA who intend to hire interns.''

Paragraph (g)(7) requires that guidance include the citation to the statutory provision(s) or regulation(s) (in the Code of Federal Regulations format) to which it applies or which it interprets. This is consistent with and will reinforce conformity to other requirements in this rule. For example, including citations to relevant legal authorities will help ensure that the

agency statement is actually guidance under the definition in § 89.2(d).

Paragraph (g)(8) requires that a guidance document note if it revises a previously issued guidance document. If it does, it should identify the guidance it replaces.

Paragraph (g)(9) requires that guidance have a statement indicating if the guidance is valid for only a limited duration or, instead, until it is modified or rescinded. This feature will help keep track of the expiration date of guidance (where such a date exists).

Taken together, the Department believes the requirements in this section will result in more uniform, clear, and useful guidance.

Section 89.5 Public Access to Guidance Documents

This section ensures that the public will have access to all guidance documents in effect at any given point in time. It also describes requirements for the Department's guidance website. This section will enhance fair notice of agency policies. By creating a complete digital inventory of all current guidance and requiring that agencies routinely publish a list of changes to guidance, this section will lower the cost of staying current with any given agency's policies.

Paragraph (a) requires that the Department maintain a single, searchable, indexed website that contains, or links to, each agency's guidance documents that are in effect. The Department established this website in February 2020. It is available at *www.dol.gov/guidance.* Under paragraph (a), guidance posted to the website will be deemed final unless it is proposed significant guidance. This provision helps ensure agencies treat guidance consistently in various contexts. For example, it will help agencies characterize guidance as final both in pre-enforcement discussions with parties, as well as when describing the same guidance to a tribunal.

Paragraph (b) requires that the Department's guidance website have two statements, both of which are presently visible on the website. First, under paragraph (b)(1), the website must note that guidance documents lack the force and effect of law, except as authorized by law or as incorporated into a contract, cooperative agreement, or grant. As explained above in the discussion of § 89.4, guidance documents issued before this rule's effective date need not each individually have the disclaimer this rule requires. The language on the website will provide the necessary context for guidance created before this rule was promulgated.

Under paragraph (b)(2), the website must note an agency may not cite, use, or rely on any guidance that is not posted on the website except to establish historical facts.

Relatedly, paragraph (c) explains that all guidance documents not posted on the Department's website are no longer in effect. Consistent with the language on the website, such guidance must not be cited, used, or relied on by any agency as indicative of the agency's policies or views except to establish historical facts. For example, an agency could use withdrawn guidance to establish the agency's historical position on a topic in defense against claims that recent agency action is arbitrary and capricious. Importantly, this provision does not prevent regulated parties from attempting to use guidance that is no longer in effect as a defense to an enforcement action or other agency action where that guidance is used to establish a historical fact, such as willfulness or knowledge. For example, it may be appropriate for a person to use a guidance document that is now withdrawn but was in effect at the time of a cited violation of law as evidence that the person did not willfully violate the law.

Paragraph (d) requires that the Department maintain and advertise on its website a means for the public to comment electronically on any guidance documents subject to the notice and comment procedures required in § 89.6, discussed below.

Under paragraph (e), the Department must provide clear instructions on its website about how to submit petitions for withdrawal or modification of any guidance document, consistent with § 89.7. Those instructions must be clearly displayed on the website and must include, at a minimum, an email address or web portal; a physical mailing address for hard-copy petitions; and the office responsible for coordinating responses to petitions.

Paragraph (f) requires that, within 14 calendar days after the end of each quarter, the Department publish a list of each agency's guidance documents issued, modified, or withdrawn in that immediately preceding quarter. The list must include links to those guidance documents, unless it is not feasible. For example, links might not exist for withdrawn guidance. The quarterly-reporting requirement creates an efficient way for the American public to stay abreast of agencies' policies as they change. For example, rather than paying a law firm to monitor all agency statements and send periodic updates, an HR manager could scan this list each quarter to learn whether relevant policies have changed. This provision will help make clear what guidance agencies have withdrawn, which may not be immediately apparent from reviewing the website.

Section 89.6 Procedures for Significant Guidance

Though guidance cannot generally create binding legal requirements, it can still have significant impact. To improve such guidance and provide better notice of its contents, the Department, following OIRA's *Guidance Implementing Executive Order 13891* (Oct. 31, 2019), is establishing additional procedures for guidance OIRA deems ''significant.'' These procedures will benefit the American public by ensuring that significant guidance receives careful review from the agency issuing the guidance; from OIRA, and other federal agencies when appropriate; and from those the guidance will impact.

Section 89.6 applies to guidance issued, modified, or withdrawn after the effective date of this rule. It accounts for reliance interests on existing guidance because guidance that predates this rule, later modified or withdrawn, must still comply with this section if deemed significant.

Under § 89.6(a), the Department must consult with OIRA to determine whether guidance is significant guidance, or ''major'' under the Congressional Review Act, unless the guidance is otherwise exempted from such a determination by the OIRA Administrator.[3] Prior to issuing guidance, the Department will give OIRA opportunity to review guidance and make a significance determination.[4] The Department will provide this opportunity through their regular notification to OIRA of upcoming guidance. Notice can be provided through a list of guidance documents planned, with summaries of each guidance document and the agency's recommended designation of ''not significant,'' ''significant,'' or ''economically significant,'' and the

[3] *See* 5 U.S.C. 804(2) (defining ''major rule'').

[4] The Department will evaluate whether, although not legally binding, an agency guidance document may result in a significant economic impact (*e.g.,* by inducing private parties to alter their conduct to conform) where ''significant'' is defined by E.O. 12866. E.O. 12866 also requires agencies to estimate the net benefits of regulations. Net benefits are defined as total benefits minus total costs. When it is determined that a guidance document will be economically significant, the agency must prepare a Regulatory Impact Analysis and make it publicly available in the same manner it what would accompany an economically significant rulemaking.

reason for the designation. For example, an agency could recommend that guidance not be deemed significant because it is routine or ministerial. The Department will provide OIRA with any additional information needed, as well as any information for determining whether the guidance is a major rule under the CRA. Under this section, the required consultation with OIRA will consist of giving OIRA an opportunity to review each guidance document on a timeline reasonable for the size, complexity, and importance of the guidance document.

Once OIRA deems guidance significant, it will generally be subject to additional requirements, including notice and comment. However, under paragraph (b) an agency and the OIRA Administrator may agree that exigency, safety, health, or other compelling cause warrant an exemption from some of paragraph (b)'s requirements. Absent such an exemption, paragraphs (b)(1) through (b)(4) establish requirements applicable to significant guidance.

Under paragraph (b)(1), significant guidance must undergo a period of public notice and comment of at least 30 days before issuance of the final guidance. When finalized, significant guidance must be accompanied by a publicly posted response from the agency, made available either as part of the final guidance or in a companion document, that addresses major concerns raised in timely submitted comments. This response-to-comments should be similar to what typically appears in the preamble to a final rule under the APA. An agency need not respond to every comment or every issue raised, but it should provide explanations of its choices in the final guidance document, including why it disagreed with the principal suggestions received.

Under (b)(1), notice and comment will not be necessary when an agency for good cause finds that notice and public comment is impracticable, unnecessary, or contrary to the public interest. This exception parallels an APA exception for informal rulemaking. 5 U.S.C. 553(b)(B). Agencies must, as required under paragraph (e), incorporate the good cause finding and a brief statement of reasons for it into the guidance.

Paragraph (b)(2) requires that agency component heads, acting component heads, or the Secretary or the Deputy Secretary approve and sign significant guidance. Approval and signature are non-delegable due to the importance of significant guidance, and this provision is less flexible than the review and approval process for non-significant guidance in § 89.4(a). Approval and signature must come from (i) an agency component head appointed by the President, with or without confirmation by the Senate; (ii) by an official serving in an acting capacity as the foregoing; or (iii) by the Secretary or the Deputy Secretary.

Paragraph (b)(3) requires that significant guidance undergo review by OIRA under Executive Order 12866 before issuance. Among other things, this provision will help ensure that federal agencies outside the Department provide feedback, as needed, on significant guidance.

Paragraph (b)(4) requires that significant guidance comply with the requirements of certain executive orders (E.O.s) that otherwise apply to rules, including significant regulatory actions, including E.O.s 12866, 13563, 13609, 13771, and 13777. Compliance with E.O.s 12866 and 13563 requires that an agency explain the analysis it has conducted that shows that the guidance under consideration maximizes net benefits. The agency should also discuss the alternatives it has considered and whether it is issuing the guidance as a result of any retrospective review. Compliance with E.O. 13609, if applicable, requires the agency to explain how the guidance promotes international regulatory cooperation and how the agency considered the effect the guidance may have on interactions with other countries. Compliance with E.O. 13777 requires an explanation whether the guidance is being issued as a result of the Department's regulatory reform agenda or through a recommendation as a result of the Department's Regulatory Reform Task Force. The Department expects to work closely with OIRA so that significant guidance adequately addresses applicable requirements in these E.O.s.

Paragraph (c) requires agencies to publish notices in the **Federal Register** to announce the availability of all proposed and final significant guidance documents. Agencies also must make proposed and final significant guidance available on the website maintained under § 89.5. In this section, as with this rule as a whole, the Department seeks to give fair notice of agency statements and positions, in particular when they will likely have significant impact.

Paragraph (d) requires agencies to ensure that comments timely submitted in response to each proposed significant guidance document are published online, on or linked from the website maintained under § 89.5, before publishing a final significant guidance document. This will make the agency's response to comments received more intelligible for anyone wishing to view the comments to which the agency responds.

Paragraph (e) applies when OIRA and an agency have agreed that exigency, safety, health, or other compelling cause warrants an exemption under paragraph (b). When this occurs, the agency must incorporate that finding and a brief statement of reasons for it into the guidance issued. This provision resembles the requirement in paragraph (b)(1) and gives the public notice of an agency's rationale for its approach.

Under paragraph (f), any significant guidance initially exempt from certain requirements under paragraph (b), including (b)(1), is only temporary. Such guidance will be rescinded automatically 270 days after its publication unless the agency later makes it permanent by following the procedures for significant guidance not exempt under paragraph (b). Paragraph (f) guarantees that all significant guidance eventually benefits from the notice and comment process. The Department expects taking comment on such guidance may be particularly valuable due to the public having had experience with it for an extended period of time.

Under paragraph (g), procedures for significant guidance documents do not apply to pre-enforcement rulings that are guidance. Among other considerations, this approach accounts for the importance of giving parties timely direction as they face market pressures. For example, an employer may have opportunities that weigh in favor of changing current business practices. Absent an agency's opinion, though, the employer may be unwilling to make the change due to perceived legal risk. An agency's rapid response to such an inquiry may be vital to such an employer, and may improve only marginally through notice and comment—especially when the underlying basis for the agency response may itself have gone through notice and comment and the agency's response is specific to the facts of the inquiry.

Section 89.7 Petitions for Withdrawal or Modification

This section establishes that members of the public may submit petitions for withdrawal or modification of guidance documents. It also outlines how agencies must respond. The Department believes the petition process will help agencies receive important feedback, which will lead to more useful and effective guidance. The Department also expects that petitions will prevent needless litigation. For example, if an agency mistakenly issues guidance that ostensibly but unlawfully establishes a

binding requirement, an employer could submit a petition requesting the document's withdrawal and drawing the agency's attention to what it may have overlooked.

Paragraph (a) provides that any member of the public can petition an agency for withdrawal or modification of its guidance.

Paragraph (b) establishes requirements for petitions. They must be written. They must include an email and mailing address as well as any other preferred means for the agency to respond to the petitioner (where the petitioner has means of electronic communication). The Department expects that some agencies will receive numerous petitions, including some by postal mail. It may be costly to respond to each individual petition if the Department cannot respond electronically. This requirement furthers the Department's ongoing cost-saving and modernization efforts.

Under paragraph (b), the petition must identify the specific guidance that is the subject of the petition. The Department expects this will typically include the title of the guidance, the agency that issued it and the date it was issued, and any available document identification numbers.

A petition must also state in detail the reasons for requesting withdrawal or modification. For example, a petition could explain in detail that the document was treated as guidance, but, despite how the document is labeled, it appears to contain a binding requirement and should have been promulgated through notice and comment rulemaking. By contrast, general petitions or those lacking in detailed reasoning and argument would not satisfy paragraph (b). For example, summarily and generally disagreeing with an agency's policy and then simply listing links to relevant guidance would fall short. So would a petition that baldly requests modification or withdrawal of all, or a significant portion, of an agency's guidance. Detailed explanations will enable agencies to fairly evaluate petitions and reassess guidance as needed. Absent such detail, reasoning, and argument, agencies have no obligation to respond.

Under paragraph (c), the petition must be directed to the relevant agency official, pursuant to instructions provided on the website described in § 89.5. This ensures that the petition reaches the right agency and receives due consideration.

Under paragraph (d), an agency may choose to withdraw, modify, or retain guidance. Decisions to withdraw or modify guidance are subject to applicable provisions of this rule.

Paragraph (e) describes how agencies must respond to petitions. Under paragraph (e), an agency must provide a response in writing to a petition promptly, but no later than 90 days after receiving it. This means agencies must respond to all petitions satisfying § 89.7(b). However, paragraph (e) gives agencies discretion over how they respond. Decisions should depend on factors such as the nature of the petition; the complexity of the guidance under review; and relevant resource constraints. An agency that receives only a few petitions each year may opt to respond in detail to each one. Or, for example, if an agency receives multiple similar petitions, it may choose to respond substantively only to the first such petition and then respond to the rest by acknowledging their receipt and enclosing a link to the initial response. The agency also may simply acknowledge receipt of a petition in writing when appropriate under the circumstances.

Section 89.8 Enforceability

In § 89.8, the Department explains that this rule on guidance 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 Department includes this paragraph to make clear that this rule is one of agency procedure. And though this rule establishes a means for the Department to accept petitions, it does not create associated rights or benefits.

III. Final Rule

The Department has determined that this rule is suitable for final rulemaking. The revisions to the Department's policies and requirements surrounding guidance are purely internal matters of agency management, as well as the agency's organization, procedure, and practice. Accordingly, the Department is not required to engage in a notice and comment process to issue them, under either the APA or this rule itself. *See* 5 U.S.C. 553(a)(2), 553(b)(A), *infra* § 89.2(d)(3).

List of Subjects

Administrative practice and procedure, Labor.

■ For the reasons discussed in the preamble, the Department of Labor adds 29 CFR part 89 to read as follows:

PART 89—GUIDANCE DOCUMENTS

Sec.

89.1 Scope of this Part.
89.2 Definitions.
89.3 General Requirements.
89.4 Requirements for Guidance.
89.5 Public Access to Guidance.
89.6 Procedures for Significant Guidance.
89.7 Petitions for Withdrawal or Modification.
89.8 Enforceability.

Authority: 5 U.S.C. 301, E.O. 13891.

§ 89.1 Scope of this part.

(a) Guidance documents can provide a valuable means for an agency, among other things, to interpret existing law or to clarify how it intends to enforce an existing legal requirement. However, unless law permits, guidance documents should not establish new requirements that the agency treats as binding; any such requirements should be issued pursuant to applicable notice and comment requirements of the Administrative Procedure Act or pursuant to other appropriate process under applicable law.

(b) This part governs the Department of Labor and its agencies involved with any phase(s) of developing, issuing, modifying, withdrawing, or using guidance documents.

(c) Except where other law or this part provide otherwise, the provisions of this part apply to guidance issued and modifications or withdrawals of existing guidance that occur after September 28, 2020.

§ 89.2 Definitions.

The following definitions apply for purposes of this part:

Agency means the Department of Labor or any of its agencies, agency components, offices, or other similar organizational units.

Agency head means the actual head of the respective Agency within the Department.

Department means the Department of Labor.

Guidance or *guidance document* means an agency statement of general applicability, intended to have future effect on the behavior of regulated persons, that sets forth a policy on a statutory, regulatory, or technical issue, or an interpretation of a statute or regulation. Guidance may come in a variety of forms, including letters, memoranda, circulars, bulletins, or advisories, and may include video, audio, and web-based formats. Guidance does not include the following:

(1) Rules promulgated pursuant to notice and comment under 5 U.S.C. 553 or similar statutory provisions;

(2) Rules exempt from 5 U.S.C. 553's rulemaking requirements under 5 U.S.C. 553(a) or any other statute;

(3) Rules of agency organization, procedure, or practice;

(4) Decisions of agency adjudications under 5 U.S.C. 554 or similar statutory provisions;

(5) Internal agency statements directed to the issuing agency or other agencies that are not intended to have substantial future effect on the behavior of regulated persons;

(6) Internal executive branch legal advice or legal opinions addressed to executive branch officials;

(7) Legal briefs and other court filings;

(8) Agency statements of specific applicability, including advisory or legal opinions directed to particular persons about circumstance-specific questions (*e.g.,* case or investigatory letters, responses to complaints, warning letters), notices regarding particular locations or facilities (*e.g.,* an agency statement pertaining to the use, operation, or control of a government facility or property), and correspondence with individual persons or entities (*e.g.,* congressional correspondence or notices of violations), except statements ostensibly directed to a particular person but also designed or used by the agency to guide the conduct of the broader regulated public—for example, an opinion letter to a particular person that an agency publishes or otherwise issues and then cites in a letter to a different person could be guidance; or

(9) Agency statements that do not set forth a policy on a statutory, regulatory, or technical issue or an interpretation of a statute or regulation, such as statements merely communicating news updates about the agency (*e.g.,* speeches or press releases).

OIRA means the Office of Management and Budget's Office of Information and Regulatory Affairs.

Person includes entities such as state, tribal, and local governments; corporations, companies, associations, labor unions, firms, partnerships, societies; and individuals.

Pre-enforcement ruling means a formal written communication by an agency in response to an inquiry from a person concerning compliance with legal requirements that interprets the law or applies the law to a specific set of facts supplied by the person. The term includes letter rulings, advisory opinions, no-action letters, and informal guidance under section 213 of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121 (Title II), as amended.

Significant guidance or *Significant guidance document* means guidance or a guidance document that may reasonably be anticipated to:

(1) Lead to an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Federal agency (one outside the Department);

(3) Materially alter the budgetary impact of entitlements, grants, user fees, 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 of Executive Order 12866.

§ 89.3 General requirements.

(a) Unless law otherwise permits, all legislative rules must comply with all applicable notice and comment requirements set out in 5 U.S.C. 553 or other appropriate process under applicable law.

(b) All guidance documents issued after September 28, 2020 must be issued in accordance with this part. For each guidance document an agency issues jointly with other federal agencies (outside the Department), an agency may, subsequent to consultation with those outside agencies about that document, modify its approach from the requirements of this part as necessary.

(c) In any enforcement action commenced after September 28, 2020:

(1) An agencies may not treat a party's noncompliance with a guidance document as itself a violation of applicable statutes or regulations.

(2) However, among other permissible uses of guidance—

(i) If guidance explains or paraphrases existing legal requirements, an agency may use the guidance as evidence that a person had the requisite scienter, notice, or knowledge of the law;

(ii) An agency may cite guidance as evidence of its past positions or to establish the consistency of the agency's current view(s) with those positions; and

(iii) An agency may use a guidance document as probative evidence that a party has satisfied, or failed to satisfy, professional or industry standards or practices relating to applicable statutory or regulatory requirements.

(d) Guidance must not be used to attempt to regulate the public unless the guidance is binding because binding guidance is authorized by law or because the guidance is incorporated into a contract, cooperative agreement, or grant. Guidance should not, for instance, suggest that a standard for behavior in a guidance document is the only acceptable means of complying with statutory requirements where the relevant statute and any relevant legislative rule permits other means of complying. Guidance also should not threaten enforcement action against persons that do not follow the guidance itself.

(e) In issuing or modifying guidance, an agency must comply with any applicable requirements of the Congressional Review Act (5 U.S.C. 801–808).

§ 89.4 Requirements for guidance.

(a) Before any guidance is issued, modified, or withdrawn, it must be reviewed and approved by:

(1) The appropriate agency head;

(2) An official who is serving in an acting capacity as the agency head, or when there is no acting agency head, the official otherwise leading the agency; or

(3) An official designated by the appropriate agency head, acting agency head, or the official otherwise leading the agency.

(b) An official reviewing and approving guidance under paragraph (a) must ensure that each guidance document follows all relevant statutes and regulations, including the applicable requirements of this part.

(c) In assessing whether an agency's statement is in fact guidance during the review under paragraph (a) of this section, an official should evaluate the statement independent of how it is labeled.

(d) Guidance issued or modified after September 28, 2020 must:

(1) Include a disclaimer that states: ''This document does not have the force and effect of law and is not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.''; or,

(2) Include a modified version of the disclaimer described in paragraph (d)(1)—if permitted by underlying statute or other legal authority and developed in consultation with OIRA—explaining that the agency's guidance document is binding because it is authorized by law or because the guidance is incorporated into a contract, cooperative agreement, or grant. Such a modified disclaimer must provide the reason why the guidance document is binding.

In general, a disclaimer under (d)(1) or (2) of this section must be located prominently and direct readers to *www.dol.gov/guidance* for questions or additional information. However, an agency may modify those requirements for a disclaimer if appropriate given the nature of the guidance (for example, for a video, interactive web page, a brochure, a letter of interpretation, or a wallet-sized guidance card), so long as the disclaimer is still legible.

(e) Guidance issued or modified must avoid using mandatory language such as ''shall,'' ''must,'' ''required,'' or ''requirement'' to direct persons outside the Department to take or refrain from taking action, except when restating—with applicable citations—the relevant requirements, provisions, or holdings contained in binding legal authorities, or when the guidance is binding because binding guidance is authorized by law or because the guidance is incorporated into a contract, cooperative agreement, or grant.

(f) Guidance issued or modified must be written in plain and understandable language.

(g) In general, except when not feasible given the nature of the guidance document (for example, guidance issued in interactive online formats, small brochures, or on wallet-sized cards designed to be carried by workers for quick reference), each guidance document issued or modified must:

(1) Prominently display the term ''guidance'';

(2) Identify the agency issuing the guidance;

(3) Provide the title of the guidance and the document identification number;

(4) Include the date of issuance;

(5) Include a short summary at the top of the document of the subject matter covered in the guidance;

(6) Identify the activities to which and the persons to whom the guidance applies;

(7) Include the citation to the statutory provision(s) or regulation(s) (in the Code of Federal Regulations format) to which it applies or which it interprets;

(8) Note if the guidance is a revision to a previously issued guidance document and, if so, identify the guidance document that it replaces; and

(9) Include a statement indicating if the guidance is valid for only a limited duration or, instead, until it is modified or rescinded.

§ 89.5 Public Access to guidance.

(a) The Department must maintain a single, searchable, indexed website that contains, or links to, each agency's guidance documents in effect. Each agency must ensure that all its guidance is available through this website; any guidance posted will be deemed final unless it is a proposed significant guidance document under § 89.6.

(b) The website described in paragraph (a) of this section must clearly note that guidance documents lack the force and effect of law, except as authorized by law or as incorporated into a contract, cooperative agreement, or grant and that an agency may not cite, use, or rely on any guidance that is not posted on the website, except to establish historical facts.

(c) All guidance documents that are not posted on the Department's website described in paragraph (a) of this section shall be deemed no longer in effect. Such guidance must not be cited, used, or relied upon by any agency as indicative of an agency's policies or views except to establish historical facts, including the agency's position at the time and the regulated party's knowledge, or (where the legal standard so permits) constructive knowledge or reckless disregard, of legal requirements at the time an enforcement action was initiated.

(d) The Department must maintain and advertise on its website a means for the public to comment electronically on any guidance documents that are the subject of the notice-and-comment procedures described in § 89.6.

(e) The Department must provide clear instructions on its website regarding how to submit petitions for withdrawal or modification of any guidance document, consistent with § 89.7. These instructions must include an email address or web portal, a physical mailing address for hard-copy petitions, and the office responsible for coordinating responses to petitions. This website should clearly identify the relevant agency official(s) to whom petitions should be directed.

(f) Within 14 calendar days after the end of each fiscal quarter, the Department must publish a list of each agency's guidance documents issued, modified, or withdrawn in that immediately preceding quarter, including links to those guidance documents when feasible.

§ 89.6 Procedures for significant guidance.

In this section, requirements that apply to issuance of guidance also apply to modification or withdrawal of guidance.

(a) The Department must consult with OIRA to determine whether guidance is significant guidance, or qualifies as ''major'' guidance under the criteria in 5 U.S.C. 804(2), unless the guidance is otherwise exempted from such a determination by the Administrator of OIRA. Consultation with OIRA will consist of giving OIRA an opportunity to review each guidance document on a timeline reasonable for the size, complexity, and importance of the guidance document.

(b) For a significant guidance document, as determined by the Administrator of OIRA, unless the agency and the Administrator agree that exigency, safety, health, or other compelling cause warrants an exemption from some or all requirements of this paragraph, each significant guidance document must:

(1) Undergo a period of public notice and comment of at least 30 days before issuance of the final guidance document and be accompanied by a publicly posted response from the agency, made available either as part of the final guidance document or in a companion document, that addresses major concerns raised in timely submitted comments, except when the agency for good cause finds (and incorporates the finding and a brief statement of reasons for the finding into the guidance) that notice and public comment under this paragraph are impracticable, unnecessary, or contrary to the public interest;

(2) Before initial and final issuance, receive both approval and signature on a non-delegable basis by:

(i) The agency head;

(ii) An official who is serving in an acting capacity as the foregoing; or

(iii) The Secretary or the Deputy Secretary, as appropriate;

(3) Undergo review by OIRA under Executive Order 12866 before issuance; and,

(4) Comply with the applicable requirements that would otherwise apply to regulations or rules, including significant regulatory actions as set forth in Executive Orders 12866 (Regulatory Planning and Review), 13563 (Improving Regulation and Regulatory Review), 13609 (Promoting International Regulatory Cooperation), 13771 (Reducing Regulation and Controlling Regulatory Costs), and 13777 (Enforcing the Regulatory Reform Agenda).

(c) An agency must publish a notice in the **Federal Register** announcing the availability of each proposed and final significant guidance document and must make each proposed and final significant guidance document available on the website maintained under § 89.5.

(d) An agency must ensure that comments timely submitted in response to each proposed significant guidance document are published online or linked from the website maintained

under § 89.5, before publishing the final significant guidance document.

(e) For each significant guidance document where the agency and the Administrator of OIRA agree that exigency, safety, health, or other compelling cause warrants an exemption from some or all requirements under paragraph (b) of this section, the agency must incorporate that finding and a brief statement of reasons for the finding into the guidance.

(f) For all significant guidance exempt from requirements under this section as permitted by paragraph (b) of this section, such significant guidance shall be treated as temporary and will be rescinded by operation of law 270 days after it is published. The agency may make the temporary significant guidance permanent before the automatic rescission by following the procedures outlined for all significant guidance not exempt under paragraph (b).

(g) This section does not apply to pre-enforcement rulings, defined in § 89.2(g), that are guidance under this rule.

§ 89.7 Petitions for withdrawal or modification.

(a) Any member of the public may petition an agency for withdrawal or modification of a guidance document issued by the agency.

(b) Such a petition must be submitted in writing; include an email address and mailing address, as well as any other preferred means for the agency to respond electronically to the petitioner (where the petitioner has a means of electronic communication); identify the guidance document that is the subject of the petition; and state in detail the reason(s) for requesting withdrawal or modification.

(c) A petition must be directed to the relevant agency official, pursuant to instructions provided on the website described in § 89.5.

(d) The agency may choose to withdraw, modify, or retain a guidance document.

(e) Under this section an agency must provide a response in writing to a petition that meets the requirements of paragraph (b) of this section promptly, but no later than 90 days after receiving the petition.

§ 89.8 Enforceability.

This rule is intended to improve the internal management of the Department. As such, it is for the use of Department personnel only and 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.

Signed at Washington, DC, this 19th day of August, 2020.

Jonathan A. Wolfson,

Deputy Assistant Secretary of Labor for Policy.

[FR Doc. 2020–18500 Filed 8–27–20; 8:45 am]

BILLING CODE 4510–HL–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AQ68

Provider-Based Requirements

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) adopts as final, with no changes, a proposed rule to revise its medical regulations concerning collection and recovery by VA for medical care and services provided to an individual at a VA medical facility for treatment of a nonservice-connected condition. Specifically, this rulemaking adds a regulation that establishes the requirements VA will use to determine whether a VA medical facility has provider-based status.

DATES: This final rule is effective on September 28, 2020.

FOR FURTHER INFORMATION CONTACT: Joseph Duran, Office of Community Care (10D), Veterans Health Administration, Department of Veterans Affairs, Ptarmigan at Cherry Creek, Denver, CO 80209; (303) 372–4629. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: VA is authorized under 38 U.S.C. 1729 to recover or collect from a third party the reasonable charges for medical care or services VA furnishes to an individual for a non-service connected disability, to the extent that the individual, or the provider of care or services, would be eligible to receive payment from the third party if the care or services had not been furnished by VA. VA's collection or recovery under section 1729 is limited to care or services furnished by VA for a nonservice-connected disability: Incurred incident to the individual's employment and covered under a worker's compensation law or plan that provides reimbursement or indemnification for such care and services; incurred as the result of a crime of personal violence that occurred in a State, or a political subdivision of a State, in which a person injured as the result of such a crime is entitled to receive health care and services at such State's or subdivision's expense for personal injuries suffered as the result of such crime; incurred as a result of a motor vehicle accident in a State that requires automobile accident reparations (no-fault) insurance; or for which the individual is entitled to care (or the payment of expenses of care) under a health plan contract. VA implements its authority under section 1729 through regulations at title 38 Code of Federal Regulations (CFR) 17.101 through 17.106. More specifically, the methodology that VA uses to determine the amount of its collection or recovery for is established in 38 CFR 17.101.

On November 21, 2019, VA published a proposed rule to revise the methodology in § 17.101 with regards to calculating the reasonable charges for care and services VA provides on an outpatient basis. 84 FR 64235. That proposed rule primarily sought to revise 38 CFR 17.101 to remove the regulatory requirement that VA use the Centers for Medicare and Medical Services (CMS) provider-based criteria with regards to VA billing of third parties, and sought to add a new regulation at 38 CFR 17.100 to establish the criteria that VA would use instead to determine whether a VA facility has provider-based status. In so doing, VA modelled a majority of the criteria in new proposed 38 CFR 17.100 on CMS provider-based criteria in 42 CFR 413.65, but VA's revisions addressed the unique structure of VA's health care system, versus the CMS requirements that are more generally applicable to private health care systems. We reiterate from the proposed rule that VA is an integrated, national health care system and, therefore, some of the CMS requirements in 42 CFR 413.65, especially as they pertain to proximity limitations and licensure, are not appropriate to use for VA facilities. 84 FR 64235, 64236. The CMS requirements that were not appropriate to use for VA facilities were further identified and explained in more detail in the proposed rule, as were the alternative VA criteria in § 17.100 as proposed. 84 FR 64235, 64236–64239.

VA received three comments in response to the proposed rule, all of which supported the proposed rule and none of which suggested changes to any provisions in the proposed rule. We therefore adopt the proposed rule as final with no changes.

Paperwork Reduction Act

This final rule contains no collections of information under the Paperwork

Reduction Act of 1995 (44 U.S.C. 3501–3521).

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small facilities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. We identified that 400 out of 745 third-party payers would qualify as small entities pursuant to the revenue threshold established by NAICS code 524114 (Direct Health and Medical Insurance Carriers) to be affected by changes in this rule. The number of 400 was derived by assuming potential effects on all entities that fell below the applicable revenue threshold, without further numeric breakout. Although this 400 number is greater than three percent of the 745 total entities, the changes in this rule do not impose any new requirements that create a significant economic impact. The changes made in § 17.100 related to revising the scope and purpose, and related to revising, adding, or removing definitions, are technical in nature and conform to existing statutory authorities and existing practices in the program. The changes in § 17.101 will allow an additional 104 VA facilities to recognize an additional billable charge under the designation of a provider-based facility, with an estimated increased revenue for VA of $3,666,218 in FY21. This $3,666,218 annual revenue increase divided by the 745 firms under NAICS code 524114 will result in $4,921 additional annual costs per firm. This $4,921 additional cost per firm divided by the total receipts per firm of $1, 109,867,678 does not create a significant economic impact. Additional training will not be required for the 400 small entities potentially to be effected, as 97 percent of VA facilities already engage in the provider-based practices subject to the changes in § 17.101, which makes these practices well known to all potentially affected entities.

Therefore, pursuant to 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

Executive Orders 12866, 13563 and 13771

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

VA's regulatory impact analysis can be found as a supporting document at *http://www.regulations.gov*, usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its impact analysis are available on VA's website at *http://www.va.gov/orpm* by following the link for VA Regulations Published from FY 2004 through FYTD.

This final rule is not subject to the requirements of E.O. 13771 because this final rule results in no more than *de minimis* costs.

Unfunded Mandates

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

Congressional Review Act

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

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are as follows: 64.008—Veterans Domiciliary Care; 64.011—Veterans Dental Care; 64.012—Veterans Prescription Service; 64.013—Veterans Prosthetic Appliances; 64.014—Veterans State Domiciliary Care; 64.015—Veterans State Nursing Home Care; 64.026—Veterans State Adult Day Health Care; 64.039—CHAMPVA; 64.040—VHA Inpatient Medicine; 64.041—VHA Outpatient Specialty Care; 64.042—VHA Inpatient Surgery; 64.043—VHA Mental Health Residential; 64.044—VHA Home Care; 64.045—VHA Outpatient Ancillary Services; 64.046—VHA Inpatient Psychiatry; 64.047—VHA Primary Care; 64.048—VHA Mental Health clinics; 64.049—VHA Community Living Center; 64.050—VHA Diagnostic Care.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Health care, Health facilities, Health professions, Health records, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Veterans.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Brooks D. Tucker, Acting Chief of Staff, Department of Veterans Affairs, approved this document on July 22, 2020, for publication.

Consuela Benjamin,

Regulations Development Coordinator, Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.

For the reasons set out in the preamble, VA amends 38 CFR part 17 as set forth below:

PART 17—MEDICAL

■ 1. The authority citation for part 17 continues to read in part as follows:

Authority: 38 U.S.C. 501, and as noted in specific sections.

* * * * *

■ 2. Add § 17.100 under the undesignated center heading ''Charges, Waivers, and Collections'' to read as follows:

§ 17.100 Requirements for provider-based status.

(a) *Scope.* This section establishes the criteria that VA uses to determine whether a VA medical facility is designated as provider-based for purposes of billing for non-service-connected and non-special treatment authority conditions.

(b) *Definitions.* For purposes of this section:

Community Based Outpatient Clinic (CBOC). A CBOC is a VA-operated, VA-funded, or VA-reimbursed site of care that is not located within a VA Medical Center. A CBOC can provide primary, specialty, subspecialty, mental health, or any combination of health care delivery services that can be appropriately provided in an outpatient setting.

Community Living Center (CLC). A CLC is a component of the spectrum of

long-term care that provides a skilled nursing environment and houses a variety of specialty programs for persons needing short and long stay services. VA CLCs are typically located on, or near a VA medical facility and are VA-owned and operated, but may be free-standing in the community.

Facility. A facility is a point of care where individuals can seek VA health care services, to include a VA Medical Center, CBOC, Health Care Center, CLC, and Other Outpatient Services site.

Health Care Center (HCC). An HCC is a VA-owned, VA-leased, VA-contracted or shared clinic that is operational at least five days per week and provides primary care, mental health care, on site specialty services, and performs ambulatory surgery and/or invasive procedures that may require moderate sedation or general anesthesia.

Main provider. A main provider (or parent facility/hospital or provider-based hospital (PBH)) is a provider that either creates, or acquires ownership of, another facility to deliver additional health care services under its name, ownership, and financial and administrative control. For example, VA Medical Centers and HCCs can be main providers.

Other Outpatient Services (OOS). A site that provides outpatient services to veterans, but does not meet the definition of a CBOC or HCC per this section.

Prospective Payment System (PPS). A Prospective Payment System (PPS) is a method of reimbursement in which Medicare payment is made based on a predetermined, fixed amount. The payment amount for a particular service is derived based on the classification system of that service (for example, Medicare Severity Diagnosis-Related Groups for inpatient hospital services furnished by most acute care hospitals).

Provider-based outpatient facility (PBO). A provider-based outpatient facility is a provider of health care services that is either created by, or acquired by, a main provider for the purpose of furnishing additional health care services under the ownership, administrative, and financial control of the main provider, and meets the criteria outlined in this section.

Remote location of a hospital. A remote location of a hospital is a CBOC, OOS Site, or HCC that is located offsite from the main facility.

VA Medical Center (VAMC). A VAMC is a VA facility that provides at least two categories of care (inpatient, outpatient, residential, or institutional extended care).

(c) *Criteria for provider-based status.* In order to be designated as a provider-based facility, the following criteria must be met:

(1) *Licensure.* The facility seeking provider-based status and the main provider must operate under the same license. VA facilities are not licensed by States but all VA facilities are considered licensed for the purpose of collection and recovery by VA as part of VA's national organization structure and in accordance with VA standards, including standards established or recognized by VA's Offices of the Medical Inspector and Inspector General and major healthcare accreditation organizations.

(2) *Clinical services.* The clinical services of the facility seeking provider-based status and the main provider must be integrated. Integration is demonstrated by the following:

(i) The professional staff of the facility has clinical privileges at the main provider.

(ii) The main provider maintains the same monitoring and oversight (*i.e.* credentialing and privileging) of the facility seeking provider-based status as it does for any other department of the provider.

(iii) The medical director of the facility seeking provider-based status maintains a reporting relationship with the chief medical officer or other similar official of the main provider that has the same frequency, intensity, and level of accountability that exists in the relationship between the medical director of a department of the main provider and the chief medical officer or other similar official of the main provider, and is under the same type of supervision and accountability as any other director, medical or otherwise, of the main provider.

(iv) The medical staff committees or other professional committees at the main provider are responsible for medical activities in the facility seeking provider-based status, including quality assurance, utilization review, and the coordination and integration of services, to the extent practicable, between the facility seeking provider-based status and the main provider.

(v) Medical records for patients treated in the facility seeking provider-based status are integrated into a unified retrieval system (or cross reference) of the main provider.

(vi) Inpatient and outpatient services of the facility seeking provider-based status and the main provider are integrated, and patients treated at the facility who require further care have full access to all services of the main provider and are referred where appropriate to the corresponding inpatient or outpatient department or service of the main provider.

(vii) Inpatient and outpatient services of the facility seeking provider-based status and the main provider are recognized under the main provider's accreditation.

(3) *Financial integration.* The financial operations of the facility seeking provider-based status are fully integrated within the financial system of the main provider, as evidenced by shared income and expenses between the main provider and the facility. The costs of a facility that is a hospital department are reported in a cost center of the provider, costs of a facility other than a hospital department are reported in the appropriate cost center or cost centers of the main provider. The main provider's integrated health care system manpower and labor budget and the financial status of any facility seeking provider-based status is incorporated and readily identified in the main provider's integrated system reports.

(4) *Public awareness.* The facility seeking provider-based status must be held out to the public (and other payers) as part of the main provider. Patients of the facility must be made aware that the facility is part of a main provider and that they will be billed accordingly. All literature, brochures, and public relations newsletters from the facility seeking provider-based status must provide the relationship between the main provider and the facility.

(5) *Obligations of hospital outpatient departments and hospital-based facilities.* If the facility seeking provider-based status is a hospital outpatient department or hospital-based facility, the facility must fulfill the obligations described in this paragraph:

(i) The hospital outpatient department must comply with the antidumping rules of 42 CFR 489.20(l), (m), (q), and (r) and § 489.24.

(ii) Physician services furnished in hospital outpatient departments or hospital-based facilities must be billed with the correct site-of-service so that appropriate physician and practitioner payment amounts can be determined based on their geographical location.

(iii) Physicians who work in hospital outpatient departments or hospital-based facilities are obligated to comply with the non-discrimination provisions in 42 CFR 489.10(b).

(iv) Hospital outpatient departments must treat all Medicare patients seen on an urgent/emergent basis as hospital outpatients.

(v) In the case of a patient admitted to the hospital as an inpatient after receiving treatment in the hospital outpatient department or hospital-based

facility, payments for services in the hospital outpatient department or hospital-based facility are subject to the payment window provisions applicable to PPS hospitals and to hospitals and units excluded from PPS set forth at 42 CFR 412.2(c)(5) and at 42 CFR 413.40(c)(2), respectively.

(vi) The hospital outpatient department must meet applicable VA policies pertaining to hospital health and safety programs.

(vii) VA must treat any facility that is located on the main hospital campus as a department of the hospital.

(6) *Operation under the control of the main provider.* The facility seeking provider-based status is operated under the control of the main provider. Control of the main provider requires:

(i) The main provider and the facility seeking provider-based status have the same governing body.

(ii) The facility seeking provider-based status is operated under the same organizational documents as the main provider. For example, the facility seeking provider-based status must be subject to common bylaws and operating decisions of the governing body of the main provider.

(iii) The main provider has final responsibility for administrative decisions, final approval for contracts with outside parties, final approval for personnel actions, final responsibility for personnel policies (such as code of conduct), and final approval for medical staff appointments in the facility seeking provider-based status.

(7) *Administration and Supervision.* The reporting relationship between the facility seeking provider-based status and the main provider must have the same frequency, intensity, and level of accountability that exists in the relationship between the main provider and one of its existing departments, as evidenced by compliance with all of the following requirements:

(i) The facility seeking provider-based status is under the direct supervision of the main provider.

(ii) The facility seeking provider-based status is operated under the same monitoring and oversight by the main provider as any other department of the provider, and is operated just as any other department of the provider with regard to supervision and accountability. The facility director or individual responsible for daily operations at the facility:

(A) Maintains a reporting relationship with a manager at the main provider that has the same frequency, intensity, and level of accountability that exists in the relationship between the main provider and its existing departments; and

(B) Is accountable to the governing body of the main provider, in the same manner as any department head of the provider.

(iii) The following administrative functions of the facility seeking provider-based status are integrated with those of the main provider where the facility is based: Billing services, records, human resources, payroll, employee benefit package, salary structure, and purchasing services. Either the same employees or group of employees handle these administrative functions for the facility and the main provider, or the administrative functions for both the facility and the main provider are contracted out under the same contract agreement; or are handled under different contract agreements, with the contract of the facility or organization being managed by the main provider.

(d) *Illustrations of how the criteria are applied.* (1) A VA facility that is seeking provider-based status that exists under contract arrangements, where only VA patients are seen, may be designated as provider-based if the provider-based requirements in this section are met.

(2) A VA facility seeking provider-based status that exists under contract arrangements, where VA patients and non-VA patients are seen at the same non-VA owned facility, will have the same provider-based status as the non-VA owned facility that is hosting the VA facility.

(3) A VA owned and operated facility seeking provider-based status, where some or all of the staff are contracted employees, may be designated as provider-based if the provider-based requirements in this section are met.

■ 2. Amend § 17.101 by:

■ a. Revising the section heading;

■ b. In paragraph (a)(5), removing the definitions ''Non-provider-based'' and ''Provider-based'' from; and

■ 3. Revising paragraph (a)(6).

The revisions read as follows:

§ 17.101 Collection or recovery by VA for medical care or services provided or furnished to a veteran for a non-service connected disability.

(a) * * *

(6) *Provider-based status and charges.* Facilities that have provider-based status by meeting the criteria in § 17.100 are entitled to bill outpatient facility charges and professional charges. The professional charges for these facilities are produced by the methodologies set forth in this section based on facility expense RVUs. Facilities that do not have provider-based status because they do not meet the criteria in § 17.100 are not permitted to bill outpatient facility charges and can only bill a professional charge. The professional charges for these facilities are produced by the methodologies set forth in this section based on non-facility practice expense RVUs.

* * * * *

■ 4. Amend § 17.106 by adding paragraph (f)(2)(viii) to read as follows:

§ 17.106 VA collection rules; third-party payers.

* * * * *

(f) * * *

(2) * * *

(viii) A third party may not reduce or refuse payment if the facility where the medical treatment was furnished is designated by VA as provider-based, but the facility does not meet the provider-based status requirements under 42 CFR 413.65.

* * * * *

[FR Doc. 2020–17042 Filed 8–27–20; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 258

[EPA–R09–RCRA–2018–0568; FRL–10011–63–Region 9]

Final Determination To Approve Site Specific Flexibility for the Cocopah Landfill

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is making a final determination to approve two Site Specific Flexibility Requests (SSFRs) from Cocopah Landfill, Inc. (CLI), a subsidiary of Republic Services, Inc. (Republic), to close and monitor the Cocopah Landfill. The Cocopah Landfill is located within Indian Country on the Cocopah Indian Reservation near Somerton, Arizona and was operated by Republic and its predecessors from the 1960's to the present. EPA is promulgating a site-specific rule proposed on May 6, 2020, that approves an alternative final cover and an alternative location for the storage of facility records.

DATES: This final rule is effective on August 28, 2020.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R09–RCRA–2018–0568 at *http://www.regulations.gov.* Publicly

available docket materials are available electronically in *http://www.regulations.gov,* or via email to *R9LandSubmit@epa.gov.*

FOR FURTHER INFORMATION CONTACT: Steve Wall, EPA Region IX, (415) 972–3381, *wall.steve@epa.gov.*

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

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I. Legal Authority for This Action

Under sections 1008, 2002, 4004, and 4010 of the Resource Conservation and Recovery Act of 1976 (RCRA) as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), 42 U.S.C. 6901 *et seq.,* Congress required EPA to establish revised minimum federal criteria for Municipal Solid Waste Landfills (MSWLFs), including landfill location restrictions, operating standards, design standards, and requirements for ground water monitoring, corrective action, closure and post-closure care, and financial assurance. Under RCRA section 4005, states are to develop permit programs for facilities that may receive household hazardous waste or waste from conditionally exempt small quantity generators of hazardous waste, and EPA is to determine whether the state's program is adequate to ensure that facilities will comply with the revised federal criteria.

The MSWLF criteria are in the Code of Federal Regulations at 40 CFR part 258. These regulations are prescriptive, self-implementing and apply directly to owners and operators of MSWLFs. Many of these criteria include a flexible performance standard as an alternative to the prescriptive, self-implementing regulation. The flexible standard is not self-implementing and requires approval by the Director of an EPA-approved state MSWLF permitting program.

However, EPA's approval of a state program generally does not extend to Indian Country because states do not have authority over Indian Country. For this reason, owners and operators of MSWLF units located in Indian Country cannot take advantage of the flexibilities available to those facilities that are within the jurisdiction of an EPA-approved state program. However, the EPA has the authority under sections 2002, 4004, and 4010 of RCRA to promulgate site-specific rules to enable such owners and operators to use the flexible standards. See *Yankton Sioux Tribe* v. *EPA,* 950 F. Supp. 1471 (D.S.D. 1996); *Backcountry Against Dumps* v. *EPA,* 100 F.3d 147 (D.C. Cir. 1996). EPA refers to such rules as ''Site Specific Flexibility Determinations'' and has developed draft guidance for owners and operators on preparing a request for such a site-specific rule, entitled ''Site-Specific Flexibility Requests for Municipal Solid Waste Landfills in Indian Country Draft Guidance,'' EPA530–R–97–016 (August 1997) (Draft Guidance).

II. Background

The Cocopah Landfill is located on the Cocopah Indian Reservation on property owned by the Cocopah Indian Tribe (Tribe) and is located near Somerton, Arizona. The Cocopah Landfill is a commercial MSWLF operated by Republic and its predecessors from the 1960's to the present. Waste was last received at the site on June 30, 2000 and interim closure construction was completed in 2003 with an interim 3-foot-thick monolithic soil cover. The Cocopah Landfill property encompasses an area of 192 acres of which approximately 138 acres were used for placement of waste materials. Disposal operations were restricted to two separate units of 105 acres and 33 acres each, designated as the North Fill Area and the South Fill Area, respectively. A combined total of approximately 2.5 million tons of waste are known to have been deposited in the two disposal units.

Between 2010 and 2016, EPA worked with the Tribe and Republic to develop and reach agreement on an overall landfill closure plan. During this time, EPA also reviewed the SSFRs to determine whether they met technical and regulatory requirements. On September 5, 2017, the Tribe submitted Republic's ''Final Closure and Post-Closure Maintenance Plan and Site-Specific Flexibility Requests for the Cocopah Landfill'' (Final Closure Plan) to EPA, requesting that EPA take appropriate action to ensure that the Final Closure Plan and accompanying SSFRs satisfy EPA's requirements. EPA provided final comments on the Plan on April 26, 2019, which Republic addressed in an updated Final Closure Plan dated November 2019. The Final Closure Plan submitted to EPA includes two SSFRs. The requests seek EPA approval to use an alternative final cover meeting the performance requirements of 40 CFR 258.60(a), and approval to use an alternative location for the storage of facility records pursuant to 40 CFR 258.29(a).

III. Basis for Final Determination

EPA is basing its final determination to approve the SSFRs on the Tribe's concurrence, dated September 5, 2017, on the SSFRs as included in the Closure Plan, as well as EPA's determination that the SSFRs meet the requirements in 40 CFR part 258, and on EPA's independent review of the Final Closure Plan.

A. Alternative Final Cover SSFR: Alternative Final Cover System

The regulations require the installation of a final cover system as specified in 40 CFR 258.60(a), which consists of an infiltration layer with a minimum of 18 inches of compacted clay with a permeability of 1×10^{-5} cm/sec, covered by an erosion layer with a minimum six inches of topsoil. Republic sought approval for an alternative final cover designed to satisfy the performance criteria specified in 40 CFR 258.60(b); Republic proposed an alternative cover, called an evapotranspiration cover, which would consist of two and a half feet of native soil to control infiltration, covered by six inches of a soil gravel mixture to control erosion.

EPA is basing its final determination on a number of factors, including: (1) Research showing that the prescriptive, self-implementing requirements for final covers, comprised of low permeability compacted clay, do not perform well in the arid west. The clay dries out and cracks, which allows increased infiltration along the cracks; (2) Research showing that in arid environments thick soil covers comprised of native soil can perform as well or better than the prescriptive cover; and (3) Republic's analysis demonstrating, based on site-specific climatic conditions and soil properties, that the proposed alternative soil final cover will achieve equivalent reduction in infiltration as the prescriptive cover design and that the proposed erosion layer provides equivalent protection from wind and water erosion. This analysis is provided in Appendices A, B, C and M of the Final Closure Plan for the Cocopah Landfill dated November 2019.

B. Records Storage SSFR: Alternative Location for the Storage of Facility Records

The regulations at 40 CFR 258.29(a) require that the owner or operator of a MSWLF unit must record and retain operating records at or near the facility or at an approved alternative location. Republic does not have administrative facilities at the Cocopah Landfill where records can be maintained. As a result, Republic requested approval to store all required documentation relating to the operating record of the Cocopah Landfill at the Copper Mountain Landfill (CML), which is Republic's closest operating facility to the Cocopah Landfill. The address of Copper Mountain Landfill is 34853 East County 12th Street, Wellton, Arizona 85356, which is 36 miles from the Cocopah Landfill.

EPA is basing its final determination on factors including: (1) The Cocopah Landfill is no longer operational, and Republic does not have administrative facilities there; and (2) Republic's proposed alternative records storage location, the Copper Mountain Landfill, is only 36 miles away.

IV. Summary of Public Comments Received and Response to Comments

EPA received no comments on the tentative determination.

V. Additional Findings

In order to comply with the National Historic Preservation Act, 54 U.S.C. 100101 *et seq.,* Republic will coordinate with the Tribe to arrange for a qualified Native American monitor to be present during any work. If buried or previously unidentified cultural resources are encountered during project activities, all work within the vicinity of the find will cease, and the provisions pursuant to 36 CFR 800.13(b) will be implemented. If, during the Landfill closure activities, previously undocumented archaeological material or human remains are encountered, all work shall cease in the immediate area and a qualified archaeologist shall be retained to evaluate the significance of the find and recommend further management actions.

Though no known threatened or endangered species or their habitat exist on the site, a preconstruction survey will be conducted prior to cover installation to ensure no threatened or endangered species are present. Following closure and vegetation restoration activities, the site may become suitable for threatened and endangered species. This would be a beneficial effect.

Under Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), this rule is not of general applicability and therefore is not a regulatory action subject to review by the Office of Management and Budget (OMB).

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) because it applies to a particular facility only.

Because this rule is of particular applicability relating to a particular facility, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202, 204, and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Because this rule will affect only a particular facility, it will not significantly or uniquely affect small governments, as specified in Section 203 of UMRA.

Because this rule will affect only a particular facility, this proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, ''Federalism,'' (64 FR 43255, August 10, 1999). Thus, Executive Order 13132 does not apply to this rule.

This rule also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The basis for this belief is EPA's conservative analysis of the potential risks posed by Republic's proposal and the controls and standards set forth in the application.

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

As required by section three of Executive Order 12988, ''Civil Justice Reform,'' (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct.

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments,'' (65 FR 67249, November 9, 2000), calls for EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' *See* also ''EPA Policy for the Administration of Environmental Programs on Indian Reservations,'' (November 8, 1984) and ''EPA Policy on Consultation and Coordination with Indian Tribes,'' (May 4, 2011). EPA consulted with the Tribe throughout Republic's development of its Final Closure Plan for the Cocopah Landfill.

List of Subjects in 40 CFR Part 258

Environmental protection, Municipal landfills, Final Cover, Post-closure Care, Groundwater Monitoring, Reporting and Recordkeeping Requirements, Waste Treatment and Disposal, Water Pollution Control.

Dated: July 27, 2020.

Jeffrey Scott,

Director, Land, Chemicals and Redevelopment Division, Region IX.

For the reasons stated in the preamble, 40 CFR part 258, is amended as follows:

PART 258—CRITERIA FOR MUNICIPAL SOLID WASTE LANDFILLS

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

Authority: 33 U.S.C. 1345(d) and (e); 42 U.S.C. 6902(a), 6907, 6912(a), 6944, 6945(c) and 6949a(c), 6981(a).

Subpart F—Closure and Post-Closure Care

■ 2. Section 258.62 is amended by adding paragraph (d) to read as follows:

§ 258.62 Approval of Site-specific Flexibility Requests in Indian Country.

* * * * *

(d) *Cocopah Municipal Solid Waste Landfill—Alternative final cover and alternative location for the storage of facility records.* This paragraph (d) applies to the Cocopah Landfill, a Municipal Solid Waste landfill operated by Republic on the Cocopah Indian Reservation near Somerton, Arizona.

(1) In accordance with § 258.60(b), the owner or operator may replace the prescriptive final cover set forth in § 258.60(a), with an alternative final cover as follows:

(i) The owner or operator may install an evapotranspiration cover system as an alternative final cover for the 135-acre site.

(ii) The alternative final cover system shall be constructed to achieve an equivalent reduction in infiltration as

the infiltration layer specified in § 258.60(a)(1) and (2) and provide an equivalent protection from wind and water erosion as the erosion layer specified in § 258.60(a)(3). Top-deck cover slopes shall have a minimum slope of 2%. All side slopes in the South Fill Area shall be regraded to a maximum 3 horizontal to 1 vertical (3H:1V). The existing side slope of 2.5H:1V in the North Fill Area will remain; however, drainage benches shall be installed on portions of the slope where the vertical height exceeds 50 feet.

(iii) The final cover system shall consist of a minimum three-feet-thick multi-layer cover system comprised, from bottom to top, of:

(A) A minimum 30-inch thick infiltration layer consisting of:

(*1*) Existing intermediate cover; and

(*2*) Additional cover soil from on-site sources, which, prior to placement, shall be wetted to optimal moisture and thoroughly mixed to near uniform condition, and the material shall then be placed in lifts with an uncompacted thickness of six to eight inches, spread evenly and compacted to 90 percent of the maximum dry density, and shall:

(*i*) Exhibit a grain size distribution that excludes particles in excess of three inches in diameter;

(*ii*) Have a minimum fines content (percent by weight passing U.S. No. 200 Sieve) of 12 percent for the average of ten consecutive tests; and

(*iii*) Have a grain size distribution with a minimum of six percent finer than five microns for the average of ten consecutive tests; and

(B) A surface erosion layer comprised of a rock/soil admixture for top deck slopes and rock armoring for side slopes. The surface erosion layer requirements for top-deck slopes and side slopes are detailed below:

(*1*) Top deck slope surface erosion layer requirements: The top deck slope surface erosion layer shall be a minimum six-inch surface erosion layer comprised of a rock/soil admixture. The top deck surface erosion layer shall achieve the following gradation specification:

(*i*) Exclude particles in excess of three inches in diameter;

(*ii*) 40% to 75% passing No. 4 sieve

(*iii*) 10% to 50% passing No. 40 sieve

(*iv*) Less than or equal to 15% passing No. 200 sieve

(*2*) Side slope surface erosion layer: The side slope surfaces erosion layer shall consist of a 4-inch thick rock armor underlain by an 8 ounce per square yard (oz/sy) non-woven geotextile filter fabric. The side slope surface erosion rock armor layer shall achieve the following gradation specification:

(*i*) Exclude particles in excess of three inches in diameter;

(*ii*) 10% to 40% passing No. 4 sieve

(*iii*) 0% to 10% passing No. 40 sieve

(2) In accordance with 40 CFR 258.29(a), the owner operator may retain all required documentation relating to the operating record of the Cocopah Landfill at the administrative offices of Copper Mountain Landfill. The address of Copper Mountain Landfill is 34853 East County 12th Street, Wellton, Arizona 85356.

(3) The owner or operator shall place documentation demonstrating compliance with the provisions of this Section in the operating record.

(4) All other applicable provisions of 40 CFR part 258 remain in effect.

[FR Doc. 2020–16586 Filed 8–27–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 282

[EPA–R06–UST–2018–0703; FRL–10011–49–Region 6]

New Mexico: Final Approval of State Underground Storage Tank Program Revisions and Incorporation by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: Pursuant to the Resource Conservation and Recovery Act (RCRA or Act), the Environmental Protection Agency (EPA) is taking direct final action to approve revisions to the State of New Mexico's Underground Storage Tank (UST) program submitted by the State. EPA has determined that these revisions satisfy all requirements needed for program approval. This action also codifies EPA's approval of New Mexico's State program and incorporates by reference those provisions of the State regulations that we have determined meet the requirements for approval. The provisions will be subject to EPA's inspection and enforcement authorities under Subtitle I of RCRA sections 9005 and 9006 and other applicable statutory and regulatory provisions.

DATES: This rule is effective October 27, 2020, unless EPA receives adverse comment by September 28, 2020. If EPA receives adverse comment, it will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register, as of October 27, 2020, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

ADDRESSES: Submit your comments by one of the following methods:

1. *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the on-line instructions for submitting comments.

2. *Email: lincoln.audray@epa.gov.*

Instructions: Direct your comments to Docket ID No. EPA–R06–UST–2018–0703. EPA's policy is that all comments received will be included in the public docket without change and may be 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 Federal *https://www.regulations.gov* website is an ''anonymous access'' system, which means the 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 the 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, the 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 the EPA cannot read your comment due to technical difficulties, and cannot contact you for clarification, the 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.

The index to the docket for this action is available electronically at *https://www.regulations.gov.* You can view and copy the documents that form the basis for this codification and associated publicly available docket materials are available either through *https://www.regulations.gov* or at the Environmental Protection Agency, Region 6, 1201 Elm Street, Suite #500, Dallas, Texas 75270. This facility is open from 8:30 a.m. to 4:00 p.m. Monday through Friday excluding

Federal holidays and facility closures. We recommend that you telephone Audray Lincoln, Environmental Protection Specialist at (214) 665–2239 before visiting the Region 6 Office. Interested persons wanting to examine these documents should make an appointment with the office at least two weeks in advance.

FOR FURTHER INFORMATION CONTACT: Audray Lincoln, (214) 665–2239, *lincoln.audray@epa.gov.* Out of an abundance of caution for members of the public and our staff, the EPA Region 6 office will be closed to the public to reduce the risk of transmitting COVID–19. We encourage the public to submit comments via *https://www.regulations.gov,* as there will be a delay in processing mail and no courier or hand deliveries will be accepted. Please call or email the contract listed above if you need alternative access to material indexed but not provided in the docket.

SUPPLEMENTARY INFORMATION:

I. Approval of Revisions to New Mexico's Underground Storage Tank Program

A. Why are revisions to State programs necessary?

States which have received final approval from the EPA under RCRA section 9004(b), 42 U.S.C. 6991c(b), must maintain an underground storage tank program that is equivalent to, consistent with, and no less stringent than the Federal underground storage tank program. When EPA makes revisions to the regulations that govern the UST program, States must revise their programs to comply with the updated regulations and submit these revisions to the EPA for approval. Changes to State UST programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to the EPA's regulations in 40 Code of Federal Regulations (CFR) part 280. States can also initiate changes on their own to their underground storage tank program and these changes must then be approved by EPA.

B. What decisions has the EPA made in this rule?

On October 11, 2018, in accordance with 40 CFR 281.51(a), New Mexico submitted a complete program revision application seeking approval for its UST program revisions corresponding to the EPA final rule published on July 15, 2015 (80 FR 41566), which finalized revisions to the 1988 UST regulations and to the 1988 State program approval (SPA) regulations. As required by 40 CFR 281.20, the State submitted the following: A transmittal letter from the Governor requesting approval, a description of the program and operating procedures, a demonstration of the State's procedures to ensure adequate enforcement, a Memorandum of Agreement outlining the roles and responsibilities of the EPA and the implementing agency, a statement of certification from the Attorney General, and copies of all relevant State statutes and regulations.

We have reviewed the application and the revisions to New Mexico's UST program and determined they are no less stringent than the corresponding Federal requirements in subpart C of 40 CFR part 281, and the New Mexico program provides for adequate enforcement of compliance (40 CFR 281.11(b)). Therefore, the EPA grants New Mexico final approval to operate its UST program with the changes described in the program revision application, and as outlined below in Section I.G of this document. The New Mexico Environment Department (NMED) is the lead implementing agency for the UST program in New Mexico, except in Indian Country.

C. What is the effect of this approval decision?

This action does not impose additional requirements on the regulated community because the regulations being approved by this rule are already effective in the State of New Mexico, and they are not changed by this action. This action merely approves the existing State regulations as meeting the Federal requirements and renders them federally enforceable.

D. Why is EPA using a direct final rule?

The EPA is publishing this direct final rule without a prior proposed rule because we view this as a noncontroversial action and anticipate no adverse comment. New Mexico received comments during its comment period when the rules and regulations in this document were being considered and were proposed at the State level. All comments were addressed at the public hearing and/or are reflected in the adopted regulations. No opposing testimony was presented during the public hearing before the New Mexico Environmental Improvement Board on February 21 and 22, 2018.

E. What happens if the EPA receives comments that oppose this action?

Along with this direct final rule, the EPA is publishing a separate document in the ''Proposed Rules'' section of this **Federal Register** that serves as the proposal to approve the State's UST program revision, providing opportunity for public comment. If EPA receives comments that oppose this approval, EPA will withdraw the direct final rule by publishing a document in the **Federal Register** before the rule becomes effective. The EPA will base any further decision on the approval of the State program changes on the proposal to approve after considering all comments received during the comment period. EPA will then address all public comments in a later final rule. You may not have another opportunity to comment. If you want to comment on this approval, you must do so at this time.

F. For what has New Mexico previously been approved?

On September 17, 1990, EPA finalized a rule approving the UST program submitted by New Mexico in lieu of the Federal program. On January 18, 1996, EPA codified the approved New Mexico program that is subject to EPA's inspection and enforcement authorities under RCRA sections 9005 and 9006, 42 U.S.C. 6991d and 6991e, and other applicable statutory and regulatory provisions.

G. What changes are we approving with this action?

In order to be approved, the program must provide for adequate enforcement of compliance as described in 40 CFR 40 CFR 281.11(b) and part 281, Subpart D. The NMED has broad statutory authority to regulate the installation, operation, maintenance, closure of USTs, and UST releases under the following New Mexico Statutes: Department of Environment Act, NMSA 1978, sections 9–7A–1 to 9–7A–15; Environmental Improvement Act, NMSA 1978 sections 74–1–1 to 74–1–17; Hazardous Waste Act, NMSA 1978, sections 74–4–1 to 74–4–14; Ground Water Protection Act, NMSA 1978, sections 74–6B–1 to 74–6B–14; Petroleum Products Loading Fee Act, NMSA 1978, sections 7–13A–1 to 7–13A–7; Tax Administration Act, NMSA 1978 sections 7–1–6; 7–1–6.1; 7–1–6.25; 7–1–6.39; 7–1–13.1; Gasoline Tax Act, NMSA 1978 sections 7–13–3; 7–13–4; and Special Fuels Supplier Tax Act, NMSA 1978 sections 7–16A–3.

Specific authorities to regulate the installation, operation, maintenance, closure of USTs, and UST releases are found under Title 20 Chapter 5 of the New Mexico Administrative Code (NMAC), Parts 101 through 125 as amended effective July 24, 2018. The aforementioned regulations satisfy the

requirements of 40 CFR 281.40 and 281.41.

New Mexico's Petroleum Storage Tank Bureau (PSTB) invites and encourages public participation. PSTB provides notice and opportunity for public comment on all proposed rules. The PSTB investigates and requires petroleum storage tank owners and operators to provide notice about contaminants and submissions of final remediation plans. Requirements for public participation and notification can be found in the New Mexico State Rules Act, NMSA 1978 section 14–4–5.2, and 20.1.1 NMAC, 20.1.9 NMAC, 20.5.119 NMAC, and 20.5.120 NMAC. Additionally, the New Mexico Ground Water Protection Act, NMSA 1978 section 74–6B–4 created an advisory committee, the Storage Tank Committee, that may review corrective actions and payments from the corrective action fund. Storage Tank Committee meetings are public meetings, and information on upcoming meetings is provided through legal notices in local and statewide newspapers as well as notices on the PSTB website pursuant to New Mexico's Open Meetings Act, NMSA 1978 sections 10–15–1 to 10–15–4. The PSTB submits semi-annual information to EPA, and all records pertaining to NMED PSTB-regulated UST systems and release sites are available to the EPA upon request. New Mexico has met the public participation requirements found in 40 CFR 281.42.

To qualify for final approval, a State's program must be ''no less stringent'' than the Federal program in all elements of the revised EPA final rule published on July 15, 2015 (80 FR 41566). EPA added new operation and maintenance requirements and addressed UST systems deferred in the 1988 UST regulations. The changes also added secondary containment requirements for new and replaced tank and piping, operator training requirements, periodic operation and maintenance requirements for UST systems, and requirements to ensure UST system compatibility before storing certain biofuel blends. It removed past deferrals for emergency generator tanks, field constructed tanks and airport hydrant systems.

The NMED made updates to their regulations to ensure that they were no less stringent than the Federal regulations which were revised on July 15, 2015 (80 FR 41566). Title 40 CFR 281.30 through 281.39 contains the ''no less stringent than'' criteria that a State must meet in order to have its UST program approved. In the State's application for approval of its UST program, the New Mexico Special Assistant Attorney General certified that it meets the requirements listed in 40 CFR 281.30 through 281.39. EPA has relied on this certification in addition to the analysis submitted by the State in making our determination. For further information on EPA's analysis of the State's application, see the chart in the Technical Support Document (TSD) contained in the docket for this rulemaking. The corresponding State regulations are as follows:

Title 40 CFR 281.30 lists the Federal requirements for new UST system design, construction, installation, and notification with which a State must comply in order to be found to be no less stringent than Federal requirements. NMAC Title 20 Environmental Protection, Chapter 5 Petroleum Storage Tanks, Parts 101, 102, 106, 113, and 114 require that USTs be designed, constructed, and installed in a manner that will prevent releases for their operating life due to manufacturing defects, structural failure, or corrosion and be provided with equipment to prevent spills and tank overfills when new tanks are installed or existing tanks are upgraded, unless the tank does not receive more than 25 gallons at one time. These parts also require UST system owners and operators to notify the implementing agency of any new UST systems, including instances where one assumes ownership of an existing UST.

Title 40 CFR 281.31 requires that most existing UST systems meet the requirements of 281.30, are upgraded to prevent releases for their operating life due to corrosion, spills, or overfills, or are permanently closed. NMAC Title 20 Environmental Protection, Chapter 5 Petroleum Storage Tanks, Parts 106, 113, and 114 contain the appropriate requirements that UST systems be upgraded to prevent releases during their operating life due to corrosion, spills, or overfills.

Title 40 CFR 281.32 contains the general operating requirements that must be met in order for the State's submission to be considered no less stringent than the Federal requirements. Parts NMAC Title 20 Environmental Protection, Chapter 5 Petroleum Storage Tanks, 107, 108, 113, and 114 contain the necessary general operating requirements required by 40 CFR 281.32.

Title 40 CFR 281.33 contains the requirements for release detection that must be met in order for the State's submission to be considered no less stringent than Federal requirements. NMAC Title 20 Environmental Protection, Chapter 5 Petroleum Storage Tanks, Parts 108, 113, and 114 contain the necessary requirements for release detection as required by 40 CFR 281.33.

Title 40 CFR 281.34 contains the requirements for release reporting, investigation, and confirmation that must be met in order for the State's submission to be considered no less stringent than Federal requirements. NMAC Title 20 Environmental Protection, Chapter 5 Petroleum Storage Tanks, Part 118 contains the necessary requirements as required by 40 CFR 281.34 for release reporting, investigation, and confirmation.

Title 40 CFR 281.35 contains the requirements for release response and corrective action that must be met in order for the State's submission to be considered no less stringent than Federal requirements. NMAC Title 20 Environmental Protection, Chapter 5 Petroleum Storage Tanks, Parts 119 and 120 contain the required provisions as listed in 40 CFR 281.35 for release response and corrective action.

Title 40 CFR 281.36 contains the requirements for out of service UST systems and closures that must be met in order for the State's submission to be considered no less stringent than Federal requirements. NMAC Title 20 Environmental Protection, Chapter 5 Petroleum Storage Tanks, Parts 114 and 115 contain the necessary requirements as listed in 40 CFR 281.36 for out of service UST systems and closures.

Title 40 CFR 281.37 contains the requirements for financial responsibility for UST systems containing petroleum that must be met in order for the State's submission to be considered no less stringent than Federal requirements. NMAC Title 20 Environmental Protection, Chapter 5 Petroleum Storage Tanks, Part 117 contains the necessary requirements as listed in 40 CFR 281.37 for financial responsibility for UST systems.

Title 40 CFR 281.38 contains the requirements for lender liability that must be met in order for the State's submission to be considered no less stringent than Federal requirements. NMAC Title 20 Environmental Protection, Chapter 5 Petroleum Storage Tanks, Part 124 contains the requirements for lender liability as listed in 40 CFR 281.38.

Title 40 CFR 281.39 contains the requirements for operator training that must be met in order for the State's submission to be considered no less stringent than Federal requirements. NMAC Title 20 Environmental Protection, Chapter 5 Petroleum Storage Tanks, Part 104 contains the requirements for operator training as required by 40 CFR 281.39.

H. Where are the revised rules different from the Federal rules?

Broader in Scope Provisions

The following statutory and regulatory provisions are considered broader in scope than the Federal program:

At 20.5.103 NMAC, New Mexico assesses an annual fee of $100 per tank and at 20.5.102.202 NMAC, requires that all regulated UST systems be registered within 60 days of placing a regulated substance in the tank.

At 20.5.509 NMAC, New Mexico requires UST Installers provide proof of two years out of the last three years of experience in the installation, modification, repair, and replacement of UST systems. The UST Installers must pass a New Mexico Laws and Rules exam, an on-site exam that includes the complete installation of a UST system in order to gain their certification, and provide proof of passing a national technical UST installer's test administered by an approved certification educator. New Mexico requires UST Junior Installers to provide proof of one year of experience in the last three years of field experience in the installation, modification, replacement, or repair of spill and overfill prevention equipment. Junior UST installers must pass a New Mexico Laws and Rules exam, and provide proof of passing a national technical UST installer's test administered by an approved certification educator.

At 20.5.106.614 NMAC, New Mexico requires owners and operators who install loading racks to design and construct then in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department.

NMED requires that all corrective action activities be performed by a qualified firm in accordance with 20.5.122 NMAC. All corrective action activities must be pre-approved in writing prior to any work being completed pursuant to 20.5.119.1900.G NMAC and 20.5.120.2000.G NMAC and be performed by a qualified firm pursuant to 20.5.119.1900.H NMAC and 20.5.120.2000.H NMAC.

At 20.5.115.1501.C(3), 1501.E and 1501.G [for field-erected AST systems only] NMAC New Mexico includes multiple requirements specific to aboveground storage tanks (ASTs) that are broader in scope than the Federal program which does not regulate these types of tanks systems.

At 20.5.115.1501.F(3) NMAC the State requires that owners/operators of temporarily closed tanks to pay all annual tank fees and accrued late fees prior to bringing a tank back into service. All fees are broader in scope.

At NMSA 1978 section 74–4–4.4 New Mexico requires registration, certification, and fee payment for classes of individuals defined as tank installers and testers that are not included in the Federal program.

At NMSA 1978 section 74–6B–9 the State assesses a storage tank fee to be paid by tank owners and operators.

Where an approved State program has a greater scope of coverage than required by Federal law, the additional coverage is not part of the federally-approved program. 40 CFR 281.12(a)(3)(ii).

More Stringent Provisions

The following regulatory provisions are considered more stringent in coverage than the Federal program:

20.5.102.206.A(20) NMAC requires that new registrations must be submitted on a PSTB approved registration form and include specific tank details including whether any part of the system is within 1,000 feet of a water supply well, certified installer signature, and owner signature. Registration certificates are valid for one year and issued upon payment of tank fees due July 1 of each year and/or upon registration of a new tank system. Owners and operators may not operate tanks without a valid registration certificate and may be found out of substantial compliance when a release has occurred and may be denied access to the corrective action fund (CAF) if a valid registration has not been obtained.

At 20.5.115.1500 NMAC New Mexico requires that owners and operators of regulated UST systems must notify PSTB at least 30 days prior to a permanent closure, temporary closure, return to service, change in service, or removal of a tank and/or lines by submitting to PSTB a 30-Day Notification Form. Federal regulations require that owners and operators of regulated underground storage tank systems provide 30-day notification if their intent is to permanently close or make the change-in-service, unless such action is in response to corrective action.

At 20.5.115.1501.G NMAC, the State requires owners and operators of field-constructed UST systems that have been in temporary closure for 3 months or more to perform an internal inspection, perform a tightness test on all piping, and perform functionality testing.

New Mexico requires all UST systems installed on or after April 4, 2008 to be double walled and use interstitial monitoring for release detection for tanks and/or piping (20.5.106.606(B) and 205.107.702(C) NMAC).

New Mexico requires a mechanism to prevent overfilling by sounding an alarm when the liquid level in the tank reaches 90 percent of capacity or automatically stops the delivery of liquid to the tank when the level in the tank reaches 95 percent of capacity (20.5.106.613.A(2) NMAC). In addition to these options, Federal regulations also allow UST owners to meet this requirement by restricting the flow 30 minutes prior to overfilling, alerting the transfer operator with a high level alarm one minute before overfilling, or automatically shut off flow into the tank so that none of the fittings on top of the tank are exposed to product due to overfilling. New Mexico does not allow the use of this additional option.

New Mexico requires owners and operators to perform inspections of containment sumps as part of their monthly walk-through inspections (20.5.107.707(A)(3) NMAC).

New Mexico requires owners and operators of UST systems that have been in temporary closure for 12 months or more to perform a site assessment, empty the tank(s) to less than one inch of a regulated substance, and pay all outstanding tank fees. Also, UST systems that have been in delivery prohibition for more than 12 months are required to permanently close in accordance with the requirements in 20.5.115 NMAC (20.5.115.1501(D) and (F) NMAC).

New Mexico requires owners and operators who use Statistical Inventory Reconciliation (SIR) for release detection on underground pressurized piping to conduct an annual line tightness test, whereas in Federal owners may choose to use another form of monthly monitoring instead. The line tightness test must be able to detect a release of 0.1 gallons per hour at one and half times the operating pressure (20.5.108.810.B NMAC).

New Mexico requires owners and operators to submit a written report within 14 days of the discovery or confirmations of a release (20.5.119.1903.B NMAC and 20.5.120.2003.B NMAC).

New Mexico also regulates underground storage tank systems at marinas (20.5.106.611 NMAC).

New Mexico regulates hybrid storage tank systems in the same manner as airport hydrant systems and UST systems with field-constructed tanks. (See specifically, 20.5.114 NMAC at sections 1403(D), 1404, 1405, 1407, 1408(C), 1409, 1410, 1412, 1413, and 1414.)

I. How does this action affect Indian Country (18 U.S.C. 1151) in New Mexico?

New Mexico is not authorized to carry out its Program in Indian Country (18 U.S.C. 1151) within the State. This authority remains with EPA. Therefore, this action has no effect in Indian Country. *See* 40 CFR 281.12(a)(2).

II. Codification

A. What is codification?

Codification is the process of placing a State's statutes and regulations that comprise the State's approved UST program into the CFR. Section 9004(b) of RCRA, as amended, allows the EPA to approve State UST programs to operate in lieu of the Federal program. The EPA codifies its authorization of State programs in 40 CFR part 282 and incorporates by reference State regulations that the EPA will enforce under RCRA sections 9005 and 9006 and any other applicable statutory provisions. The incorporation by reference of State authorized programs in the CFR should substantially enhance the public's ability to discern the current status of the approved State program and State requirements that can be Federally enforced. This effort provides clear notice to the public of the scope of the approved program in each State.

B. What is the history of codification of New Mexico's UST program?

The EPA incorporated by reference New Mexico's then approved UST program effective March 18, 1996 (61 FR 1216; January 18, 1996). In this document, the EPA is revising 40 CFR 282.81 to include the approved revisions.

C. What codification decisions have we made in this rule?

In this rule, we are finalizing regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, we are finalizing the incorporation by reference of the New Mexico rules described in the amendments to 40 CFR part 282 set forth below. The EPA has made, and will continue to make, these documents generally available through *https://www.regulations.gov* and in hard copy at the EPA Region 6 office (see the **ADDRESSES** section of this preamble for more information).

The purpose of this **Federal Register** document is to codify New Mexico's approved UST program. The codification reflects the State program that would be in effect at the time the EPA's approved revisions to the New Mexico UST program addressed in this direct final rule become final. The document incorporates by reference New Mexico's UST regulations and clarifies which of these provisions are included in the approved and federally enforceable program. By codifying the approved New Mexico program and by amending the Code of Federal Regulations (CFR), the public will more easily be able to discern the status of the federally-approved requirements of the New Mexico program.

The EPA is incorporating by reference the New Mexico approved UST program in 40 CFR 282.81. Section 282.81(d)(1)(i)(A) incorporates by reference for enforcement purposes the State's statutes and regulations. Section 282.81 also references the Attorney General's Statement, the Demonstration of Procedures for Adequate Enforcement, the Program Description, and the Memorandum of Agreement, which are approved as part of the UST program under subtitle I of RCRA.

D. What is the effect of New Mexico's codification on enforcement?

The EPA retains the authority under Subtitle I of RCRA sections 9003(h), 9005 and 9006, 42 U.S.C. 6991b(h), 6991d and 6991e, and other applicable statutory and regulatory provisions to undertake corrective action, inspections and enforcement actions and to issue orders in approved States. With respect to these actions, EPA will rely on Federal sanctions, Federal inspection authorities, and Federal procedures rather than the State authorized analogues to these provisions. Therefore, the EPA is not incorporating by reference such particular, approved New Mexico procedural and enforcement authorities. Section 282.81(d)(1)(ii) of 40 CFR lists those approved New Mexico authorities that would fall into this category.

E. What State provisions are not part of the codification?

The public also needs to be aware that some provisions of the State's UST program are not part of the federally approved State program. Such provisions are not part of the RCRA Subtitle I program because they are ''broader in coverage'' than Subtitle I of RCRA. Title 40 CFR 281.12(a)(3)(ii) states that where an approved State program has provisions that are broader in scope than the Federal program, those provisions are not a part of the federally approved program. As a result, State provisions which are ''broader in coverage'' than the Federal program are not incorporated by reference for purposes of enforcement in part 282. Section 282.81(d)(1)(iii) of the codification simply lists for reference and clarity the New Mexico statutory and regulatory provisions which are ''broader in scope'' than the Federal program and which are not, therefore, part of the approved program being codified today. Provisions that are ''broader in scope'' cannot be enforced by EPA; the State, however, will continue to implement and enforce such provisions under State law.

III. Statutory and Executive Order Reviews

This action only applies to New Mexico's UST Program requirements pursuant to RCRA section 9004 and imposes no requirements other than those imposed by State law. It complies with applicable EOs and statutory provisions as follows:

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

The Office of Management and Budget (OMB) has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011). This action approves and codifies State requirements for the purpose of RCRA section 9004 and imposes no additional requirements beyond those imposed by State law. Therefore, this action is not subject to review by OMB.

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

This action is not an Executive Order 13771 (82 FR 9339, February 3, 2017) regulatory action because actions such as this final approval of New Mexico's revised underground storage tank program under RCRA are exempted under Executive Order 12866. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

C. Unfunded Mandates Reform Act and Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Because this action approves and codifies pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995

(2 U.S.C. 1531–1538). For the same reason, this action also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

D. Executive Order 13132: Federalism

This action will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves and codifies State requirements as part of the State RCRA underground storage tank program without altering the relationship or the distribution of power and responsibilities established by RCRA.

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

This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks.

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

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a ''significant regulatory action'' as defined under Executive Order 12866.

G. National Technology Transfer and Advancement Act

Under RCRA section 9004(b), EPA grants a State's application for approval as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a State approval application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

H. Executive Order 12988: Civil Justice Reform

As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct.

I. Executive Order 12630: Governmental Actions and Interference With Constitutionally Protected Property Rights

EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the Executive order.

J. Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). ''Burden'' is defined at 5 CFR 1320.3(b).

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

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. Because this rule approves pre-existing State rules which are at least equivalent to, and no less stringent than existing Federal requirements, and imposes no additional requirements beyond those imposed by State law, and there are no anticipated significant adverse human health or environmental effects, the rule is not subject to Executive Order 12898.

L. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801–808, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this document and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). However, this action will be effective October 27, 2020 because it is a direct final rule.

List of Subjects in 40 CFR Part 282

Environmental protection, Administrative practice and procedure, Hazardous substances, Incorporation by reference, Insurance, Intergovernmental relations, Oil pollution, Petroleum, Reporting and recordkeeping requirements, Surety bonds, Water pollution control, Water supply.

Authority: This rule is issued under the authority of Sections 2002(a), 9004, and 7004(b) of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912, 6991c, 6991d, and 6991e.

Dated: July 20, 2020.

Kenley McQueen,

Regional Administrator, Region 6.

For the reasons set forth in the preamble, EPA is amending 40 CFR part 282 as follows:

PART 282—APPROVED UNDERGROUND STORAGE TANK PROGRAMS

■ 1. The authority citation for part 282 continues to read as follows:

Authority: 42 U.S.C. 6912, 6991c, 6991d, and 6991e.

■ 2. Revise § 282.81 to read as follows:

§ 282.81 New Mexico State-Administered Program.

(a) *History of the approval of New Mexico's Program.* The State of New Mexico is approved to administer and enforce an underground storage tank program in lieu of the Federal program under Subtitle I of the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. 6991, *et seq.* The State's program, as administered by the New Mexico Environment Department, was approved by EPA pursuant to 42 U.S.C. 6991c and Part 281 of this Chapter. EPA published the notice of final determination approving the New Mexico underground storage tank base program effective on November 16, 1990. A subsequent program revision application was approved effective on October 27, 2020.

(b) *Enforcement authority.* New Mexico has primary responsibility for administering and enforcing its federally approved underground storage tank program. However, EPA retains the authority to exercise its corrective action, inspection and enforcement authorities under Subtitle I of RCRA sections 9003(h), 9005 and 9006, 42

U.S.C. 6991b(h), 6991d and 6991e, as well as under any other applicable statutory and regulatory provisions.

(c) *Retaining Program Approval.* To retain program approval, New Mexico must revise its approved program to adopt new changes to the Federal subtitle I program which make it more stringent, in accordance with RCRA section 9004, 42 U.S.C. 6991c, and 40 CFR part 281, subpart E. If New Mexico obtains approval for the revised requirements pursuant to RCRA section 9004, 42 U.S.C. 6991c, the newly approved statutory and regulatory provisions will be added to this subpart and notice of any change will be published in the **Federal Register**.

(d) *Final Program Approval.* New Mexico has final approval for the following elements of its program application originally submitted to EPA and approved effective November 16, 1990, and the program revision application approved by EPA effective on October 27, 2020:

(1) *State statutes and regulations*—(i) *Incorporation by reference.* The New Mexico provisions cited in this paragraph are incorporated by reference as part of the underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.* The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain copies of the New Mexico regulations that are incorporated by reference in this paragraph from New Mexico State Records Center and Archives, 1205 Camino Carlos Rey, Santa Fe, NM 87507; Phone number: (505)-476–7941; website *http://164.64.110.134/nmac/.* You may inspect all approved material at the EPA Region 6, 1201 Elm Street, Suite 500, Dallas, Texas 75270 (Phone number (214) 665–2239 or the National Archives and Records Administration (NARA). For information on the availability of the material at NARA, email *fedreg.legal@nara.gov* or go to *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

(A) ''EPA-Approved New Mexico Statutory and Regulatory Requirements Applicable to the Underground Storage Tank Program'', June 2020. Only those provisions that have been approved by EPA are incorporated by reference. Those provisions are listed in Appendix A to Part 282.

(B) [Reserved]

(ii) *Legal basis.* EPA evaluated the following statutes and regulations which provide the legal basis for the State's implementation of the underground storage tank program, but they are not being incorporated by reference and do not replace Federal authorities:

(A) The statutory provisions include: New Mexico Statutes Annotated (NMSA) 1978, as amended through May 16, 2018:

(1) Tax Administration Act, section 7–1–6.25;

(2) Department of Environment Act, sections 9–7A–2(A) through (C), 9–7A–3 through 9–7A–12;

(3) Open Meetings Act, sections 10–15–1 through 10–15–4;

(4) Inspection of Public Records Act, sections 14–2–1 through 14–2–12;

(5) State Rules Act, section 14–4–5.2;

(6) Environmental Improvement Act, sections 74–1–2, 74–1–3(A), (B), (D), and (F), 74–1–4 through 74–1–6, 74–1–7(A) introductory paragraph and (A)(13), 74–1–8(A) introductory paragraph and (A)(13), 74–1–8.1, 74–1–9, 74–1–10;

(7) Hazardous Waste Act, sections 74–4–2, 74–4–3(A) through (D), (F), (M), (N), (Q), and (V), 74–4–4 (except (A), (J), and (K)), 74–4–4.3, 74–4–4.8, 74–4–5, 74–4–7, 74–4–8, 74–4–10, 74–4–11(C), 74–4–12 through 74–4–14; and

(8) Groundwater Protection Act, sections 74–6B–2 through 74–6B–8, 74–6B–13, 74–6B–14.

(B) The regulatory provisions include: New Mexico Administrative Code (NMAC) Title 20 Environmental Protection, Chapter 5 Petroleum Storage Tanks, as amended effective July 24, 2018: Part 107 General Operating Requirements for Underground Storage Tank Systems, section 20.5.107.712 Department Review and Approval of Plans, Installation, Operation, and Maintenance;

Part 116 Delivery Prohibition; Part 123 Corrective Action Fund Administration; and Part 125 Administrative Review.

(iii) *Provisions not incorporated by reference.* The following specifically identified sections and rules applicable to the New Mexico underground storage tank program that are broader in scope than the Federal program, are not part of the approved program, and are not incorporated by reference herein for enforcement purposes:

(A) New Mexico Statutes Annotated (NMSA) 1978, as amended through May 16, 2018: Hazardous Waste Act, section 74–4–4.4; and Groundwater Protection Act, section 74–6B–9 and 74–6B–10.

(B) New Mexico Administrative Code (NMAC) Title 20 Environmental Protection, Chapter 5 Petroleum Storage Tanks, as amended effective July 24, 2018: Part 102, section 202 New Storage Tank Systems; Part 103 Annual Fee; Part 105 Certification of Tank Installers and Junior Installers; Requirements for Testers, section 509 Experience Requirements; Part 106 New and Upgraded Underground Storage Tank Systems: Design, Construction, and Installation, section 20.5.106.614 Loading Racks; Part 115 Out-of-Service Storage Tank Systems and Closure, sections 1501.C(3), 1501.E, 1501.F(3), and 1501.G [for field-erected AST systems only]; Part 119 Corrective Action for Storage Action Tank Systems Containing Petroleum Products, sections 20.5.119.1900.G and 20.5.119.1900.H; Part 120 Corrective Action for UST Systems Containing Other Regulated Substances, sections 20.5.120.2000.G and 20.5.120.2000.H; and Part 122 Qualification of Persons Performing Corrective Action.

(2) *Statement of legal authority.* The Attorney General's Statement, signed by the Special Assistant Attorney General of New Mexico June 25, 1990, and revisions to that Statement dated October 5, 2018, though not incorporated by reference, are referenced as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(3) *Demonstration of procedures for adequate enforcement.* The ''Adequate Enforcement of Compliance'' submitted as part of the original application on September 25, 1989 and as part of the program revision application for approval on October 11, 2018, though not incorporated by reference, is referenced as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(4) *Program description.* The program description and any other material submitted as part of the original application September 25, 1989 and as part of the program revision application October 11, 2018, though not incorporated by reference, are referenced as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(5) *Memorandum of Agreement.* The Memorandum of Agreement between EPA Region 6 and the New Mexico Environment Department, signed by the EPA Regional Administrator on July 29, 2019 though not incorporated by reference, is referenced as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

■ 3. Appendix A to part 282 is amended by revising the entry for New Mexico to read as follows:

Appendix A to Part 282—State Requirements Incorporated by Reference in Part 282 of the Code of Federal Regulations

* * * * *

New Mexico

(a) The statutory provisions include: New Mexico Statutes Annotated (NMSA) 1978, as amended through May 16, 2018 (2018 Cumulative Supplement): Chapter 74, Environmental Improvement, Article 4 Hazardous Waste, sections 74–4–3(J), (R), and (S).

(b) The regulatory provisions include: New Mexico Administrative Code (NMAC), as amended effective July 24, 2018: Title 20 Environmental Protection, Chapter 5 Petroleum Storage Tanks:

Part 101: General Provisions—Sections 20.5.101.2 ''Scope''; 20.5.101.7 ''Definitions'' (except ''above ground storage tank'' and ''AST system'');

Part 102: Registration of Tanks—Sections 20.5.102.200 ''Existing Tanks'', 20.5.102.201 ''Transfer of Ownership'', and, 20.5.102.203 ''Substantially Modified Storage Tank Systems'' through 20.5.102.207 ''Registration Certificate'';

Part 104: Operator Training—Sections 20.5.104.400 ''Classes of Operators'' through 20.5.104.412 ''Documentation and Recordkeeping'';

Part 105: Certification of Tank Installers and Junior Installers; Requirements for Testers—Sections 20.5.105.500 ''General Requirements for Installer of UST Systems'' through 20.5.105.508 ''Individual Certification for Junior Installer of UST Systems'', and 205.105.510 ''On-Site Examination for Installer'' through 20.5.105.520 ''Airport Hydrant Fuel Distribution Systems, UST Systems with Field-Constructed Tanks and Hybrid Storage Tank Systems'';

Part 106: New and Upgraded Underground Storage Tank Systems: Design, Construction, and Installation—Sections 20.5.106.600 ''General Performance Standards for UST Systems'' through 20.5.106.613 ''Spill and Overfill Protection'', and 20.5.106.615 ''Required Notification Prior to Installation'' through 20.5.106.617 ''Alternate Methods'';

Part 107: General Operating Requirements for Underground Storage Tank Systems—Sections 20.5.107.700 ''Operation and Maintenance of Underground Storage Tank Systems'' through 20.5.107.711 ''Required Notification Prior to Replacement, Repair and Modification''; 20.5.107.713 ''Alternate Methods'' through 20.5.107.715 ''Reporting'';

Part 108: Release Detection For Underground Storage Tank Systems—Sections 20.5.108.800 ''General Release Detection Requirements for UST Systems'' through 20.5.105.816 ''Reporting'';

Part 113 Underground Storage Tank Emergency Generator Systems—Sections 20.5.113.1300 ''General Requirements'' through 20.5.113.1308 ''Reporting'';

Part 114: Airport Hydrant Fuel Distribution Systems, UST Systems with Field-Constructed Tanks, and Hybrid Storage Tank Systems—Sections 20.5.114.1400 ''General Requirements for Airport Hydrant Fuel Distribution Systems, UST Systems with Field-Constructed Tanks, and Hybrid Storage Tank Systems'' through 20.5.114.1414 ''Reporting'';

Part 115: Out-of-Service Storage Tank Systems and Closure—Sections 20.5.115.1500 ''Required Notification Prior to Temporary or Permanent Closure, Return to Service, Removal, or Change in Service''; 20.5.115.1501 ''Out-of-Service Storage Tank Systems and Closure'' (except 20.5.115.1501.C(3), 1501.E, 1501.F(3), and 1501.G [for field-erected AST systems only]); and 20.5.115.1502 ''Permanent Closure'' through 20.5.115.1506 ''Closure Records'';

Part 117: Financial Responsibility—Sections 20.5.117.1700 ''Applicability''; 20.53.117.1703 ''Amount and Scope of Required Financial Responsibility'' through 20.5.117.1772 ''Form Document for Drawing on Financial Assurance Mechanisms'';

Part 118: Reporting and Investigation of Suspected and Confirmed Releases—Sections 20.5.118.1800 ''Reporting of Spill or Release'' through 20.5.118.1803 ''Spills and Overfills'';

Part 119: Corrective Action for Storage Tank Systems Containing Petroleum Products—Sections 20.5.119.1900 ''General'' (except 20.5.119.1900.G and 205.119.1900.H) through 20.5.119.1933 ''Reporting'';

Part 120: Corrective Action for UST Systems Containing Other Regulated Substances—Sections 20.5.120.2000 ''General'' (except 20.5.120.2000.G and 205.120.2000.H) through 20.5.120.2030 ''Reporting'';

Part 121: Corrective Action Fund Use and Expenditures—Sections 20.5.121.2100 ''Permissible Fund Expenditures'' through 20.5.121.2106 ''Reserved Money''; and

Part 124: Lender Liability—Sections 20.5.124.7 ''Definitions'' through 20.5.124.2405 ''Operating a Storage Tank or Storage Tank System After Foreclosure''.

(c) Copies of the New Mexico regulations that are incorporated by reference are available from the New Mexico State Records Center and Archives, 1205 Camino Carlos Rey, Santa Fe, NM 87507; Phone number: (505) 476–7941; website *http://164.64.110.134/nmac/.*

* * * * *

[FR Doc. 2020–16273 Filed 8–27–20; 8:45 am]

BILLING CODE 6560–50–P

NATIONAL FOUNDATION FOR THE ARTS AND HUMANITIES

National Endowment for the Arts

45 CFR Part 1147

RIN 3135–AA35

Procedures for Arts Endowment Guidance Documents

AGENCY: National Endowment for the Arts, National Foundation for the Arts and Humanities.

ACTION: Interim final rule.

SUMMARY: This interim final rule sets procedures for the Arts Endowment relating to the issuance of guidance documents.

DATES: This rule is effective on August 28, 2020. Written comments must be received on or before September 27, 2020.

ADDRESSES: You may submit comments, identified by RIN 3135–AA35, by any of the following methods:

(a) *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments.

(b) *Email: generalcounsel@arts.gov.* Include RIN 3135–AA35 in the subject line of the message.

(c) *Mail:* National Endowment for the Arts, Office of the General Counsel, 400 7th Street SW, Second Floor, Washington, DC 20506.

(d) *Hand Delivery/Courier:* National Endowment for the Arts, Office of the General Counsel, 400 7th Street SW, Second Floor, Washington, DC 20506.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (3135–AA35) for this rulemaking. Arrangements to deliver by courier may be affected by health and safety procedures related to the coronavirus pandemic; please reach out to *generalcounsel@arts.gov* or 202–682–5418 before attempting delivery in this manner to ensure that you delivery will be able to be accepted.

Docket: For access to the docket to read background documents or comments received, go to 400 7th Street SW, Washington, DC. Arrangements to view the docket in person may be affected by health and safety procedures related to the coronavirus pandemic; please reach out to *generalcounsel@arts.gov* or 202–682–5418 before attempting delivery in this manner to ensure that you delivery will be able to be accepted.

FOR FURTHER INFORMATION CONTACT: Daniel Fishman, Assistant General Counsel, National Endowment for the Arts, 400 7th St. SW, Washington, DC 20506; *fishmand@arts.gov;* 202–682–5418.

SUPPLEMENTARY INFORMATION:

1. Background

This final rule implements section 4 of Executive Order 13891, ''Promoting the Rule of Law Through Improved Agency Guidance Documents'' (October 9, 2019). Under the Executive Order, the National Endowment for the Arts must set forth a process in regulation that includes:

(1) A requirement that each guidance document clearly state that it does not bind the public, except as authorized by law or as incorporated into a contract;

(2) procedures for the public to petition for withdrawal or modification of a particular guidance document, including a designation of the officials to which petitions should be directed; and

(3) for a significant guidance document, as determined by the Administrator of Office of Management and Budget's (OMB) Office of Information and Regulatory Affairs (Administrator), unless the agency and the Administrator agree that exigency, safety, health, or other compelling cause warrants an exemption from some or all provisions requiring:

(A) A period of public notice and comment of at least 30 days before issuance of a final guidance document, and a public response from the agency to major concerns raised in comments, except when the agency for good cause finds (and incorporates such finding and a brief statement of reasons therefor into the guidance document) that notice and public comment thereon are impracticable, unnecessary, or contrary to the public interest;

(B) approval on a non-delegable basis by the agency head or by an agency component head appointed by the President, before issuance;

(C) review by the Office of Information and Regulatory Affairs (OIRA) under Executive Order 12866, before issuance; and

(D) compliance with the applicable requirements for regulations or rules, including significant regulatory actions, set forth in Executive Orders 12866, 13563 (Improving Regulation and Regulatory Review), 13609 (Promoting International Regulatory Cooperation), 13771 (Reducing Regulation and Controlling Regulatory Costs), and 13777 (Enforcing the Regulatory Reform Agenda).

All agency guidance documents will be made available on the agency's website, at *https://www.arts.gov/guidance.*

2. Compliance

Administrative Procedure Act

This final rule incorporates requirements of the Executive Order and the Arts Endowment's existing internal policy and procedures into the CFR. Therefore, in accordance with 5 U.S.C. 553, there is good cause for this rule of Agency organization, procedure, or practice, to be enacted without notice and comment. See 5 U.S.C. 553(b)(A).

Executive Order 12866

This rule is an internal rule of agency procedure and is not a significant regulatory action under Executive Order 12866.

Executive Order 13771

This rule is not an E.O. 13771 regulatory action because this rule is related to agency organization, management, or personnel.

Regulatory Flexibility Act

As required by the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Arts Endowment certifies that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates

For purposes of Title II of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531–1538, as well as Executive Order 12875, this regulatory action does not contain any Federal mandate that may result in increased expenditures in either Federal, state, local, or tribal governments in the aggregate, or impose an annual burden exceeding $100 million on the private sector.

Paperwork Reduction Act

The rule does not contain any information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Executive Order 13132, Federalism

Executive Order 13132, Federalism, prohibits an agency from publishing any rule that has federalism implications if the rule imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. This rule does not have any federalism implications, as described above.

Congressional Review Act

This action pertains to agency management, personnel, and organization and does not substantially affect the rights or obligations of nonagency parties and, accordingly, is not a ''rule'' as that term is used by the Congressional Review Act (Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)). Therefore, the reporting requirement of 5 U.S.C. 801 does not apply. However, for each final guidance document issued pursuant to these regulations and adopted by the Arts Endowment, it will submit appropriate reports to Congress and Government Accountability Office (GAO) and comply with the procedures specified by 5 U.S.C. 801.

List of Subjects in 45 CFR Part 1157

Administrative practice and procedure.

■ For reasons set forth in the preamble, the Arts Endowment amends 45 CFR chapter XI, subchapter B, by adding part 1157 to read as follows:

PART 1157—ARTS ENDOWMENT GUIDANCE DOCUMENTS

Sec.

1157.1 General.
1157.2 Review and clearance.
1157.3 Requirements for clearance.
1157.4 Public access to effective guidance documents.
1157.5 Definitions of ''significant guidance document'' and guidance documents that are ''otherwise of importance to the Arts Endowment's interests.''
1157.6 Notice-and-comment procedures.
1157.7 Petitions for guidance.
1157.8 Rescinded guidance.
1157.9 Exigent circumstances.
1157.10 No judicial review or enforceable rights.
1157.11 Reports to Congress and Government Accountability Office (GAO).

Authority: 20 U.S.C. 959.

§ 1157.1 General.

(a) This part governs all National Endowment for the Arts (''Arts Endowment'' or ''NEA'') employees and contractors involved with all phases of issuing Arts Endowment guidance documents.

(b) Subject to the qualifications and exemptions contained in this part, the procedures in this part apply to all guidance documents issued by the Arts Endowment after August 28, 2020.

(c) For purposes of this part, the term ''guidance document'' means an agency statement of general applicability, intended to have future effect on the behavior of regulated parties, that sets forth a policy on a statutory, regulatory, or technical issue, or an interpretation of a statute or regulation. The term is not confined to formal written documents; guidance may come in a variety of forms, including (but not limited to) letters, memoranda, circulars, bulletins, and advisories, and may include video, audio, and web-based formats. See Office of Management and Budget (OMB) Bulletin 07–02, ''Agency Good Guidance Practices,'' (January 25, 2007) (''OMB Good Guidance Bulletin'').

(d) This part does not apply to:

(1) Rules promulgated pursuant to notice and comment under section 553 of title 5, United States Code, or similar statutory provisions;

(2) Rules exempt from rulemaking requirements under 5 U.S.C. 553(a);

(3) Rules of Agency organization, procedure, or practice;

(4) Decisions of Agency adjudications under 5 U.S.C. 554 or similar statutory provisions;

(5) Internal guidance directed to the issuing agency or other agencies that is not intended to have substantial future effect on the behavior of regulated parties;

(6) Internal executive branch legal advice or legal advisory opinions addressed to executive branch officials;

(7) Agency statements of specific applicability, including advisory or legal opinions directed to particular parties about circumstance-specific questions (*e.g.,* case or investigatory letters responding to complaints, warning letters, determinations related to historic preservation), notices regarding particular locations or facilities (*e.g.,* guidance pertaining to the use, operation, or control of a government facility or property), and correspondence with individual persons or entities (*e.g.,* congressional correspondence), except documents ostensibly directed to a particular party but designed to guide the conduct of the broader regulated public;

(8) Legal briefs, other court filings, or positions taken in litigation or enforcement actions;

(9) Agency statements that do not set forth a policy on a statutory, regulatory, or technical issue or an interpretation of a statute or regulation, including speeches and individual presentations, editorials, media interviews, press materials, or congressional testimony that do not set forth for the first time a new regulatory policy;

(10) Guidance pertaining to military or foreign affairs functions;

(11) Grant solicitations, guidelines and awards;

(12) Contract solicitations and awards; and

(13) Purely internal Agency policies or guidance directed solely to Arts Endowment employees or contractors or to other Federal agencies that are not intended to have substantial future effect on the behavior of regulated parties.

§ 1157.2 Review and clearance.

All Arts Endowment guidance documents, as defined in § 1157.1(c), require review and clearance in accordance with this part.

§ 1157.3 Requirements for clearance.

The Arts Endowment's review and clearance of guidance shall ensure that each guidance document proposed by the Arts Endowment satisfies the following requirements:

(a) The guidance document complies with all relevant statutes and regulation (including any statutory deadlines for Agency action);

(b) The guidance document identifies or includes:

(1) The term ''guidance'' or its functional equivalent;

(2) If applicable, the issuing Arts Endowment responsible office name;

(3) A unique identifier, including, at a minimum, the date of issuance and title of the document and its regulatory identification number (RIN), if applicable;

(4) The activity or entities to which the guidance applies;

(5) Citations to applicable statutes and regulations;

(6) A statement noting whether the guidance is intended to revise or replace any previously issued guidance and, if so, sufficient information to identify the previously issued guidance; and

(7) A short summary of the subject matter covered in the guidance document at the top of the document;

(c) The guidance document avoids using mandatory language, such as ''shall,'' ''must,'' ''required,'' or ''requirement,'' unless the language is describing an established statutory or regulatory requirement or is addressed to Arts Endowment employees and will not foreclose the Arts Endowment's consideration of positions advanced by affected private parties;

(d) The guidance document is written in plain and understandable English; and

(e) All guidance documents should include the following disclaimer prominently in each guidance document: ''The contents of this document do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.'' When an Arts Endowment guidance document is binding because binding guidance is authorized by law or because the guidance is incorporated into a contract, the Arts Endowment will modify the disclaimer in the preceding sentence to reflect either of those facts.

§ 1157.4 Public access to effective guidance documents.

The Arts Endowment shall:

(a) Ensure all effective guidance documents, identified by a unique identifier which includes, at a minimum, the document's title and date of issuance or revision and its RIN, if applicable, are on its website in a single, searchable, indexed database, and available to the public in accordance with § 1157.7;

(b) Note on its website that guidance documents lack the force and effect of law, except as authorized by law or as incorporated into a contract;

(c) Advertise on its website where the public can comment electronically on any guidance documents that are subject to the notice-and-comment procedures described in § 1157.6 and to submit requests electronically for issuance, reconsideration, modification, or rescission of guidance documents. Guidance documents that do not appear on the Agency's single, searchable, indexed database are rescinded; and

(d) Designate an office to receive and address complaints from the public that the Arts Endowment is not following the requirements of OMB's Good Guidance Bulletin or is improperly treating a guidance document as a binding requirement.

§ 1157.5 Definitions of ''significant guidance document'' and guidance documents that are ''otherwise of importance to the Arts Endowment's interests.''

(a) The term ''significant guidance document'' means a guidance document that will be disseminated to regulated entities or the general public and that may reasonably be anticipated:

(1) To lead to an annual effect on the economy of $100 million or more or adversely affect in a material way the U.S. economy, a sector of the U.S. economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities. Historically, the Arts Endowment has not issued any significant guidance documents with these implications;

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

(3) To alter materially the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) To raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in E.O. 12866, as further amended.

(b) The term ''significant guidance document'' does not include the categories of documents excluded by this part or any other category of guidance documents exempted in writing by the Arts Endowment in consultation with the Office of Information and Regulatory Affairs (OIRA).

(c) Significant and economically significant guidance documents must be

reviewed by OIRA under E.O. 12866 before issuance and must demonstrate compliance with the applicable requirements for regulations, including significant regulatory actions, set forth in applicable Executive orders. NEA will seek significance determinations from OIRA for guidance documents, as appropriate, in the same manner as for rulemakings. Prior to publishing these guidance documents, and with sufficient time to allow OIRA to review the document in the event that a significance determination is made. NEA will provide OIRA with an opportunity to review the designation request or the guidance document, if requested, to determine if it meets the definition of ''significant'' or ''economically significant'' under Executive Order 13891.

(d) Even if not ''significant,'' a guidance document will be considered ''otherwise of importance to the Arts Endowment's interests'' within the meaning of this paragraph (d) if it may reasonably be anticipated:

(1) To relate to a major program, policy, or activity of the Arts Endowment or a high-profile issue pending decision before the Arts Endowment;

(2) To involve one of the Chairman's top policy priorities;

(3) To garner significant press or congressional attention; or

(4) To raise significant questions or concerns from constituencies of importance to the Arts Endowment, such as Committees of Congress, states, Indian tribes, the White House or other departments of the executive branch, courts, consumer or public interest groups, or leading representatives of industry.

§ 1157.6 Notice-and-comment procedures.

(a) Except as provided in paragraph (b) of this section, all proposed Arts Endowment guidance documents determined to be a ''significant guidance document'' within the meaning of § 1157.5 are subject to notice-and-comment procedures. The Arts Endowment shall publish an advance notice in the **Federal Register** of the proposed guidance document and invite public comments for a minimum of 30 days, then publish a response to major concerns raised in the comments when the final guidance document is published.

(b) All significant guidance documents must have approval and signature on a non-delegable basis by the Chairman or Senior Deputy Chairman, before issuance.

(c) The requirements of paragraph (a) of this section will not apply to any significant guidance document unless the Arts Endowment finds, in consultation with OIRA, good cause that notice-and-comment procedures thereon are impracticable, unnecessary, or contrary to the public interest (and incorporates the finding of good cause and a brief statement of reasons in the guidance issued). The Arts Endowment and OIRA may establish an agreement on presumptively exempted categories of guidance; such documents will be presumptively exempt from the requirements of paragraph (a) of this section.

(d) Where appropriate, the Arts Endowment may determine a particular guidance document that is otherwise of importance to the Arts Endowment's interests shall also be subject to the notice-and-comment procedures described in paragraph (a) of this section.

§ 1157.7 Petitions for guidance.

(a) Interested parties may submit petitions to the Arts Endowment requesting withdrawal or modification of any effective guidance document by emailing *generalcounsel@arts.gov,* or sending the petition by mail to National Endowment for the Arts, Attn: Office of General Counsel, 400 7th St. SW, Washington DC 20506. Please include ''Guidance Petition'' in the subject line of any correspondence to ensure the letter is routed properly.

(b) Interested parties should include the guidance document's title and a summarized justification describing why the document should be withdrawn, how it should be modified, or the nature of the complaint in the petition in order to receive an expedited response.

(c) The appropriate Arts Endowment official will review the petition and determine if withdrawal or modification is necessary or the best way to resolve the complaint, and respond to the petitioner with a decision no later than 90 days after receipt of the request.

§ 1157.8 Rescinded guidance.

The Arts Endowment may not cite, use, or rely on guidance documents that are rescinded, except to establish historical facts.

§ 1157.9 Exigent circumstances.

In emergency situations or when the Arts Endowment is required by statutory deadline or court order to act more quickly than normal review procedures allow, the Arts Endowment shall notify OIRA as soon as possible and, to the extent practicable, comply with the requirements of this part at the earliest opportunity. Wherever practicable, the Arts Endowment will alter its proceedings to permit sufficient time to comply with the procedures set forth in this part.

§ 1157.10 No judicial review or enforceable rights.

This part is intended to improve the internal management of the Arts Endowment. As such, it is for the use of Arts Endowment personnel only and is not intended to, and does not create any right or benefit, substantive or procedural, enforceable by law or in equity by any party against the United States, its agencies or other entities, its officers or employees, or any other person.

§ 1157.11 Reports to Congress and Government Accountability Office (GAO).

Unless otherwise determined in writing by the Arts Endowment, it is the policy of the Agency that upon issuing a guidance document the Arts Endowment will submit a report to Congress and GAO in accordance with the procedures described in 5 U.S.C. 801 (the ''Congressional Review Act'').

Dated: August 18, 2020.

Jillian Miller,

Director of Guidelines and Panel Operations, Administrative Services, National Endowment for the Arts.

[FR Doc. 2020–18459 Filed 8–27–20; 8:45 am]

BILLING CODE 7537–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Parts 1304 and 1305

RIN 0970–AC77

Head Start Designation Renewal System

AGENCY: Office of Head Start (OHS), Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

ACTION: Final rule.

SUMMARY: This final rule refines how the Office of Head Start uses deficiencies, Classroom Assessment Scoring System: Pre-K (CLASS®) scores, and audit findings for designation renewal. It also streamlines and updates the regulatory provisions on designation renewal to make them easier to understand.

DATES: This final rule is effective on October 27, 2020.

FOR FURTHER INFORMATION CONTACT: Catherine Hildum, Office of Head Start, 202–205–7328 (not a toll-free call). Deaf

and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 between 8:00 a.m. and 7:00 p.m. Eastern Time.

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I. Statutory Authority

The Office of Head Start (OHS) publishes this final rule under the authority granted to the Secretary of Health and Human Services (the Secretary) by sections 641(a), 641(c), and 644(c), of the Head Start Act, as amended by the Improving Head Start for School Readiness Act of 2007 (Pub. L. 110–134). Generally, under these sections, the Secretary is authorized to implement a system for designation renewal that determines if a grantee delivers high-quality and comprehensive services and adheres to financial management requirements. The Secretary is also authorized to designate any local public or private non-profit agency, including community-based and faith-based organizations, and for-profit organizations as a Head Start agency, as well as prescribe rules or regulations, which are binding on all agencies that perform Head Start activities.

II. Executive Summary

Since its inception in 1965, Head Start has been a leader in helping children from low-income families reach kindergarten more prepared to succeed in school. Through the Improving Head Start for School Readiness Act of 2007 (the 2007 Reauthorization) amending the Head Start Act (the Act), Congress required HHS to ensure these children and their families receive the highest quality services possible. In support of that requirement, the 2007 Reauthorization directed the Secretary to establish the Designation Renewal System to (1) identify Head Start grantees delivering a high-quality and comprehensive Head Start program that could receive funding noncompetitively for a 5-year period and grantees not delivering a high-quality and comprehensive Head Start program that will be required to compete for continued funding, and (2) to transition all grants from indefinite grants to 5-year grant periods. Congress required that decisions about which grantees would have to compete be based on budget and fiscal management data (including annual audits), program monitoring reviews, classroom quality as measured by a valid and reliable research-based observational instrument, and other program information.

The Designation Renewal System regulation, promulgated in 2011, requires grantees to compete for continued funding if they meet one or more of the following seven conditions: (1) One deficiency under section 641A(c)(1)(A), (C), or (D) of the Act; (2) failure to establish, use, and analyze children's progress on agency-established school readiness goals; (3) scores below minimum thresholds in any of the three domains of the Classroom Assessment Scoring System: Pre-K (CLASS) or in the lowest 10 percent in any CLASS domain out of the grantees monitored in a given year, unless the grantee's score is equal to or above the standard of excellence for that domain; (4) revocation of a license to operate a center or program; (5) suspension from the program; (6) debarment from receiving federal or state funds or disqualification from the Child and Adult Care Food Program; or (7) an audit finding of being at risk for failing to continue as a ''going concern.''

Since 2011, all Head Start and Early Head Start grants have been reviewed under the Designation Renewal System and transitioned from indefinite to 5-year grant periods. Approximately a third of grants have been required to compete and two-thirds have received a new grant non-competitively. As required in section 641(c)(8) of the Head Start Act (42 U.S.C. 9836(c)(8)), ACF has been regularly analyzing data on the implementation of the Designation Renewal System and on those grantees required to compete. In 2016, the ACF Office of Planning, Research and Evaluation published a report of its designation renewal evaluation, titled ''Early Implementation of the Head Start Designation Renewal System,'' which examined how the system is addressing the goals of transparency, validity, and reliability.[1] The study explored whether the Designation Renewal System identifies lower-performing grantees for competition and how designation renewal might support program quality improvement. From the experience of individual grantees and the results of the designation renewal evaluation and other Head Start research, ACF is confident the Designation Renewal System has driven increases in the quality of Head Start and Early Head Start services, but believes improvements can be made to the system.

ACF believes revisions to the current conditions will better distinguish grantees for noncompetitive continued funding from those that could most benefit from competition, particularly after the transition of all grantees from indefinite to definite project periods. Therefore, we are making some adjustments to the seven conditions that require competition; we believe the adjustments will, going forward, better identify grantees whose data indicate they are lower performing in the important dimensions of quality that Congress requires we consider under the Designation Renewal System.

Regarding the deficiency condition, we will no longer require competition for grantees with a single deficiency during their project period. While all deficiencies are serious and substantial or systemic, we believe changing the condition to require competition after two deficiencies during the project period will better reflect significant quality failures of an agency. Additionally, the change will appropriately put the focus on grantees having systems in place to ensure health and safety incidents do not occur or are quickly identified and rectified, and on financial and human resource systems that support ongoing, high-quality operations.

With respect to the CLASS condition, we want to ensure this tool supports

[1] Derrick-Mills, T., Burchinal, M., Peters, H.E., De Marco, A., Forestieri, N., Fyffe, S., Hanson, D., Heller, C., Pratt, E., Sandstrom, H., Triplett, T., & Woods, T. (2016). *Early Implementation of the Head Start Designation Renewal System: Volume I.* OPRE Report #: 2016–75a. Washington, DC: Office of Planning, Research and Evaluation, Administration for Children and Families, U.S. Department of Health and Human Services.

quality improvement as part of the Designation Renewal System. The aspect of the CLASS condition that requires grantees scoring in the lowest 10 percent of any of the three domains of the tool to compete creates a moving target for grantees. The moving target combined with implementation challenges of this condition have led to periods of uncertainty for grantees regarding their designation status. Further, the relative nature of the condition in some cases has resulted in grantees with rather high scores on a specific domain being designated for competition due to that score, while grantees with a rather low score on another domain have not always been required to compete.

In the final rule, we drop the 10 percent criterion, while simultaneously establishing *quality thresholds* and raising the *competitive thresholds* (formerly minimum threshold) for each domain of the CLASS. For any grantee with a score below a quality threshold, OHS will provide support for quality improvement and help ensure the grantee's coordinated approach to training and professional development is supporting improvements in the learning environment, particularly in teaching practices and teacher-child interactions. We also raise the competitive thresholds for each domain and any grantee with a score below a competitive threshold will be designated for competition.

The establishment of quality thresholds for the CLASS domains builds on existing program quality improvement efforts to enhance classroom quality and will lead to more intentional OHS support for these efforts. Further, it is important to raise the CLASS competitive thresholds. Evidence suggests children learn more in well-organized classroom environments that are characterized by sensitive and responsive interactions that promote autonomy, conversation, literacy skills, and executive functioning. Children gain these skills when they experience higher quality teacher-child interactions and instruction. This revised approach will remove the moving target but appropriately set the focus on improving the quality of teacher-child interactions in all areas the CLASS measures and ensure grantees are focused on promoting rich, engaging, and sensitive interactions between teachers and children in all classrooms.

The fiscal condition is also being revised because the current condition does not adequately identify grantees whose audit data indicates they may have serious fiscal issues warranting competition. The current condition identifies for competition grantees that are at risk of failing to continue as a going concern, which means the organization is in such a dire financial situation that they are likely to no longer be a viable financial entity within 12 months. This condition only identifies grantees in the last stages of financial problems and has identified less than a dozen Head Start grantees for competition within the last 8 years, even as many other grantees have experienced significant financial management problems. While we retain the going concern condition and adjust the time window in which it is considered, we also add a second fiscal criterion in which any grantee that has a total of two or more audit findings of material weakness or questioned costs related to their Head Start funds in audits for a financial period within the current project period will also be required to compete. Material weaknesses and questioned costs indicate challenges in grantees' internal controls, appropriate use of funds, financial management, and reporting. These two audit findings indicate significant fiscal concerns that we believe warrants competition. We believe the additional criterion will provide a richer look at a grantee's fiscal management systems and financial systems and better identify grantees with potentially serious financial problems specifically in their Head Start grant before the financial problems might impact their viability. The new criterion will look more deeply at Head Start specific audit information, which is consistent with section 641(c)(1)(C) of the Act requiring use of annual audits in the system. However, it will not identify for competition grantees that have less significant audit findings or findings related to non-Head Start funds.

The new conditions will be effective on October 27, 2020. In general, grantee performance before the effective date of the rule is subject to the prior conditions and grantee performance after the effective date is subject to new conditions. Going forward, all decisions about which grantees will have to compete for renewed funding will be based on the conditions described in this rule. Grantees whose performance prior to the effective date of the rule met one or more conditions requiring them to compete will have a second look to determine if they still meet the new conditions. These grantees whose performance would have required competition under the prior conditions will only be required to compete after the effective date of this rule if they would also be required to compete under the new conditions. Likewise, there will be no retroactive implementation of the new conditions to ensure grantees are not designated for competition based a condition on which they did not know they would be judged.

Prior to the effective date of this final rule, some grantees will have received a letter from OHS with a preliminary decision that they are eligible for renewed funding without competition based on not having met any of the DRS conditions at the time of the determination. These preliminary decisions will not be revisited under the new conditions, and these grantees will continue to be eligible for a noncompetitive new grant. Only in the rare case that such a grantee receives two or more deficiencies, a license revocation, suspension, debarment from any federal or state funds, disqualification from the Child and Adult Care Food Program, or an audit finding of a going concern before receiving their non-competitive 5-year grant award would the grantee be required to compete. This would also have happened under the current regulation, with the only difference being the number of deficiencies requiring competition.

Prior to the effective date of this final rule, other grantees will have received a letter from OHS with a preliminary decision that they will have to compete for renewed funding. These preliminary decisions will be revisited for each grantee, as long as the Funding Opportunity Announcement (FOA) for the competition has not yet been posted, to determine if a given grantee will still have to compete based on the new conditions put forth in this final rule. For competitions awaiting a FOA posting, only those grantees required to compete under the current conditions *and* the new conditions will be required to compete. For example, if a grantee was designated for competition based on the deficiency condition but had only one deficiency and the FOA has not been posted, they would not meet the new condition (two or more deficiencies). Therefore, this grantee would become preliminarily eligible for a non-competitive new grant. However, if a grantee was previously designated for competition based on the deficiency condition and had two deficiencies, the grantee would still be required to compete because the grantee would meet the new deficiency condition (two or more deficiencies) as well.

Similarly for the CLASS condition and fiscal condition, when making DRS

determinations that consider grantee performance prior to the effective date of the rule, OHS will take a second look to see if grantees would still be required to compete under the new conditions until a FOA for that grantee's service area has been posted. Grantees with CLASS data collected prior to the effective date of this rule will only still be required to compete after this final rule is effective if those CLASS scores would require competition under both the current CLASS condition and the new CLASS condition. For example, if a grantee was required to compete solely based on a CLASS score that was in the lowest 10 percent for one domain, but that score is above the new competitive threshold for that domain, this grantee will become preliminarily eligible for a non-competitive grant and not have to compete. However, if a grantee's CLASS score was in the lowest 10 percent for a given CLASS domain and is also below the new competitive threshold for that domain, they will still be required to compete. Additionally, any grantee with a going concern audit finding will still have to compete since that condition exists in both the current and new Designation Renewal System conditions. Because audit findings of material weakness and questioned costs are included in the new fiscal condition but not the prior fiscal condition, only audits from a grantee's fiscal years beginning after the effective date of the rule will be considered in competitive determinations.

Once a FOA has been posted to inform the public of the availability of funding in that service area, competition decisions will be final. After that time, there will be no opportunity for reconsideration based on changes in regulatory conditions requiring competition. During the first several years after the effective date of this rule, grantees that would have been subject to competition under the CLASS and deficiency conditions may no longer be required to compete under the new conditions. In addition, audit data from grantee fiscal years after the effective date of the rule to evaluate the new fiscal criterion will not yet be available. This means there may be less competition in the first few years of implementation of this final rule, compared to when the new conditions are fully implemented. However, the purpose of these revisions to the Designation Renewal System is not to ensure a certain level of competition, but to ensure all grantees understand the markers of quality that they should be aiming for so that quality is improved across all Head Start programs.

III. Background

OHS released a request for comment in December 2017, titled ''CLASS Condition of the Head Start Designation Renewal System,'' (82 FR 57905) in the **Federal Register** to collect information and input from the public for this rulemaking. The request solicited public input on specific changes to the way we use Classroom Assessment Scoring System (CLASS) for designation renewal. Specifically, we wanted the public's feedback on whether we should: (1) Remove the ''lowest 10 percent'' provision of the CLASS condition; (2) increase the minimum thresholds for the Emotional Support and Classroom Organization domains; (3) remove the minimum threshold for the Instructional Support domain; and (4) establish authority for the Secretary to set an absolute minimum threshold for the Instructional Support domain prior to the start of each fiscal year to be applied for CLASS reviews in the same fiscal year. We also sought feedback on ways we could incentivize robust competition to include new applicants, facilitate smooth transitions when there is a new grantee as a result of competition, and improve the designation renewal processes.

We considered comments we received from the request for comment, along with data we collected over the years, and published a notice of proposed rulemaking (NPRM) in the **Federal Register** on August 13, 2019 (84 FR 39996). In the NPRM, we sought the public's opinion on whether we should consider a change to the single deficiency trigger. We also proposed changes to both the CLASS and fiscal conditions. Specifically, we proposed to raise the absolute threshold for each CLASS domain and to remove the lowest 10 percent criterion. We also proposed to add a second criterion related to audit findings to the fiscal condition.

The NPRM generated a diverse pool of comments. We analyze and discuss those comments below in Part IV. Public Comments Analysis and Part V. Section-by-Section Discussion of Changes with this Final Rule.

IV. Public Comments Analysis

We received 63 unique submissions, which included a few comments with up to 100 signatories and one comment with 1,600 signatories on the NPRM. Commenters included Head Start grantees, teachers, other staff, large early childhood associations, advocacy organizations, early childhood vendors, Members of Congress, Indian tribes, child development and policy experts, CLASS experts, and parents.

In drafting this final rule, we carefully reviewed each comment. Most of the comments were supportive of our efforts to hold programs accountable for delivering high-quality services. However, commenters also criticized our current approach to identifying low performing grantees. Commenters gave specific recommendations for how we should use deficiencies, CLASS, and the fiscal condition under designation renewal. We discuss those comments in Part V., Section-by-Section Discussion of Changes with this Final Rule. We also received the following comments that were not germane to what we proposed in the notice of proposed rulemaking.

Comment: Many commenters recommended OHS look for ways to move designation renewal from being punitive to an approach that better integrates continuous quality improvement and provides intentional support for programs to address challenges and improve quality. This was emphasized due to the disruption competition could cause to communities when there is a change in provider.

Response: Having to compete for continued funding is not an adverse action. All eligible grantees can compete for renewed funding and, in fact, the majority of grantees are re-awarded the grant following open competition. We are revising the conditions to better ensure grantees that are required to compete are those whose data and history show they are not high performing. Furthermore, the improvements we make in this final rule focus designation renewal more on continuous quality improvement.

Comment: A few commenters wanted to see the tribal consultation process improved. They wanted a forum where tribal officials could openly discuss issues that affect Head Start service delivery and have those issues resolved within a timely manner. A few commenters believed federal officials with policy-making authority should be required to attend tribal consultations and tribal leaders should be afforded sufficient advance notice and an agenda (at least 60 days) of scheduled consultations. Commenters asked for consultation reports to include a record of topics discussed along with next action steps.

Response: OHS conducts tribal consultations in accordance with the HHS policy on tribal consultations. We provide notice of all tribal consultations scheduled for the fiscal year to the leadership of tribal governments operating Head Start and Early Head

Start programs, and we ensure a federal official with policy-making authority attends each one. We organize the agenda around the statutory purposes of Head Start tribal consultations related to meeting the needs of American Indian/Alaska Native children and families. In addition, we share what actions we have taken and progress made to address the issues and concerns raised at these consultations. We appreciate commenters' suggestions, and we will continue to consider ways in which we can improve our consultations and align with the HHS policy.

Comment: According to some commenters, programs that are designated to compete spend money and other resources that could be better spent elsewhere, particularly given most of those programs get their grants back after competition.

Response: The purpose of designation renewal has always been to identify those communities where competition is most warranted and to improve quality through the process. We believe this final rule strikes an appropriate balance between the importance of competition to drive quality improvement and the resources required for the competitive process, and better ensures the right grantees are in competition. Specifically, we make changes in the CLASS condition and the deficiency condition to better target competition where scores show lower performance or there are systemic problems in operations. Further, Congress directed Head Start to establish a system of designation renewal that would (1) identify Head Start grantees delivering a high-quality and comprehensive program that could receive funding noncompetitively for a 5-year period and grantees not delivering a high-quality and comprehensive program that will be required to compete for continued funding, and (2) to transition all grants from indefinite grants to 5-year grant periods.

Comment: Many commenters suggested OHS establish an appeals process that has clear parameters, procedures, and time frames for final determinations, which would make the Designation Renewal System more transparent and equitable. Some believed an appeals process would afford grantees the opportunity to express concerns, seek clarification, address inconsistencies, and provide feedback about ways to improve the Designation Renewal System. A few commenters believed an appeals process would allow programs to reevaluate findings, seek redress, and better integrate the principles of continuous quality improvement into the Designation Renewal System.

Response: Congress did not require grantees designated to compete for further funding be given an opportunity to appeal. However, Congress did require appeals for grantees that are terminated or suspended for more than 30 days. These different approaches indicate that Congress did not believe the requirement that a grantee compete for further funding was on par with termination or other actions for which Congress did require appeals.

Additionally, all eligible entities that have not been terminated from providing Head Start or Early Head Start services or denied refunding in the preceding five years, including the grantees designated for competition, are able and encouraged to apply through competition. Unlike a grant termination, a requirement to compete provides a mechanism for a current grantee to demonstrate its capacity to provide a high-quality program while providing the ability to shift funding to more capable entities if such entities exist in the community. Further, a grantee that competed and lost a competition would remain eligible for future competitions. The grantee that must compete for further funding is one whose level of compliance is sufficient to justify continuance in the Head Start program, provided that no other organization in the same community establishes through a competitive process that it is better able to provide a high-quality and comprehensive program.

V. Section-by-Section Discussion of Changes With This Final Rule

In this section, we discuss comments we received specific to what we asked the public to consider, regarding the single deficiency trigger, and to what we proposed regarding the CLASS and fiscal conditions. We analyze and describe the changes we make to each section in the final rule, based on those comments.

We also make technical fixes that do not alter the substance of the standards in these sections. In drafting this final rule, we realize outdated, repetitive, and unnecessary language make these sections cumbersome and hard to follow. We believe the technical fixes we make below ensure these sections are clear, updated, streamlined, and transparent to the public.

1. Section 1304.11 Basis for Determining Whether a Head Start Agency Will Be Subject to an Open Competition

This section sets forth the seven conditions for designation renewal. It requires a program to compete for continued funding in their service area, if they meet any of these seven conditions. While we did not propose any changes to this introductory paragraph nor did we receive comments on it, we make a few technical fixes to this paragraph that do not alter the substance of the provision. We remove the word ''shall'' and replace it with the word ''will.'' We also remove the phrase ''covered by the responsible HHS official's review.'' These fixes remove outdated regulatory language, along with repetitious, unnecessary language to streamline the section and make it easier to read.

i. 1304.11(a) Deficiency Condition

This paragraph establishes the trigger for competition related to deficiencies. It requires an agency that has one or more deficiencies on a single review to compete for continued funding. Since the Designation Renewal System was launched in 2011, we have held one deficiency is serious enough to cause a grantee to compete for continued funding. However, we have heard concerns the single deficiency trigger is too stringent and causes grantees that otherwise provide high-quality comprehensive services to compete because of a single incident that is not a result of system failures. Most of the comments we received addressed the deficiency condition.

In the NPRM, while we did not propose a change to the deficiency condition, we did seek comment about whether we should consider a change to the single deficiency trigger.

In this final rule, we amend the deficiency condition requiring a grantee to compete from a single deficiency to two or more deficiencies. However, this does not mean that all single incidents necessarily reflect an isolated issue. If a single serious incident is the result of multiple failures within a program, it may very well result in more than one deficiency. In addition, it is important to note that a single deficiency always leads to follow-up reviews to ensure it is corrected. Additionally, if there is serious risk for harm to staff and/or children's health and safety, substantial injury to property or loss of project funds, OHS can exercise its authority to suspend or terminate financial assistance pursuant to §§ 1304.4 and 1304.5(a)(2)(iii).

Comment: Most commenters believed two or more deficiencies, within a project period, better reflect a significant issue in a program than a single deficiency. A few commenters offered other suggestions for how we should further change the deficiency condition including to combine the CLASS and

deficiency condition, increase the number of deficiencies to three or more, and not count self-reported or corrected deficiencies.

Most commenters expressed concern we do not differentiate deficiencies either by severity or between a one-time incident that is or is not a result of multiple system failures. This would result in cases where one mishap of an individual could require an entire program to compete. A few of these commenters recommended we take steps to distinguish whether a one-time incident is a result of multiple system failures, while most commenters indicated a change to two or more deficiencies would help address this concern since two or more deficiencies would be a better reflection of systemic issues.

Response: We considered commenters' suggestions, along with monitoring data we collected over the years. Our data shows about half of the deficiencies that programs received are most likely the result of a single incident of inadequate supervision, which often occur during the transition of a group of children from one space to another. These findings are substantial but can be often seen as isolated by the grantee, especially when training was provided to the staff to prevent such an incident or the staff involved faced consequences for the incident. We believe a change to two or more deficiencies will capture significant quality failures of an agency and will mitigate the concern of grantees that a single incident that is not a result of multiple system failures could lead to competition.

One of our primary goals of competition is to improve quality through competition. Multiple deficiencies are an indication of lower quality in overall program performance and changing the deficiency trigger to two or more better aligns with this goal. However, in cases where there is a substantial material failure, a serious risk for substantial injury to property or loss of project funds or harm to staff and children's health and safety, OHS will exercise its authority to suspend or terminate financial assistance pursuant to §§ 1304.4 and 1304.5(a)(2)(iii) regardless of the number of deficiencies involved. We would not change the deficiency condition if we did not have the authority to mitigate or remove serious risk. In prior years' competitions, determinations for about half of grantees were based on a single deficiency, and we therefore expect this revision may result in a reduction in competition associated with deficiencies.

In this final rule, we do not define and differentiate deficiencies based on severity or distinguish whether a one-time incident is a result of multiple system failures since Congress, as discussed earlier, already defined the term ''deficiency'' under section 637 of the Head Start Act in part as ''systemic or substantial material failure.'' However, we revise the deficiency condition from a single deficiency to two or more deficiencies to mitigate the concern that a single isolated incident that is not a result of multiple system failures may cause a grantee to have to compete. Specifically, we amend paragraph (a), by removing the word ''one'' and replacing it with the word ''two.'' We also remove the phrase ''been determined by the responsible HHS official to have.'' This phrase is repetitious as this language is established in the introductory paragraph of this section and does not add anything of substance by being in this paragraph. Further, we remove the phrase ''on a single review'' and replace it with the phrase ''on reviews'' to ensure grantees that receive one deficiency on one monitoring review and another deficiency on a second review within the same five-year grant period would be designated for competition since the total count of deficiencies is cumulative across all reviews within a project period. Finally, we remove the phrase ''covered by the responsible HHS official's review'' because it is unnecessary and does not make the sentence easy to understand.

ii. 1304.11(b) School Readiness Goals Condition

In this paragraph, a program meets one of the two or more conditions for designation renewal if the program does not have school readiness goals that meet specific criteria, that are not aggregated and analyzed at least three times a year, and that are not analyzed to inform progress. We did not receive any comments on this paragraph. Therefore, as we proposed in the NPRM, we remove dates and learning tools that are either outdated or are no longer relevant. Specifically, we amend this paragraph by removing the phrase ''After December 9, 2011'' in paragraphs (b)(1) and (2). We also remove the phrase ''Birth to Five Head Start Child Outcomes Framework'' and replace it with the new framework ''Head Start Early Learning Outcomes Framework: Ages Birth to Five'' in paragraph (b)(1)(ii).

In addition, we make a few technical fixes to streamline this paragraph by removing unnecessary, repetitive language that is already established in the introductory paragraph. These fixes do not alter the substance of the regulation, but they make this section easier to read. In paragraph (b), we remove the phrase ''been determined by the responsible HHS official'' and replace that phrase with the word ''not,'' and a comma. Similarly, in the same paragraph, we remove the phrase ''covered by the responsible HHS official's review.'' It is well established in the introductory paragraph that the responsible HHS official reviews a program's operations to determine whether that program meets a condition for designation renewal. It is not necessary for us to repeat that here. Finally, we remove the phrase ''not to have'' to make the sentence easier to read.

iii. 1304.11(c) CLASS Condition

Section 1304.11(c) describes the use of the CLASS tool to assess a grantee's designation status. The current CLASS condition consists of two criteria for each domain of the tool: An absolute threshold and a relative threshold. The CLASS domains are Emotional Support, Classroom Organization, and Instructional Support.

In the NPRM, we proposed to amend the CLASS condition in the following ways:

(1) Drop the relative threshold criterion of this condition, often referred to as the ''lowest 10 percent'' criterion.

(2) Raise the absolute thresholds across the three CLASS domains as follows: Raise Emotional Support threshold from 4 to 5; raise Classroom Organization threshold from 3 to 5; raise Instructional Support threshold from 2 to 2.5.

In this final rule, we:

(1) Drop the relative threshold criterion of this condition, often referred to as the ''lowest 10 percent'' criterion.

(2) Raise the competitive threshold for Emotional Support from 4 to 5, for Classroom Organization from 3 to 5, and for Instructional Support from 2 to 2.3. Further, for CLASS reviews beginning on August 1, 2025, the competitive threshold for Instructional Support will be raised to 2.5.

(3) Establish a quality threshold for each CLASS domain as follows: 6 for Emotional Support, 6 for Classroom Organization, and 3 for Instructional Support.

Most of the public comments on the NPRM included discussion of the proposed changes to the CLASS condition or some other aspect of CLASS in relation to its use in the Designation Renewal System. We summarize the types of comments we received related to CLASS and our

corresponding responses, including our approach for the CLASS condition in this final rule. The comments we received on the CLASS condition were diverse as they covered various aspects of the condition. To make our discussion below easier to follow, we organize the comments, our responses, and regulatory text changes (if applicable) as follows: (1) Absolute Thresholds for the CLASS Condition; (2) Lowest 10 Percent Criterion of the CLASS Condition; (3) CLASS as a Quality Improvement Tool; (4) Methodological and Implementation Issues with CLASS; (5) Research Base on CLASS; and (6) Other Miscellaneous Comments on CLASS.

Absolute Thresholds (Competitive Thresholds) for the CLASS Condition

Comment: Most commenters discussed the proposed changes to the absolute thresholds across the three CLASS domains. Some were supportive of the increased thresholds we proposed across all three domains (Emotional Support = 5, Classroom Organization = 5, Instructional Support = 2.5). These commenters noted that the increased thresholds seemed fair and are supported by research or are a ''step in the right direction'' to move programs toward higher quality.

However, most commenters who discussed the absolute thresholds were not supportive of some aspect of our proposal to increase the thresholds. More specifically, most commenters supported the proposed higher thresholds of 5 for the Emotional Support and Classroom Organization domains, but did not support the proposal to raise the Instructional Support threshold from 2 to 2.5. These commenters stated there is not sufficient evidence for a specific threshold for Instructional Support that is related to improved outcomes for children. Some commenters said we should not increase any of the absolute thresholds. They stated that they believed the raised thresholds are not supported by research. Commenters also expressed concerns that the higher threshold on Instructional Support would create more fear and stress for programs and teachers.

A few commenters supported the proposed thresholds for Emotional Support and Instructional Support, but said Classroom Organization should not be raised to 5. These commenters argued that there has been an increase in challenging behaviors in Head Start classrooms due to more exposure to traumatic experiences among the population of children and families that Head Start serves, and this makes it difficult for teachers to score highly on the Classroom Organization domain of CLASS. One commenter suggested that a threshold of 5 for the Classroom Organization domain may unintentionally incentivize programs to ''pass over'' children that are harder to serve due to behavior issues. One commenter agreed with our proposal to raise the Instructional Support threshold to 2.5, but said the Emotional Support and Classroom Organization thresholds should each be 4. One commenter felt the Instructional Support threshold of 2.5 is too low and should, instead, be a 3. One commenter requested an exemption for American Indian/Alaska Native programs if the CLASS absolute thresholds are raised as proposed in the NPRM.

Response: We believe it is important to raise the absolute thresholds (now referred to as competitive thresholds in this final rule) across the three CLASS domains to continue to encourage Head Start programs to strive for improving the quality of teaching practices and teacher-child interactions in their classrooms. To inform the CLASS competitive thresholds in this final rule, we considered the public comments received on the NPRM and research on the use of the measure in early education settings, as well as our own data from several years of implementation of the CLASS condition.

Evidence suggests children learn more in well-organized classroom environments that are characterized by sensitive and responsive interactions that promote autonomy, conversation, literacy skills, and executive functioning. Children gain these skills when they experience higher quality teacher-children interactions and instruction.[2] On the CLASS tool, scores of 1 to 2 (low range of quality) reflect a classroom environment where teachers poorly manage children's behaviors, instruction is purely rote, and where there is little teacher-child interaction. Scores of 3 to 5 (midrange of quality) reflect a classroom environment where teachers show a mix of effective interactions with periods when interactions are either not effective or are absent. Scores of 6 to 7 (high range of quality) reflect a classroom environment where teachers consistently demonstrate effective teacher-child interactions. Research suggests that higher levels of instructional quality are linked to improvements in child outcomes. Although research does not indicate a specific threshold of classroom quality that programs must reach to see impacts on child outcomes, there is a growing body of research indicating classrooms need to be out of the low-quality range (*i.e.,* above a 2 on CLASS) to support children's development.[3]

Therefore, we believe strongly that the competitive thresholds for all domains of the CLASS should be above a 2, in order to continue to strengthen the quality of teacher-child interactions across all Head Start classrooms. This final rule raises the competitive threshold for Emotional Support from 4 to 5, for Classroom Organization from 3 to 5, and for Instructional Support from 2 to 2.3, as of the effective date of this rule. Further, beginning on August 1, 2025, the competitive threshold for Instructional Support will be raised to 2.5. A grantee with a score below any of these competitive thresholds will be designated for competition. Scores of 5 in Emotional Support and Classroom Organization are in the mid-quality range on the CLASS tool. We believe the changes to these competitive thresholds increase the minimum standard of quality and set the expectation for programs to work toward moving into the high-quality range.

We take a different approach with the Instructional Support domain than the other two CLASS domains, as a result of public comments, research, and our own data. We recognize the concern expressed by commenters regarding increased stress and fear among program staff that may result if the competitive threshold for the Instructional Support domain is raised immediately from 2 to 2.5 (as proposed in the NPRM). We also recognize the fact that teachers across a variety of preschool settings tend to score lower in this domain, and that it takes time to improve teacher-child interactions in a way that reflects in

[2] Hatfield, B.E., Burchinal, M.R., Pianta, R.C., & Sideris, J. (2016). Thresholds in the association between quality of teacher-child interactions and preschool children's school readiness skills. *Early Childhood Research Quarterly, 36,* 561–571.

[3] Broekhuizen, M.L., Mokrova, I.L., Burchinal, M.R., Garrett-Peters, P.T., & The Family Life Project Key Investigators. (2017). Classroom quality at pre-kindergarten and kindergarten and children's social skills and behavior problems. *Early Childhood Research Quarterly, 36,* 212–222.; Burchinal, M., Vernon-Feagans, L., Vitiello, V., & Greenberg, M. (2014). Thresholds in the association between child care quality and child outcomes in rural preschool children. *Early Childhood Research Quarterly, 29*(1), 41–51.; Burchinal, M., Zaslow, M., & Tarullo, L. (2016). Quality thresholds, features and dosage in early care and education: Secondary data analyses of child outcomes. *Monographs of the Society for Research in Child Development.*; U.S. Department of Health and Human Services. (2012). *Report from the Secretary's Advisory Committee on Head Start Research and Evaluation.* Washington, DC: HHS. Retrieved from: *https://www.acf.hhs.gov/sites/default/files/opre/eval_final.pdf.*

improved CLASS scores.[4] For example, the Head Start Family and Child Experiences Survey (FACES)—a large, nationally representative study of Head Start children, families, staff, and programs—examined changes over time in classroom quality after the implementation of the Designation Renewal System, and findings showed an increase in average Instructional Support scores across programs, but only over a significant time, from an average of 1.9 across programs in 2007 to an average of 2.4 in 2015.[5] This study also found an increase over this time period in the number of programs scoring in the mid- or high-range of quality for the Instructional Support domain, and fewer programs scoring in the low-range of quality for this domain.[6] Qualitative findings from the evaluation of the early Designation Renewal System implementation indicate that inclusion of CLASS in this system is incentivizing Head Start programs to focus on improving teacher-child interactions as part of their overall quality improvement efforts.[7]

According to our own monitoring data from the past 5 fiscal years, programs have averaged between a 2.8 and 3.0 in the Instructional Support domain. In addition, the average cut-off for the bottom 10 percent of grantee scores in this domain has been about a 2.2 or 2.3 over the past 5 fiscal years.

These data demonstrate that, in general, most programs are scoring above a 2 in this domain of CLASS over the past five fiscal years. However, our monitoring data also demonstrate that a fair number of programs score below a 2.5 in this domain (approximately 20 percent of those grantees with CLASS scores from the past five years). Meanwhile, we must consider the growing body of research indicating programs need to be out of the low-quality range to support children's development.[8] Therefore, to take into account both where Head Start grantees currently score in this CLASS domain as well as concerns we heard in the public comments, but to still push quality improvement over time and on an ongoing basis, this final rule uses a graduated approach to increasing the competitive threshold for the Instructional Support domain, rather than immediately raising the threshold to 2.5 as proposed in the NPRM.

For the first five years following the effective date of this final rule, through July 31, 2025, there will be an interim competitive threshold for Instructional Support of 2.3. A grantee with a score below this interim competitive threshold from a CLASS observation conducted as part of Head Start monitoring through July 31, 2025, will be designated for competition. Beginning on August 1, 2025, the competitive threshold for the Instructional Support domain will be raised to 2.5. Therefore, a grantee with a score below 2.5 in Instructional Support from a CLASS observation conducted as part of Head Start monitoring on or after August 1, 2025, will be designated for competition. A score of 2.3 in Instructional Support is an interim step that will encourage all grantees to move out of the low-range and toward the mid-range of quality on CLASS. Our graduated approach to increasing this threshold incentivizes programs to undertake quality improvement efforts and provides a window of opportunity for programs to make such improvements before the competitive threshold for Instructional Support raises to a higher bar. This five-year window also aligns with the five-year grant cycle, allowing grantees a reasonable amount of time to make improvements. Furthermore, we believe our graduated approach sets a minimum bar for quality, considers where most programs as well as the broader early childhood field tend to score on this domain, addresses concerns raised by public comments, and pushes up the bar to a higher standard within a reasonable timeframe. Finally, in this final rule we do not provide an exemption from the raised competitive thresholds for any specific programs because we believe it is important that all children in Head Start are in classroom environments with high-quality teacher-child interactions. The next paragraph provides a summary of the changes to the regulation text for the absolute (competitive) thresholds for CLASS.

We amend § 1304.11(c)(1) by removing the phrase ''After December 9, 2011,'' and capitalizing ''To.'' We also remove the word ''minimum'' from that same provision and replace it with the word ''competitive.'' We also amend paragraph (c)(1)(i) (Emotional Support) in that section by removing the word ''minimum'' and replacing it with the word ''competitive,'' and we remove the number ''4'' and replace it with ''5.'' Similarly, in paragraph (c)(1)(ii) (Classroom Organization), we remove the word ''minimum'' and replace it with the word ''competitive'' and we remove the number ''3'' and replace it with ''5.'' Finally, in paragraph (c)(1)(iii) (Instructional Support), we remove the word ''minimum'' and replace it with the word ''competitive'' and we remove the number ''2'' and replace it with the phrase ''2.3 through July 31, 2025, and 2.5 on and after August 1, 2025.''

Lowest 10 Percent Trigger of the CLASS Condition

Comment: Most commenters agreed with our proposal to remove the ''lowest 10 percent'' criterion from the CLASS condition in the Designation Renewal System. These commenters cited reasons similar to those described in the NPRM, including that the lowest 10 percent criterion lacks transparency for programs and creates a significant amount of stress and uncertainty, as programs usually must wait several months to learn if they are designated for competition based on the annual calculation of the lowest 10 percent in each CLASS domain. Commenters discussed how this aspect of the CLASS condition feels arbitrary and unfair, as the ''cut-off'' for the lowest 10 percent for any given fiscal year depends on the

[4] Hamre, B.K., Pianta, R.C., & Mashburn, A.J. Building a science of classrooms: Application of the CLASS framework in over 4,000 U.S. early childhood and elementary classrooms. Charlottesville, VA: University of Virginia.; Denny, J.H., Hallam, R., & Homer, K. (2012) A multi-instrument examination of preschool classroom quality and the relationship between program, classroom, and teacher characteristics. *Early Education and Development, 23*:5, 678–696.; Aikens, N., Bush, C., Gleason, P., Malone, L., & Tarullo, L. (2016). *Tracking quality in Head Start classrooms: FACES 2006 to 2014. OPRE Report #2016–82.* Washington, DC: Office of Planning, Research and Evaluation, Administration for Children and Families, U.S. Department of Health and Human Services.

[5] Aikens, N., Bush, C., Gleason, P., Malone, L., & Tarullo, L. (2016). *Tracking quality in Head Start classrooms: FACES 2006 to 2014. OPRE Report #2016–82.* Washington, DC: Office of Planning, Research and Evaluation, Administration for Children and Families, U.S. Department of Health and Human Services.

[6] Ibid.

[7] Derrick-Mills, T., Burchinal, M., Peters, H.E., De Marco, A., Forestieri, N., Fyffe, S., Hanson, D., Heller, C., Pratt, E., Sandstrom, H., Triplett, T., & Woods, T. (2016). *Early Implementation of the Head Start Designation Renewal System: Volume I.* OPRE Report #: 2016–75a. Washington, DC: Office of Planning, Research and Evaluation, Administration for Children and Families, U.S. Department of Health and Human Services.

[8] Burchinal, M., Kainz, K., & Cai, Y. (2011). How well do our measures of quality predict child outcomes? A meta-analysis and coordinated analysis of data from large-scale studies of early childhood settings. In M. Zaslow, I. Martinez-Beck, K. Tout, & T. Halle (Eds.), *Quality measurement in early childhood settings* (pp. 11–32). Baltimore, MD: Paul H. Brookes Publishing Co.; Burchinal, M., Vandergrift, N., Pianta, R., & Mashburn, A. (2010). Threshold analysis of association between child care quality and child outcomes for low-income children in pre-kindergarten programs. *Early Childhood Research Quarterly, 25,* 166–176.; Burchinal, M., Vernon-Feagans, L., Vitiello, V., & Greenberg, M. (2014). Thresholds in the association between child care quality and child outcomes in rural preschool children. *Early Childhood Research Quarterly, 29*(1), 41–51.; Burchinal, M., Zaslow., M., & Tarullo, L. (2016). Quality thresholds, features and dosage in early care and education: Secondary data analyses of child outcomes. *Monographs of the Society for Research in Child Development.*

grantees that were observed that fiscal year. As described in the NPRM, commenters also noted how the lowest 10 percent criterion sometimes captures grantees with fairly high scores (*i.e.,* scores above a 5) in the domains of Emotional Support and Classroom Organization. One commenter disagreed with our proposal to remove the lowest 10 percent criterion and described it as a ''safety net'' that ''saved'' their program from competition.

Response: We agree with some of the concerns noted by commenters regarding the lowest 10 percent criterion of the CLASS condition. Additionally, our approach of raising the Instructional Support competitive threshold to 2.3 combined with the implementation of the new quality threshold of 3.0 (discussed in more detail in the next section) will maintain the same expectation of minimum quality standards under the current CLASS condition while also raising expectations for quality beyond the minimum and eliminating the uncertainty created by the lowest 10 percent criterion. Therefore, in this final rule, we eliminate this aspect of the CLASS condition in the Designation Renewal System. Specifically, we amend § 1304.11(c)(2) by removing the current provision that describes the ''lowest 10 percent'' criterion of the CLASS condition.

CLASS as a Quality Improvement Tool

Comment: Many commenters described the way CLASS is used in the Designation Renewal System as punitive. These commenters said CLASS can be helpful as a professional development tool to examine and reflect on teachers' practices in the classroom and support quality improvement efforts, but should not be used in the types of decisions made under the Designation Renewal System. A few said CLASS should not be used in the Designation Renewal System at all or should be used differently. One commenter suggested the specific mention of CLASS in regulation has undermined the market for the development of other tools to measure classroom quality. A few stated that they believe the CLASS tool does not meet, or is not the only tool that could meet, the requirements of the Head Start Act for use of a valid and reliable research-based observational measure of teacher-child interactions in the Designation Renewal System.

Many commenters noted that CLASS as used in the Designation Renewal System creates fear and stress for teachers and does not provide enough support for improvement, which undermines its usefulness as a professional development tool. A few commenters specifically suggested CLASS scores below the designated thresholds should trigger support or professional development for teachers and programs. Some said that American Indian/Alaska Native programs in particular need more professional development and technical assistance support in order to achieve higher CLASS scores.

Response: A large body of research points to the importance of effective teacher-child interactions as a critical component of a high-quality early education program that promotes children's development and learning.[9] The Act requires the use of a research-based observational measure of teacher-child interactions as a basis for competition in the Designation Renewal System. CLASS is a research-based measure of the quality of teacher-child interactions in preschool classrooms, meeting the requirement in the law. In fact, in the Conference Report accompanying the 2007 Reauthorization,[10] Congress specifically suggested HHS consider using the CLASS to meet this requirement. Following the passage of the 2007 Reauthorization, the Office of Head Start had discussions with numerous early childhood research experts who agreed that the CLASS was the best tool that fits these requirements. The CLASS can also be used to help understand areas of teaching and learning where individual teachers excel, as well as areas where they may need extra support. Its use in the Designation Renewal System over the past several years has enhanced programs' focus on the importance of effective teacher-child interactions for promoting stronger outcomes for children served in Head Start programs. Indeed, as summarized previously, the evaluation of the Designation Renewal System found that the inclusion of the CLASS in this system incentivized programs to focus on improving teacher-child interactions as part of their quality improvement efforts.[11] Furthermore, data from the 2015 Head Start FACES study demonstrate that, on average, CLASS scores are improving over time across Head Start programs.[12]

However, although it is not the intent of the CLASS regulatory provisions, we appreciate the public comments we received describing how CLASS, as used in the Designation Renewal System, can feel punitive. We share the view expressed by many commenters that CLASS can be an effective tool for programs to use as part of their local continuous quality improvement efforts, and we recognize that many programs already do so, separate from the Head Start monitoring process. The competitive thresholds represent the minimum scores in each CLASS domain that a program must achieve to avoid competition. Meanwhile, OHS recognizes programs already strive for CLASS scores above the competitive thresholds since the aim by programs is to continuously improve classroom quality and eventually reach high-quality scores across all three domains. Therefore, in this final rule, we develop an approach to reframe the use of CLASS in the Designation Renewal System that supports using CLASS as a tool for quality improvement, while also continuing to use it as a quality indicator as required by the Head Start Act. This approach includes the establishment of a quality threshold for each CLASS domain that does not relate to competition, but instead reflects a quality improvement focus in teacher-child interactions, with support from OHS. We believe the establishment of quality thresholds for the CLASS domains will build on existing program quality improvement efforts to enhance

[9] Bredekamp, S., & Copple, C., eds. (2002). Developmentally Appropriate Practice in Early Childhood Programs. Rev. ed. Washington, DC: National Association for the Education of Young Children.; Burchinal, M. (2017). Measuring early care and education quality. *Child Development Perspectives, 12*(1), 3–9.; Melhuish, E., Ereky-Stevens, K., Petrogiannis, K., Ariescu, A., Penderi, E., Rentzou, K., Tawell, A., Slot, P., Broekhuizen, M., & Leseman, P. (2015). A review of research on the effects of early childhood Education and Care (ECEC) upon child development. CARE project; Curriculum Quality Analysis and Impact Review of European Early Childhood Education and Care (ECEC). Retrieved from: *http://ecec-care.org/resources/publications/;* Pianta, R., Downer, J., & Hamre, B. (2016). Quality in early education classrooms: Definitions, gaps, and systems. The Future of Children, 26(2), 119–137.; Phillipsen, L.C., Burchinal, M.R., Howes, C., & Cryer, D. (1997). The prediction of process quality from structural features of child care. *Early Childhood Research Quarterly, 12,* 281–303.; Soliday Hong, S.L., Sabol, T.J., Burchinal, M.R., Tarullo, L., Zaslow, M., & Pesiner-Feinberg, E.S. (2019). ECE quality indicators and child outcomes: Analyses of six large child care studies. *Early Childhood Research Quarterly, 49,* 202–217.

[10] *https://www.congress.gov/110/crpt/hrpt439/CRPT-110hrpt439.pdf.*

[11] Derrick-Mills, T., Burchinal, M., Peters, H.E., De Marco, A., Forestieri, N., Fyffe, S., Hanson, D., Heller, C., Pratt, E., Sandstrom, H., Triplett, T., & Woods, T. (2016). *Early Implementation of the Head Start Designation Renewal System: Volume I.* OPRE Report #: 2016–75a. Washington, DC: Office of Planning, Research and Evaluation, Administration for Children and Families, U.S. Department of Health and Human Services.

[12] Aikens, N., Bush, C., Gleason, P., Malone, L., & Tarullo, L. (2016). *Tracking quality in Head Start classrooms: FACES 2006 to 2014. OPRE Report #2016–82.* Washington, DC: Office of Planning, Research and Evaluation, Administration for Children and Families, U.S. Department of Health and Human Services.

classroom instruction beyond any set floor and will lead to more intentional OHS support for these efforts.

In this final rule, we establish a quality threshold for each CLASS domain as follows: 6 for Emotional Support, 6 for Classroom Organization, and 3 for Instructional Support. A score of 6 is in the high-quality range and a score of 3 is in the mid-quality range on CLASS. Over the previous five fiscal years, the average score across grantees in Emotional Support and Classroom Organization is about 6.1 and 5.8, respectively. The average score in Instructional Support over the previous five fiscal years is 2.9. The quality thresholds we establish in this final rule will encourage programs to continue to strive for improvements in classroom quality and will also lead to OHS support for quality improvement efforts among programs as they continuously examine and improve effective teacher-child interactions in their preschool classrooms. The inclusion of quality thresholds for the CLASS addresses the request of commenters to make better use of CLASS as a quality improvement tool.

If a grantee receives a score on any domain of the CLASS that is below the *quality threshold,* then OHS will support the grantee to promote improvement in teacher-child interactions across classrooms. Specifically, OHS will identify and connect grantees to resources (*e.g.,* resources on the ECLKC website including webinars and professional development materials, meetings with OHS regional TA specialist if appropriate, etc.) designed to support improvement in the area(s) of teacher-child interactions that are below the quality thresholds. OHS will further support the program to analyze areas where their education staff most need support, and ensure a coordinated approach to training and professional development.

This approach does not place new requirements on programs but, rather, provides an opportunity for OHS to support programs in refining and improving their existing quality improvement efforts to meet the related requirements in the Head Start Act and the Head Start Program Performance Standards (HSPPS). This approach also reframes the use of the CLASS in Designation Renewal System with a growth mindset. The Head Start Act requires that information from the assessment of teacher-child interactions included in the Designation Renewal System be used to inform professional development plans that lead to improved teacher effectiveness. Furthermore, several areas of the HSPPS require grantees to have planned, intentional approaches to quality improvement in their programs. For example, Head Start programs are required to establish and implement a systematic approach to staff training and professional development, a coordinated strategy for intensive coaching, and program-wide coordinated approaches that ensure the training and professional development system effectively supports the delivery and continuous improvement of high-quality services (see §§ 1303.92(b), 1302.92(c), and 1302.101(b)). The addition of CLASS quality thresholds to the Designation Renewal System follows the same model of intentional support for targeted quality improvement.

If a program falls below the quality threshold on any CLASS domain, OHS will support the program in determining and addressing the specific areas of teacher-child interactions that need the most support and improvement, aligned with the program's existing coordinated approach for training and professional development. More specifically, within a reasonable timeframe after a CLASS review in which a grantee scores below one or more of the quality thresholds, OHS will identify and connect grantees with resources that focus on the areas of teacher-child interactions in which the grantee most needs improvement. This may include National TTA Center suites, other professional development resources available on the ECLKC website, and/or connections with their regional TTA support. The grantee will not have to request this; rather, scores below the quality threshold will trigger action on the part of OHS. OHS plans to use existing CLASS data more effectively to inform decision-making around delivery of TTA. OHS will leverage existing systems to develop a streamlined way of identifying appropriate resources and make these connections for grantees, based on their CLASS scores. OHS may request a description of the program's efforts in grant applications or through monitoring reviews.

OHS reminds programs that they have a wealth of resources available to support implementation of their coordinated approach to training and professional development. As part of their individual grant, every program has training and technical assistance funds that can be used at the program's discretion. A portion of these training and technical assistance dollars could be spent on activities that aim to improve teaching practices in the classroom and support effective teacher-child interactions. Grantees may use research-based resources available to them on the Early Childhood Learning and Knowledge Center (ECLKC) website. For instance, on the ECLKC website, grantees can find several materials that support the use of CLASS for professional development, such as the *15-minute in-service suites* [13] and the *ELOF Effective Practice Guide* [14] that have been cross-walked with the dimensions and domains of the CLASS.[15] In addition, through their regional office, grantees may request regional training and technical assistance support. Resources, including the Head Start Coaching Companion,[16] are also available to help support programs to implement intensive coaching, which research shows to be a critical component in professional development and an effective strategy for improving teacher practice.

To make regulatory changes for the quality thresholds on CLASS, we amend § 1304.11(c)(2) by removing the current provision that describes the ''lowest 10 percent'' criterion of the CLASS condition as previously stated, and we replace this provision with the following:

> ''If an agency is determined to have an average score below the quality threshold on any of the three CLASS: Pre-K domains across all classrooms observed, the Office of Head Start will support the program to strengthen its coordinated approach to training and professional development as required in § 1302.92(b) and (c), to help promote improvement in teaching practices and teacher-child interactions. The quality threshold for each domain is as follows:
>
> (i) For the Emotional Support domain, the quality threshold is 6;
>
> (ii) For the Classroom Organization domain, the quality threshold is 6;
>
> (iii) For the Instructional Support domain, the quality threshold is 3.''

Methodological Issues With CLASS

Comment: Many commenters who discussed CLASS expressed various concerns with methodological issues related to the CLASS. Some commenters raised concerns with the reliability and/or validity of CLASS scores. A few noted that there is measurement error inherent in any tool like the CLASS.

Some commenters also raised concerns regarding the validity of CLASS use with culturally and linguistically diverse populations,

[13] *https://eclkc.ohs.acf.hhs.gov/professional-development/article/15-minute-service-suites.*

[14] *https://eclkc.ohs.acf.hhs.gov/school-readiness/effective-practice-guides/effective-practice-guides.*

[15] *https://eclkc.ohs.acf.hhs.gov/professional-development/article/crosswalk-15-minute-service-suites-class.*

[16] *https://eclkc.ohs.acf.hhs.gov/professional-development/article/head-start-coaching-companion.*

including American Indian/Alaska Native populations, Migrant and Seasonal Head Start programs, and classrooms with high proportions of dual language learners. These commenters noted that the CLASS does not adequately take into account cultural or linguistic differences with these populations and/or that there is not adequate research using the CLASS with diverse samples.

Response: While we appreciate the comments related to methodological issues with use of the CLASS tool in the Designation Renewal System, we largely disagree with these assertions. We did not propose any changes in the NPRM related to CLASS methodology, and we do not make any changes in this final rule based on these comments. Section 641A(c)(2)(F) of the Act requires the Secretary to include as part of the Head Start monitoring review process ''a valid and reliable research-based observational instrument, implemented by qualified individuals with demonstrated reliability, that assesses classroom quality, including assessing multiple dimensions of teacher-child interactions that are linked to positive child development and later achievement.'' Section 641(c)(1)(D) of the Head Start Act requires that this tool be used as part of the Designation Renewal System. As discussed previously, the CLASS specifically meets these requirements and was suggested by Congress and numerous leading early childhood experts as the best instrument to meet these statutory requirements.

Regarding its use in culturally and linguistically diverse classrooms, there is an ample body of research examining CLASS and its relationship to children's outcomes. This research largely demonstrates that children in classrooms with higher CLASS scores are more likely to have stronger outcomes across a variety of developmental domains,[17] and this includes research in classrooms with diverse populations.[18] Further, there is widespread agreement in the early childhood field that the aspects of teacher-child interactions that CLASS measures are important features for supporting young children's development. However, we will continue to examine the use of CLASS in culturally and linguistically diverse settings, including American Indian/Alaska Native programs.

Implementation of CLASS Observations in Head Start Programs

Comment: Most commenters who discussed CLASS raised concerns related to OHS implementation procedures for conducting CLASS observations. We did not propose changes in the NPRM to OHS's procedures for conducting CLASS observations as part of Head Start monitoring and in fact such procedures are not governed by regulation. However, we summarize the comments here as we feel it is important to acknowledge and respond to these comments.

Most commenters stated that teachers need more time in the classroom (*e.g.,* 6 months) before they are observed with the CLASS for Head Start monitoring purposes, in order to better acclimate to the classroom environment. Some commenters said observers need mandatory cultural and linguistic awareness training and training in racial equity to improve the use of CLASS with diverse Head Start populations. Some said OHS needs to utilize more bilingual CLASS observers.

Many commenters pointed out that OHS does two cycles of observation per classroom with the CLASS instrument and said OHS should instead conduct four cycles of observation, as described in the CLASS manual. Some commenters said OHS needs to ensure observers are following appropriate protocols for classroom observations, such as observing classrooms for the appropriate length of time and during appropriate times of the day (*i.e.,* not at nap time). A few said observers should have regular re-training to maintain reliability and appropriate compliance with observation protocols. Relatedly, some commenters stated that external factors can impact observations and should be taken into account when considering grantee scores, such as the time of day or year of observations, teacher turnover and lack of qualified staff, low teacher wages, teacher stress, and challenging behaviors in the classroom. A few suggested that OHS collect CLASS observations via video to help with some of these concerns.

A few commenters suggested that if initial CLASS scores were too low, OHS give programs the opportunity to improve their scores through follow-up observations. A few commenters requested that OHS be more transparent with CLASS data and share specific classroom scores and/or observer notes with programs, to help programs better target quality improvement efforts. A few others requested OHS establish a formal grievance process to challenge CLASS observations that a program feels was not carried out correctly.

Response: We appreciate the comments related to the protocol and procedures for use of the CLASS tool in Head Start classrooms. We do not make any changes in this final rule related to these topics. However, we provide responses to each of these comments, in the order summarized in the prior section.

We understand the desire to allow teachers to have time to acclimate to the classroom environment before CLASS observations are conducted by OHS. However, we believe strongly that it is critically important that children are exposed to high-quality teacher-child interactions for the entirety of their time in Head Start. Further, in order to ensure OHS can complete all CLASS observations scheduled within a given program year, OHS must be able to begin CLASS observations in the fall. Therefore, we do not agree that OHS should wait at least 6 months before observing a teacher with CLASS; for many children, this represents more than half or most of the program year, and we believe strongly that programs should ensure teacher-child interactions are of high-quality throughout the program year.

We appreciate comments related to the need for cultural and linguistic awareness and racial equity training for CLASS reviewers. We are always looking for ways to improve reviewer training and are exploring whether this is something that should be implemented in the future. With respect to the need for more bilingual CLASS reviewers, OHS strives to recruit bilingual individuals who can serve as CLASS reviewers. Most of the bilingual CLASS reviewers OHS currently has are fluent in Spanish and English. It is challenging to find individuals who are

[17] Burchinal, M., Vandergrift, N., Pianta, R., & Mashburn, R. (2010). Threshold analysis of association between child care quality and child outcomes for low-income children in pre-kindergarten programs. *Early Childhood Research Quarterly, 25*(2), 166–176.; Hatfield, B.E., Burchinal, M.R., Pianta, R.C., & Sideris, J. (2016). Thresholds in the association between quality of teacher-child interactions and preschool children's school readiness skills. *Early Childhood Research Quarterly, 36,* 561–571.; Perlman, M., Falenchuk, O., Fletcher, B., McMullen, E., Beyene, J., & Shah, P.S. (2016). A systematic review and meta-analysis of a measure of staff/child interaction quality (the Classroom Assessment Scoring System) in early childhood education and care settings and child outcomes. *PLOS ONE 11*(12). Retrieved from: *https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0167660#ack.*

[18] Burchinal, M., Field, S., Lopez, M.L., Howes, C., & Pianta, R. (2012). Instruction in Spanish in pre-kindergarten classrooms and child outcomes for English language learners. *Early Childhood Research Quarterly, 27*(2), 188–198.; Downer, J.T., Lopez, M.L., Grimm, K., Hamagami, A., Pianta, R.C., & Howes, C. (2011). Observations of teacher-child interactions in classrooms serving Latinos and dual language learners: Applicability of the Classroom Assessment Scoring System in diverse settings. *Early Childhood Research Quarterly, 27*(1), 21–32.

fluent in languages other than Spanish or English and have the training and experience to serve as reviewers. However, OHS continues to seek such individuals that could become part of the pool of qualified CLASS reviewers. In the event that OHS does not have a reviewer fluent in the primary language of instruction for a classroom, OHS does not conduct a CLASS review in that classroom.

With regard to the number of observation cycles per classroom, in the initial design of the Designation Renewal System, ACF worked with the CLASS developers to help determine the most appropriate number of observations to conduct per classroom. Although the CLASS manual describes the recommended protocol as four cycles in each classroom, the CLASS developers at the University of Virginia (UVA) and other researchers with expertise in using the CLASS in Head Start settings advised ACF that four cycles with a single teacher, while appropriate for research, is not the best use of resources when ACF's objective is to get a picture of classroom quality at the grantee level. Instead, they recommended a protocol that involved fewer observation cycles per teacher, but that included more teachers.

Further, data from the Head Start FACES study reinforced ACF's decision to conduct two rather than four CLASS observation cycles in each classroom. FACES data indicated that four CLASS observations were not consistently conducted of all grantees, even though that was the intention in the study design. Attempting to conduct four observations in every monitoring review when it could not be accomplished in FACES, and doing so on a scale much larger than the FACES study, likely would result in differential treatment of grantees since some grantees would likely get four observations and others would get fewer. Finally, results from the evaluation of early implementation of the Designation Renewal System found no differences in grantee-level CLASS scores when either four observation cycles or a fewer number of cycles were conducted in classrooms. In other words, findings from this evaluation suggest CLASS ratings are the same when classrooms are observed for either two cycles or four cycles with the CLASS tool.[19] Therefore, given the importance of observing more classes, rather than fewer classes for a longer period of time, ACF chose to conduct two cycles of observation in each classroom within the sample for a given grantee. Overall, we believe the sampling and observation methods we use best meet the goal of finding a grantee-level score for each CLASS domain.

Further, we also have a protocol that all CLASS reviewers must follow, which includes detailed information on the length of time to implement CLASS observations as part of monitoring, as well as what time of day and what types of classroom or learning activities are acceptable for an observation cycle. All CLASS reviewers must undergo rigorous training, including annual recertification of reliability. With respect to external factors that can impact observations (*e.g.,* teacher stress and turnover, challenging behaviors), we appreciate the realities of the challenges of teaching young children; however, the purpose of the CLASS tool is to get a picture of the kinds of interactions children are experiencing in the classroom on a regular basis. Regarding the suggestion to collect CLASS observations via videotape, this is an approach we have explored and may consider further in the future. We frequently review the policies and procedures we use to implement CLASS observations and consider where there can be improvements in the process.

Any program that feels that their CLASS observation was not done fairly or appropriately should raise that concern with OHS. While there is not a formal appeals process established by the Act or regulation, programs regularly raise concerns with CLASS observations to OHS, and we investigate all of them. OHS will also share classroom level scores if requested. However, the methodology we use for CLASS data collection as part of monitoring is designed to get a grantee-level score; the score for any single classroom may be less useful for a program. We are aware of many programs that conduct their own separate CLASS observations for training and professional development purposes.

Regarding the opportunity for a program to have a follow-up observation if CLASS scores are low, we disagree. The purpose of the CLASS observation is to capture a picture of the quality of teacher-child interactions in the program. If a grantee is designated for competition due to low CLASS scores, they then have the opportunity to demonstrate through the competitive process how they have or will improve their program. Further, for American Indian/Alaska Native Head Start programs, the Act provides a process for an initial review of Designation Renewal System conditions, a period of improvement, and then a follow-up review of these conditions, but explicitly does not provide such a process for all other programs.

Research Base on CLASS

Comment: Most commenters suggested that additional research is needed on CLASS, such as in the following areas: Relations between specific CLASS thresholds and child outcomes; use of CLASS in the Designation Renewal System; reliability and validity issues; use of CLASS with culturally and linguistically diverse populations or alternative measures to assess classroom quality for these populations; use of CLASS with children with disabilities; and lessons learned from programs who are ''positive outliers'' on CLASS. A few commenters specifically stated that research does not indicate that increased CLASS scores will lead to improved child outcomes, or requested more information on this topic. Conversely, a few commenters specifically stated that there is research evidence to support the association between CLASS scores and child outcomes.

Response: We appreciate the comments received regarding the research base on CLASS and relations between measures of classroom quality and child outcomes. As previously discussed, there is a large body of research examining relations between the quality of teacher-child interactions as measured by the CLASS and children's outcomes. This research largely demonstrates children in classrooms with higher CLASS scores are more likely to have stronger outcomes across a variety of developmental domains.[20] However, we agree more research could be beneficial to continue to examine these relations, as well as broader issues related to measurement of classroom quality in early childhood settings. ACF is currently funding a variety of research studies on related issues, including: (1) The impact of various features of classroom quality on child outcomes (Variations in Implementation of Quality Interventions (VIQI); study on-

[19] Derrick-Mills, T., Burchinal, M., Peters, H.E., De Marco, A., Forestieri, N., Fyffe, S., Hanson, D., Heller, C., Pratt, E., Sandstrom, H., Triplett, T., & Woods, T. (2016). *Early Implementation of the Head Start Designation Renewal System: Volume I.* OPRE Report #: 2016–75a. Washington, DC: Office of Planning, Research and Evaluation, Administration for Children and Families, U.S. Department of Health and Human Services.

[20] Burchinal et al. (2010); Hatfield et al. (2016); Perlman et al. (2016).

going through 2021 [21]); (2) use of CLASS with diverse populations; and (3) alternative measures of quality for infant and toddler classrooms (the Quality of Caregiver-Child Interactions for Infants and Toddlers (Q–CIITT); there is a final report on this measure as well as accompanying professional development tools; the contractor is currently disseminating the tool through trainings for early childhood programs).[22] We also welcome additional research on these complex issues.

Other Miscellaneous Comments on CLASS

Comment: A few commenters noted that CLASS is used in many state quality rating and improvement systems (QRIS), but not in a high-stakes manner in those systems. A few also noted that many of the areas measured by the CLASS are not areas supported by public school leadership, which makes it challenging for Head Start classrooms located in public schools. A few commenters noted that the underlying assumptions of the CLASS are based on a more ''traditional'' approach to early learning with ''high quantity'' teacher feedback, which may disadvantage alternative approaches and teaching styles such as Montessori and Reggio Emilia. A few commenters said the cost of competition due to low CLASS scores is not a good use of resources.

Response: We disagree with the assertion that CLASS is used in a high-stakes manner in the Designation Renewal System. Meeting the CLASS condition only places a grantee into competition where they then have the opportunity to demonstrate how they have or will improve their program. Unlike termination, competition is not an adverse action. In fact, the majority of incumbent grantees win back their grant in full or part. We appreciate the comments regarding challenges for programs in public school settings or for programs that use an alternative teaching approach such as Montessori or Reggio Emilia. However, as summarized previously, in order for children to receive a high-quality early education experience, we strongly believe that the kinds of teacher-child interactions the CLASS measures should be occurring in Head Start classrooms on a regular basis throughout the program year. Finally, we disagree with the assertion that the cost of competition is not a good use of resources. As discussed previously, findings from the ACF-funded evaluation of the Designation Renewal System indicate that inclusion of CLASS in this system incentivizes Head Start programs to focus on improving teacher-child interactions as part of their overall quality improvement efforts.[23] We believe this is a key area for quality improvement efforts, given the importance of a high-quality classroom environment for facilitating positive outcomes for children.

iv. 1304.11(d) Revocation Condition

We also amend paragraph (d) in this section to make a technical change that does not alter the substance of the provision. We remove the word ''shall'' in the second sentence of the paragraph and replace it with the word ''will.'' ''Shall'' is outdated regulatory language.

v. 1304.11(e) Suspension Condition

Under this paragraph, any grantee that has been suspended from the Head Start program must compete for funding. When we implemented designation renewal, grantees had the opportunity to appeal certain administrative decisions, including suspensions. However, we eliminated the appeal process in 2016, when we published the Head Start Program Performance Standards final rule. When we removed the process for appeals, we did not remove references to the process in this paragraph. So, in the NPRM, we proposed to remove those references to keep our performance standards streamlined and up to date. We did not receive any comments or suggestions on the technical changes we proposed. Therefore, we amend this paragraph, as we proposed in the NPRM, by removing the phrase ''there is a pending appeal and'' in the second sentence. In the third sentence of paragraph (e), after the word ''cause,'' we add the phrase ''and the suspension remains in place,'' and remove the phrase, ''regardless of appeal status.'' We also remove the incorrect cross-reference to ''1304.16,'' and replace it with ''1304.15.''

vi. 1304.11(g) Fiscal Condition

This paragraph establishes the fiscal condition for designation renewal. Head Start programs are required to have annual audits, and the Head Start reauthorization requires that information from a grantee's annual audit be considered in the Designation Renewal System. The current fiscal condition uses information from those audits only to identify grantees with such serious fiscal problems that they may be near bankruptcy and fails to identify additional grantees with very serious financial concerns. Although the current condition uses one of the most serious audit findings, we believe this already available rich and broad fiscal audit data could be better used to determine competition status.

The current condition of going concern audit finding is a very serious fiscal finding indicating threat of liquidation of an organization; however, this finding may not effectively capture problems in the financial management of the Head Start grant. We revise the fiscal condition to better utilize existing requirements and Head Start related audit data more effectively for improvement of grantees' fiscal systems and management. The revised condition aims to require competition before a grantees' fiscal condition becomes so dire that it potentially impacts the program's viability.

The NPRM provided additional background and rationale for adding an addition to the fiscal condition. In the NPRM, we proposed to amend the fiscal condition at § 1304.11(g) in the following way:

(1) Revise the timeframe for the going concern condition from within the previous 12 months to any time during the 5-year grant period.

(2) Add a second criterion to the fiscal condition that would require grantees to compete for continued funding if they had audit findings associated explicitly with their Head Start funds in two or more audit reports filed during the first, second, or third years of their current grant period.

In this final rule, we:

(1) Revise the timeframe for the going concern condition from within the previous 12 months to anytime during the current Head Start project period.

(2) Add a second criterion to the fiscal condition but clarify which specific audit findings associated explicitly with any funding from the Office of Head Start for a grantee's fiscal years within the project period would require a grantee to compete for continued funding. It is important to note that Head Start funds include Head Start,

[21] See this link for additional information on the VIQI study: *https://www.acf.hhs.gov/opre/resource/coming-soon-viqi-2016-2018.*

[22] See these links for more information and resources on the Q–CIITT: *https://www.acf.hhs.gov/opre/research/project/development-of-a-measure-of-the-quality-of-caregiver; https://www.acf.hhs.gov/opre/research/project/professional-development-tools-to-improve-the-quality-of-infant-toddler-care-q-cciit-pd-tools.*

[23] Derrick-Mills, T., Burchinal, M., Peters, H.E., De Marco, A., Forestieri, N., Fyffe, S., Hanson, D., Heller, C., Pratt, E., Sandstrom, H., Triplett, T., & Woods, T. (2016). *Early Implementation of the Head Start Designation Renewal System: Volume I.* OPRE Report #: 2016–75a. Washington, DC: Office of Planning, Research and Evaluation, Administration for Children and Families, U.S. Department of Health and Human Services.

Early Head Start, Early Head Start—Child Care Partnerships grant funding or any other supplemental funding provided by the Office of Head Start.

We received comments, including letters with many signatories, related to various aspects of the proposed condition itself and how we would implement it. Additional commenters addressed general concerns about auditors and audit processes and some requested special consideration for specific types of grantees. To make our discussion easier to follow, we organize the comments, our responses, and regulatory text changes (if applicable) as follows: (1) Going Concern Criterion Timeframe; (2) Additional Audit Findings Criterion; and (3) Other Comments about Audits and Fiscal Condition.

Going Concern Criterion Timeframe

Comment: Most commenters stated we should maintain the current timeframe for the going concern determination, only considering the previous 12 months rather than the full length of the project period as proposed in the NPRM.

These commenters argued that OHS should only consider the most recent audit data. Further, commenters stated that if a grantee had a going concern finding early in the project period, they could recover their fiscal viability within the 5-year project period. The argument is that if a grantee has corrected the going concern finding, they should not be required to compete.

Response: We disagree that keeping the 12-month timeframe for going concern findings is the appropriate policy. We believe the finding that a grantee is at risk of failing to continue as a going concern is so serious it warrants competition regardless of when, during the grant period, the condition is identified. This finding means an organization risks ceasing to exist as a viable entity in the near future. While commenters assert organizations can recover from this situation, the fact that the situation occurred any time warrants competition. For that reason, we maintain the timeframe we proposed in the NPRM and consider going concern findings anytime during the project period to identify a grantee for competition.

Therefore, we revise the regulatory text to reflect this policy and also update the language in the following way. We revise paragraph (g) and add new paragraphs (g)(1) and (g)(2). New paragraph (g) outlines the two fiscal criteria and reads as follows, ''An agency meets one of two fiscal criteria, if the agency:.'' Existing paragraph (g) is redesignated as (g)(1) and is revised by removing unnecessary and repetitive language and by changing the timeframe for considering a finding of going concern. Specifically, we remove the phrase ''an agency has been determined,'' because it is now part of the revised introductory language in (g). We also remove the phrase ''within the twelve months preceding the responsible HHS official's review under 1304.15'' and replace it with ''within the current project period.''

Additional Audit Findings Criterion

Comment: Most commenters expressed concern that the proposal to use additional audit findings in the second fiscal criterion is vague and could be subjective. These commenters requested clarification about which audit findings will determine designation renewal decisions. Concerns about inconsistency of findings in their severity and in their identification by individual auditors were mentioned by these comments. Commenters asserted that some audit findings may not be serious enough to warrant competition and feared that we may compete grantees with low-level findings.

Response: We agree and have made the condition more specific about exactly which additional audit findings will require competition. We limit the findings considered for competition to only findings of material weakness and questioned costs related to any funding from the Office of Head Start, Additionally, the condition only requires competition if there are a total of two or more of either of these types of findings across the two most recent audit reports. Each of these findings is significant and raises concerns about a grantee's management of its federal funding dedicated to the Head Start program. Further, two or more findings of material weakness or questioned costs indicates a pattern of fiscal challenges that warrant competition.

The findings of material weakness and questioned costs represent serious concerns about an organization's internal controls or reasonable fiscal management. An independent auditor evaluates an entity based on a set of several elements related to management of financial systems and prudent fiscal decision making, or internal controls. Internal controls, as defined in accounting and auditing, is a process for assuring an organization's objectives in operational effectiveness and efficiency, reliable financial reporting, and compliance with laws, regulations, and policies.

The finding of material weakness indicates that it is likely that the entity's leadership may not have accurate or sufficient information to understand the entity's financial status well enough to make reasonable decisions about the management of the organization. Material weakness is defined as a deficiency, or combination of deficiencies, in an internal control, such that there is a reasonable possibility that a material misstatement of the entity's financial statements will not be prevented, or detected, or corrected on a timely basis. This means that there is the likelihood that financial information is not accurate or sufficient for decision makers to make reasonable financial decisions.

A questioned costs finding in an audit report raises concerns about fiscal management and potential risks to federal Head Start funding. An auditor notes a finding of questioned costs because they observe an issue that indicates a violation or possible violation of a statute, regulation, or the terms and conditions of a Federal award. A questioned cost finding could also mean the costs, at the time of the audit, are not supported by adequate documentation; or the costs incurred appear unreasonable and do not reflect the actions a prudent person would take in the circumstances.

As stated earlier, fiscal challenges may result in operational challenges that create reduced program quality and stability of services to children and families. We believe findings of material weakness and questioned costs are significant, transparent, and specific findings to appropriately identify grantees for competition.

Comment: Commenters expressed concern that we would not be able to track findings to a Head Start grant, especially if an organization receives multiple federal grants. These commenters stated concerns we would require an agency to compete for a fiscal problem that was actually a fiscal problem in another federal grant.

Response: In response to comments that fiscal challenges with respect to other federal programs could cause an audit finding in Head Start, we will only look at audit findings specifically related to Head Start, Early Head Start, Early Head Start—Child Care Partnerships grant funding or any other supplemental funding provided by the Office of Head Start, identified on the federal audit report. This will ensure that the identified audit findings that require a Head Start grantee to compete directly affect Head Start grant funds and highlights potential risk to Head Start funds that must be addressed.

Therefore, with the exception of a going concern audit finding, Head Start grantees will not be required to compete due to findings in other funding sources and the organization's overall fiscal management.

Comment: Some commenters raised concerns that there is confusion and inconsistency regarding timing of audits and audit reports between grantees. Many commenters noted challenges caused by differences in their agency's fiscal year, project year, and the nine months allowed to file audit reports after their fiscal year. For example, for some grantees, audit reports in the first year of the current project period may cover a fiscal year that was in the previous 5-year project period. Therefore, for some grantees, there may be a period of two years in the current project grant period before an audit report from the first year of the project period is filed. Other commenters suggested that the timing will not allow grantees to know and correct findings before the next audit and could cause repeat findings or confusion.

Response: We agree with commenters' concerns that lack of alignment in grantees' fiscal years, project years, and the audit report filing period could cause implementation problems and greater clarity is needed. In order to address these timing challenges, we revise the criterion to focus on the number of findings and clarify that an audit must represent a financial period within the grantee's current project period. We believe this approach focuses on grantees with a pattern of findings, multiple or repeat audit findings, related to Head Start funds. In addition, this approach provides greater consistency across grantees regardless of timing of their project period and fiscal years. Furthermore, focusing on the findings rather than the timing of the audits is consistent with other DRS conditions in which findings are considered over the entire project period.

Comment: Many commenters said only repeat or identical findings in consecutive audits should trigger competition. Some of these commenters specifically believed grantees should have the ability to correct findings before they are required to compete. They recommended we not require competition for those grantees who have corrected their findings and did not have the same finding in the next audit report. One commenter suggested we rely on very serious findings rather than on repeat findings to trigger competition.

Response: We disagree with the suggestion only repeat findings should be considered. Therefore, we do not make changes in this final rule to address repeat audit findings. The second audit criterion in the final rule requires competition for grantees with two or more audit findings. In response to the comment that very serious findings rather than repeat findings be used to trigger competition, OHS believes that multiple findings related to Head Start funds during the project period indicates a pattern of fiscal concern. Furthermore, audit findings of material weakness and questioned costs represent serious findings. We do not require the same or repeat findings, but we also believe that the findings we have chosen are serious and indicate red flags for a program's management of their Head Start grant.

Regarding comments about grantees' ability to correct findings before being required to compete, all grantees are required to correct audit findings. This rule does not contemplate the audit resolution, it only focuses on the existence of the findings. A total of two or more findings related to Head Start funds during the project period identifies a pattern of financial concern whether the findings are unique or repeated. We believe audit findings identified in the final rule, material weakness and questioned costs, are significant enough that the virtue of just having these findings would warrant competition. This is similar to the treatment of deficiencies for designation renewal purposes. The existence of the findings, regardless of its correction, determines whether a grantee will compete.

Based on the reasons previously described, we amend the regulatory language as follows. We amend paragraph (g) by adding paragraph (g)(2), which includes a new criterion that reads: ''Has a total of two or more audit findings of material weakness or questioned costs associated with its Head Start funds in audit reports submitted to the Federal Audit Clearinghouse (in accordance with section 647 of the Act) for a financial period within the current project period.''

Other Comments About Audits and the DRS Fiscal Condition

General Issues With Auditors and Audit Process

Comment: Commenters said there were challenges with the audit process and inconsistency between auditors, which would make it unfair that some grantees would have to compete and others with similar findings characterized differently by an auditor would not be required to compete. Commenters stated audits are not uniform and some auditors use outdated guidance.

Response: While we appreciate commenters' concerns, we believe there is general consistency across federal audits. Each grantee chooses its own auditor and so has control over the quality of their audits. Furthermore, each grantee is required to have a member on its Board with a background in fiscal management or accounting to guide the grantee in fiscal matters, including audits. While individual differences between auditors exist, every auditor conducting single audits of a Head Start program is required to follow established regulations and Generally Accepted Governmental Accounting Standards. All auditors are required to use the federal audit instructions and the most current Compliance Supplement to ensure uniformity.

In response to commenters' concerns that auditors are using outdated information, we note that in 2014, the Office of Management and Budget issued the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance). This guidance replaced the long-standing A–133 circular. This regulation overhauled federal audit rules and procedures and required all federal departments to issue implementing regulations to conform to it. HHS issued implementing regulations for the Uniform Guidance in 45 CFR part 75 *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for HHS Awards.* The Head Start Program Performance Standards published in 2016 made clear these rules applied to Head Start.

Given the factors described here, we do not believe the challenges suggested by commenters prohibit us from fairly and consistently implementing the new fiscal criterion. Finally, we believe the consistency is even stronger for the serious audit findings of going concern, material weakness and questioned costs, which we will use for designation renewal determinations as further described in a previous section.

Special Considerations for Tribal Grantees

Comment: A large tribal organization stated that tribal audits should account for the unique fiscal reporting implications of the tribal grantee—tribal nation relationship. The commenters stated that in some cases, the Head Start program does not get information related to the audit reports, and it is not

clear how OHS would identify findings specific to Head Start.

Response: We respect the sovereignty of the tribal nations that administer American Indian/Alaska Native Head Start programs. Tribal programs are required, like all other federal grantees, to submit annual audits to the Federal Audit Clearinghouse. The only unique requirement for tribal grantees is that tribes have an option to not make the audit reports public. Otherwise, there are not specific requirements for tribal grantees. A majority of Head Start programs are run by large agencies that receive multiple federal grants, so we will only consider findings specifically associated with Head Start funds in the added fiscal criterion for designation renewal determinations.

Technical Assistance Versus Competition

Comment: Some commenters stated that OHS should not require competition based on audit findings, but should use audit findings as a trigger for additional technical assistance.

Response: We believe the limited types of audit findings that will be considered as part of the designation renewal determination are serious enough to trigger competition. Furthermore, we provide continuous and ongoing technical assistance to grantees on fiscal management through our extensive training and technical assistance system. The National Center on Program Management and Fiscal Operations has developed many resources and trainings for programs on fiscal management and provides grantees with opportunities to work with expert fiscal consultants through the Fiscal Consulting Initiative. Training and technical assistance will continue, and grantees with multiple serious audit findings will be required to compete for continued Head Start funding.

Audit Condition Appeal

Comment: Most commenters stated they thought the audit condition should have an appeal process due to the challenges with audits they mentioned. They suggested we establish a process by which grantees could challenge audit findings and report on unfair audit practices that erroneously caused the grantee to be identified with findings that lead to competition.

Response: We do not agree an appeals process for the audit condition is necessary. Therefore, we do not add such a provision to the final rule. Congress did not require an appeals process in the establishment of the Designation Renewal System rule in the 2007 Reauthorization for any of the conditions that would require a program to be designated for competition. Furthermore, each Head Start grantee chooses its own auditor and therefore grantees work through the audit process with their selected auditor.

2. Section 1304.12 Grantee Reporting Requirements Concerning Certain Conditions

This section requires a grantee to notify OHS if it loses its state or local license to operate a center; files for bankruptcy; has been debarred from receiving state or federal funding; or has been found to be at risk of failing to continue functioning as a going concern.

We did not propose any policy changes to this section in the NPRM. However, we did propose to remove dates that are no longer relevant, and made minor word changes that did not change any meaning. We did not receive any comments from the public on what we proposed in the NPRM. Therefore, in this final rule, we amend § 1304.12 by removing paragraph (a) in its entirety. In paragraph (b), we remove the phrase ''Head Start agencies'' and replace it with the phrase ''A Head Start agency,'' and we add the word ''of'' after ''occurrence'' as an additional technical fix to the regulatory text. We also remove the phrase ''following December 9, 2011.'' Because paragraph (a) is removed, paragraph (b) becomes the sole paragraph in this section and, therefore, becomes the introductory text. Finally, we redesignate paragraphs (b)(1) through (4) as paragraphs (a), (b), (c), and (d) respectively.

3. Section 1304.15 Designation Request, Review, and Notification Process

This section describes the process for designation renewal and explains how a grantee will be notified of its designation renewal status.

In the NPRM, we proposed to simplify, clarify, and update this section by removing outdated language that refers to the transition to 5-year grants and the process before and after the transition. The language is no longer relevant as all grantees have transitioned through designation renewal to 5-year grants. We also proposed to revise language to make it clear that only data from the grantee's current grant period will be reviewed for designation determinations. In addition, we no longer send communication to grantees via certified mail, so we proposed to remove that language as well.

We did not receive any comments from the public on what we proposed in the NPRM. We made all of the changes proposed in the NPRM and additional small technical fixes to make this section consistent with other sections in this Part. Specifically, we amend paragraph (a) with a technical fix by replacing the word ''Grantees'' with the phrase, ''A grantee.'' As proposed in the NPRM, we remove paragraph (a)(1) entirely. In existing paragraph (a)(2), we remove the phrase ''After the transition period,'' at the beginning of the first sentence because it is out of date. Next, we remove the word, ''each'' and replace it with ''A.'' We also remove ''their'' and replace it with the word ''its'' to make the sentence grammatically correct, and we remove the word ''shall'' and replace it with the word ''must.'' The word ''must'' connotes the same meaning as ''shall.'' ''Shall'' is outdated regulatory language. Finally, we redesignate paragraph (a)(2) as paragraph (a).

In paragraph (b), we make an additional technical fix to remove the phrase ''agency's program'' and replace it with ''agency.'' We also add the phrase ''during the current project period,'' at the end of the sentence since all grantees are now on five-year project periods and only data from the current project period will be reviewed. We remove the colon '':'' and replace it with a period ''.''. We also remove paragraphs (b)(1), (2), and (3) in their entirety because they are out of date.

We amend paragraph (c) by removing the colon '':'' after ''§ 1304.14''and replacing it with a comma '','. At the end of paragraph (c), we add the phrase ''at least 12 months before the expiration date of a Head Start or Early Head Start agency's current grant stating:''. We also remove paragraphs (c)(1), (c)(2), and (c)(3) entirely because they mention the transition period. Consequently, we redesignate paragraph (c)(3)(i) as paragraph (c)(1) and paragraph (c)(3)(ii) as paragraph (c)(2).

Finally, in paragraph (c)(2), we remove the reference to ''(c)(3)(i),'' and replace it with ''(c)(1).''

Section 1305.2 Terms

Section 1305.2 defines certain terms in the performance standards. We realized we accidentally omitted a definition for ''denial of refunding,'' when we published the Head Start Program Performance Standards final rule in 2016. Therefore, in the NPRM, we proposed to add the following definition:

Denial of Refunding means the refusal of a funding agency to fund an application for a continuation of a Head Start program for a subsequent program year when the decision is based on a determination that the grantee has improperly conducted its program, or is incapable of doing so properly in the future,

or otherwise is in violation of applicable law, regulations, or other policies.

Given we did not receive any comments or suggestions from the public, we amend § 1305.2 by adding the definition as proposed.

Effective Dates: In the NPRM, we proposed that the improvements made to the Designation Renewal System become effective the fiscal year immediately following the publication of a final rule, but not less than 30 days after the publication date.

We did not receive any comments or suggestions from the public regarding this effective date. We simplify the effective date to be October 27, 2020.

VI. Regulatory Process Matters

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), see 5 U.S.C. 605(b) as amended by the Small Business Regulatory Enforcement Fairness Act, requires federal agencies to determine, to the extent feasible, a rule's impact on small entities, explore regulatory options for reducing any significant impact on a substantial number of such entities, and explain their regulatory approach. The term ''small entities,'' as defined in the RFA, 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. Under this definition, some Head Start grantees may be small entities. We consider a rule to have a significant impact on a substantial number of small entities if it has at least a three percent impact on revenue on at least five percent of small entities. However, the Secretary certifies, under 5 U.S.C. 605(b), as enacted by the Regulatory Flexibility Act (Pub. L. 96–354), that this rule will not have a significant impact on a substantial number of small entities. We expect there to be fewer grantees in competition due to the changes in this final rule and we also do not expect increased costs for grantees to meet the revised conditions; therefore, we do not expect there to be a significant impact on a substantial number of small entities.

In the proposed rule, we requested comments on whether any member of the public believed their business, organization, or governmental jurisdiction qualifies as a small entity and that the actions proposed in the notice of proposed rulemaking would have a significant economic impact on it. We did not receive any comments from the public on this issue.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (UMRA), see 2 U.S.C. 1501 *et seq.,* was enacted to avoid imposing unfunded federal mandates on state, local, and tribal governments, or on the private sector. Section 202 of UMRA requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any one year of $100 million in 1995 dollars, updated annually for inflation. In 2019, that threshold is approximately $154 million. This rule does not contain mandates that will impose spending costs on state, local, or tribal governments in the aggregate, or on the private sector, in excess of the threshold.

Treasury and General Government Appropriations Act of 1999

Section 654 of the Treasury and General Government Appropriations Act of 1999 requires federal agencies to determine whether a policy or regulation may negatively affect family well-being. If the agency determines a policy or regulation negatively affects family well-being, then the agency must prepare an impact assessment addressing seven criteria specified in the law. We believe it is not necessary to prepare a family policymaking assessment, see Public Law 105–277, because the action we take in this final rule will not have any impact on the autonomy or integrity of the family as an institution. In the proposed rule, we requested public comment on whether this action would have a negative effect on family well-being, and we did not receive any comments on this issue.

Federalism Assessment Executive Order 13132

Executive Order 13132 requires federal agencies to consult with state and local government officials if they develop regulatory policies with federalism implications. Federalism is rooted in the belief that issues that are not national in scope or significance are most appropriately addressed by the level of government close to the people. This rule will not have substantial direct impact on the states, on the relationship between the federal government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this action does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Congressional Review

The Congressional Review Act (CRA) allows Congress to review ''major'' rules issued by federal agencies before the rules take effect, see 5 U.S.C. 802(a). The CRA defines a major rule as one that has resulted or is likely to result in (1) an annual effect on the economy of $100 million 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, or innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets, see 5 U.S.C. Chapter 8. The Office of Information and Regulatory Affairs has designated this rule as major.

Paperwork Reduction Act of 1995

The Paperwork Reduction Act of 1995, Public Law 104–13, minimizes government-imposed burden on the public. In keeping with the notion that government information is a valuable asset, it also is intended to improve the practical utility, quality, and clarity of information collected, maintained, and disclosed.

The Paperwork Reduction Act defines ''information'' as any statement or estimate of fact or opinion, regardless of form or format, whether numerical, graphic, or narrative form, and whether oral or maintained on paper, electronic, or other media (5 CFR 1320.3(h)). This includes requests for information to be sent to the government, such as forms, written reports and surveys, recordkeeping requirements, and third-party or public disclosures (5 CFR 1320.3(c)). This final rule changes the burden of an existing information collection currently approved with Office of Management and Budget Control Number 0970–0148 under the Paperwork Reduction Act. This information collection is entitled the Head Start Program Performance Standards and does not contain any standardized instruments to promote flexibility for local programs.

Although no comments were received in response to the Paperwork Reduction Act section of the proposed rule, comments were received on other changes that were incorporated into the final rule. The changes to the burden table reflect those of the final rule.

Requirement	Annual number of respondents	Average annual burden per respondent (hours)	Total annual burden hours
§ 1304.13: Agencies required to compete will have to complete an application for each grant competed.	75 Grants	60	4,500
§ 1304.15(a): Each Head Start or Early Head Start agency wishing to be renewed for 5 years without competition shall request that status from ACF.	400 Grants	0.25	100

Description of Information Collection and Associated Burden

When a Head Start grant meets any of the conditions outlined in § 1304.11, the grantee is designated for competition and must submit an application during competition to be considered for continued funding as required under § 1304.13. The burden to submit an application is estimated at 60 hours for an estimated 75 grants each year. These projections are based on data available on CLASS, deficiencies, and audits from prior years.

Head Start grantees are required by § 1304.15(a) to submit a letter requesting renewal for a new non-competitive continuation grant, and the estimated burden to submit a letter is 15 minutes for 400 grants. The non-competitive renewal request consists of filling in a template letter and sending it through the OHS system, so the burden is small. This calculation assumes in any given year, about one-fifth of all 2,000 grants, or 400 grants, are nearing the end of their current project period and, therefore, a designation under the Designation Renewal System will be made for these grants.

Regulatory Planning and Review Executive Order 12866, Executive Order 13563, and Executive Order 13771

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 is supplemental to and reaffirms the principles, structures, and definitions governing regulatory review as established in Executive Order 12866, emphasizing the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action that is likely to result in a rule: (1) Having an annual effect on the economy of $100 million or more in any 1 year, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities (also referred to as ''economically significant''); (2) creating a serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. A regulatory impact analysis must be prepared for major rules with economically significant effects ($100 million or more in any 1 year), and an ''economically significant'' regulatory action is subject to review by the Office of Management and Budget.

Executive Order 13771, entitled ''Reducing Regulation and Controlling Regulatory Costs,'' was issued on January 30, 2017 (82 FR 9339, February 3, 2017) and requires that the costs associated with significant new regulations ''shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least two prior regulations.'' This rulemaking is not expected to be subject to the requirements of Executive Order 13771 because it would result in no more than *de minimis* costs.

VII. Regulatory Impact Analysis

Estimated Impact of Designation Renewal System Changes on the Public

This regulatory action is necessary to improve a governmental process: The process to identify grantees that are lower performing in the important dimensions of quality that Congress requires we consider under the Designation Renewal System. As a result of public comment, we consider revisions to the conditions in the Designation Renewal System from those proposed in the NPRM in this regulatory impact analysis.

We revise the prior deficiency, CLASS, and fiscal condition of the Designation Renewal System in this new rule. We estimate that about 20% of grants meet the deficiency condition under the prior rule which will decrease to 7% in this new rule, about 13% of grants meet the CLASS condition under the prior rule which will decrease to 9% in this new rule, and nearly no grants meet the fiscal condition under the prior rule which will increase to 6% in this new rule. There are a few grants that meet multiple conditions, but altogether, we estimate that roughly one-third of grants are required to compete in the prior rule and this will decrease to about one-fifth of grants.

With grants potentially affected by this rule totaling $10.4 billion per year, then this estimated net decrease in the portion of grant activity subject to competition would translate to $1.35 billion. Historically, 71 percent of re-competing grantees have received their full service area back and an additional 7 percent have received part of their service area back, so we estimate that the effect of this rule is to reallocate approximately $297 to $392 million (= 22% × $1.35 billion to 29% × $1.35 billion) from new potential grantees to existing grantees, with this amount being reached in the fifth year after rule finalization after a roughly linear increase in the preceding years. However, this rule raises the competitive threshold for the Instructional Support domain from 2.3 to 2.5 for CLASS reviews conducted on or after August 1, 2025. This approach intends to allow grantees to make necessary quality improvements and gradually move to higher quality; the establishment of the quality threshold aligns and supports this approach. The estimates provided above will be impacted by any changes to the distribution of CLASS scores, especially in the Instructional Support domain. Although the following is not expected, if scores in the Instructional Support domain do not increase by the time the 2.5 threshold goes into effect, then there would be an estimated increase of competition ranging between 4 to 6%

resulting in a lower reallocation of funds from the prior rule than projected above. This range of estimates may understate the rule's transfer impact because it reflects only the estimated net decrease in competition, rather than the mix of some regulatory provisions increasing competition and some reducing it. The possibility of the rule changing the 71 to 78 percent success rate of re-competing grantees introduces further uncertainty into the estimates.

The quantifiable costs of implementation of these rules for the subset of grantees that would be required to compete in any year is well under $1 million. The cost grantees designated for competition will bear in completing a competitive application is estimated at $3,097 per grantee. It assumes 60 hours per application at a cost of $51.62 per hour in staff time (we multiply the $25.81 hourly wage by two to account for fringe benefits). Applications would likely be completed by a combination of the Head Start Assistant Director and other managers in the program (*i.e.,* Child Development Manager or Family and Community Partnership Manager). The average hourly wage for these positions is based on the U.S. Bureau of Labor Statistics Job Code 11–9031. The total estimated cost for grantees to complete competitive applications would be $247,760 per year (400 grantees would compete across five years which is an average of 80 grantees per year at $3,097 each). This cost of competition decreases in this new rule since fewer grantees would be required to compete.

A non-quantified opportunity cost for this new rule is fewer opportunities for entities that are not existing Head Start grantees to be able to compete and potentially grow as an early childhood provider in their community. However, we believe there is an added benefit of existing grantees being able to focus on the cost of quality improvement rather than the cost of competition, especially considering there were several competitions where the incumbent agency was the only applicant.

Although not possible to quantify, this new rule has the added benefit of removing the stress caused by the lowest 10 percent criterion of the CLASS condition. Grantees will no longer have to wait several months to learn if they are designated for competition due to this moving target. Additionally, changes to the deficiency condition in this new rule will have the added benefit of reducing the fear expressed by grantees that one mishap of an individual could require their entire program to compete.

This new rule establishes quality thresholds for the CLASS domain and grantees that fall below them are designated for quality improvement. For any grantee with a score below a quality threshold, OHS will provide support for quality improvement and help ensure the grantee's coordinated approach to training and professional development is supporting improvements in the learning environment. The overall Head Start budget includes about $250 million for training and technical assistance, of which about half goes directly to grantees. A number of grantees already spend some portion of their Head Start technical assistance dollars on activities related to CLASS; in addition, we make available several materials related to supporting positive teacher-child interactions to grantees on the Early Childhood Learning and Knowledge Center website.

The cost of quality improvement activities in CLASS leverages these existing resources. The key difference is that OHS and grantees will shift these existing resources to focus on particular domains of CLASS needing improvement for each grantee. Although there is a cost to fewer resources going to domains where a grantee already excels while other resources go to domains needing improvement, the added benefit of this cost is more data-driven and effective use of existing resources.

Although there is an overall estimated decrease of competition, we estimate more grantees will compete due to the fiscal condition, which will result in an additional cost for those subset of grantees. An anticipated benefit of this cost is competing grantees before known fiscal challenges escalate to a crisis point, which could prevent potential termination or relinquishment of the grant. A disruption in services to children and families may occur if a Head Start grantee is terminated or relinquishes the grant but OHS will take all actions necessary to attempt to prevent a disruption in services.

Tribal Consultation Statement

OHS conducts an average of five Tribal Consultations each year for those tribes operating Head Start and Early Head Start. The consultations are held in four geographic areas across the country: Southwest, Northwest, Midwest (Northern and Southern), and Eastern. The consultations are often held in conjunction with other tribal meetings or conferences, to ensure the opportunity for most of the 150 tribes that operate Head Start and Early Head Start programs are be able to attend and voice their concerns about issues regarding service delivery. We complete a report after each consultation, and then we compile a final report that summarizes the consultations and submit the report to the Secretary at the end of the year.

We received comments from tribes on the NPRM. Most of the comments focused on the CLASS condition, Head Start's tribal consultation process, and suggestions for special considerations during the audit process. We considered those comments, responded to them, and used them to develop this final rule.

List of Subjects

45 CFR Part 1304

Audit, Classroom Assessment Scoring System (CLASS), Competition, Designation Renewal System, Education of disadvantaged, Fiscal, Grant programs, Head Start, Monitoring, Social programs.

45 CFR Part 1305

Administrative practice and procedure.

Dated: August 10, 2020.

Lynn A. Johnson,

Assistant Secretary for Children and Families.

Approved: August 10, 2020.

Alex M. Azar, II,

Secretary.

For the reasons discussed in the preamble, we amend 45 CFR parts 1304 and 1305, as follows:

PART 1304—FEDERAL ADMINISTRATIVE PROCEDURES

■ 1. The authority citation for part 1304 continues to read as:

Authority: 42 U.S.C. 9801 *et seq.*

■ 2. Revise § 1304.11 to read as follows:

§ 1304.11 Basis for determining whether a Head Start agency will be subject to an open competition.

A Head Start or Early Head Start agency will be required to compete for its next five years of funding whenever the responsible HHS official determines that one or more of the following seven conditions existed during the relevant time period under § 1304.15:

(a) An agency has two or more deficiencies across reviews conducted under section 641A(c)(1)(A), (C), or (D) of the Act during the relevant time period under § 1304.15.

(b) An agency has not, based on a review conducted under section 641A(c)(1)(A), (C), or (D) of the Act during the relevant time period under § 1304.15:

(1) Established program goals for improving the school readiness of

children participating in its program in accordance with the requirements of section 641A(g)(2) of the Act and demonstrated that such goals:

(i) Appropriately reflect the ages of children, birth to five, participating in the program;

(ii) Align with the Head Start Early Learning Outcomes Framework: Ages Birth to Five, state early learning guidelines, and the requirements and expectations of the schools, to the extent that they apply to the ages of children, birth to five, participating in the program and at a minimum address the domains of language and literacy development, cognition and general knowledge, approaches toward learning, physical well-being and motor development, and social and emotional development;

(iii) Were established in consultation with the parents of children participating in the program.

(2) Taken steps to achieve the school readiness goals described under paragraph (b)(1) of this section demonstrated by:

(i) Aggregating and analyzing aggregate child-level assessment data at least three times per year (except for programs operating less than 90 days, which will be required to do so at least twice within their operating program period) and using that data in combination with other program data to determine grantees' progress toward meeting its goals, to inform parents and the community of results, and to direct continuous improvement related to curriculum, instruction, professional development, program design and other program decisions; and

(ii) Analyzing individual ongoing, child-level assessment data for all children birth to age five participating in the program and using that data in combination with input from parents and families to determine each child's status and progress with regard to, at a minimum, language and literacy development, cognition and general knowledge, approaches toward learning, physical well-being and motor development, and social and emotional development, and to individualize the experiences, instructional strategies, and services to best support each child.

(c) An agency has been determined during the relevant time period covered by the responsible HHS official's review under § 1304.15:

(1) To have an average score across all classrooms observed that is below the following competitive thresholds on any of the three CLASS: Pre-K domains from the most recent CLASS: Pre-K observation:

(i) For the Emotional Support domain, the competitive threshold is 5;

(ii) For the Classroom Organization domain, the competitive threshold is 5;

(iii) For the Instructional Support domain, the competitive threshold is 2.3 through July 31, 2025, and 2.5 on and after August 1, 2025.

(2) If an agency is determined to have an average score across all classrooms observed below the quality threshold on any of the three CLASS: Pre-K domains, the Office of Head Start will support the program to strengthen its coordinated approach to training and professional development as required in § 1302.92(b) and (c), to help promote improvement in teaching practices and teacher-child interactions. The quality threshold for each domain is as follows:

(i) For the Emotional Support domain, the quality threshold is 6;

(ii) For the Classroom Organization domain, the quality threshold is 6;

(iii) For the Instructional Support domain, the quality threshold is 3.

(d) An agency has had a revocation of its license to operate a Head Start or Early Head Start center or program by a state or local licensing agency during the relevant time period under § 1304.15, and the revocation has not been overturned or withdrawn before a competition for funding for the next five-year period is announced. A pending challenge to the license revocation or restoration of the license after correction of the violation will not affect application of this requirement after the competition for funding for the next five-year period has been announced.

(e) An agency has been suspended from the Head Start or Early Head Start program by ACF during the relevant time period covered by the responsible HHS official's review under § 1304.15 and the suspension has not been overturned or withdrawn. If the agency did not have an opportunity to show cause as to why the suspension should not have been imposed or why the suspension should have been lifted if it had already been imposed under part 1304, the agency will not be required to compete based on this condition. If an agency has received an opportunity to show cause and the suspension remains in place, the condition will be implemented.

(f) An agency has been debarred from receiving federal or state funds from any federal or state department or agency or has been disqualified from the Child and Adult Care Food Program (CACFP) any time during the relevant time period covered by the responsible HHS official's review under § 1304.15 but has not yet been terminated or denied refunding by ACF. (A debarred agency will only be eligible to compete for Head Start funding if it receives a waiver described in 2 CFR 180.135.)

(g) An agency meets one of two fiscal criteria, if the agency:

(1) Is at risk of failing to continue functioning as a going concern within the current project period. The final determination is made by the responsible HHS official based on a review of the findings and opinions of an audit conducted in accordance with section 647 of the Act; an audit, review or investigation by a state agency; a review by the National External Audit Review (NEAR) Center; or an audit, investigation or inspection by the Department of Health and Human Services Office of Inspector General; or

(2) Has a total of two or more audit findings of material weakness or questioned costs associated with its Head Start funds in audit reports submitted to the Federal Audit Clearinghouse (in accordance with section 647 of the Act) for a financial period within the current project period.

■ 3. Revise § 1304.12 to read as follows:

§ 1304.12 Grantee reporting requirements concerning certain conditions.

A Head Start agency must report in writing to the responsible HHS official within 10 working days of occurrence of any of the following events:

(a) The agency has had a revocation of a license to operate a center by a state or local licensing entity.

(b) The agency has filed for bankruptcy or agreed to a reorganization plan as part of a bankruptcy settlement.

(c) The agency has been debarred from receiving federal or state funds from any federal or state department or agency or has been disqualified from the Child and Adult Care Food Program (CACFP).

(d) The agency has received an audit, audit review, investigation or inspection report from the agency's auditor, a state agency, or the cognizant federal audit agency containing a determination that the agency is at risk of ceasing to be a going concern.

■ 4. Revise § 1304.15 to read as follows:

§ 1304.15 Designation request, review and notification process.

(a) A grantee must apply to be considered for Designation Renewal. A Head Start or Early Head Start agency wishing to be considered to have its designation as a Head Start or Early Head Start agency renewed for another five year period without competition must request that status from ACF at least 12 months before the end of their

five year grant period or by such time as required by the Secretary.

(b) ACF will review the relevant data to determine if one or more of the conditions under § 1304.11 were met by the Head Start and Early Head Start agency during the current project period.

(c) ACF will give notice to grantees on Designation Renewal System status, except as provided in § 1304.14, at least 12 months before the expiration date of a Head Start or Early Head Start agency's current grant, stating:

(1) The Head Start or Early Head Start agency will be required to compete for funding for an additional five-year period because ACF finds that one or more conditions under § 1304.11 were met by the agency's program during the relevant time period described in paragraph (b) of this section, identifying the conditions ACF found, and summarizing the basis for the finding; or

(2) That such agency has been determined on a preliminary basis to be eligible for renewed funding for five years without competition because ACF finds that none of the conditions under § 1304.11 have been met during the relevant time period described in paragraph (b) of this section. If prior to the award of that grant, ACF determines that the grantee has met one of the conditions under § 1304.11 during the relevant time period described in paragraph (b) of this section, this determination will change and the grantee will receive notice under paragraph (c)(1) of this section that it will be required to compete for funding for an additional five-year period.

PART 1305—DEFINITIONS

■ 5. The authority citation for part 1305 continues to read as follows:

Authority: 42 U.S.C. 9801 *et seq.*

■ 6. Amend § 1305.2 by adding, in alphabetical order, the definition ''Denial of Refunding'' to read as follows:

§ 1305.2 Terms.

* * * * *

Denial of Refunding means the refusal of a funding agency to fund an application for a continuation of a Head Start program for a subsequent program year when the decision is based on a determination that the grantee has improperly conducted its program, or is incapable of doing so properly in the future, or otherwise is in violation of applicable law, regulations, or other policies.

* * * * *

[FR Doc. 2020–17746 Filed 8–27–20; 8:45 am]

BILLING CODE 4184–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 96

[AU Docket No. 20–25; FCC 20–110]

Auction of Flexible-Use Service Licenses in the 3.7–3.98 GHz Band for Next-Generation Wireless Services; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 107

AGENCY: Federal Communications Commission.

ACTION: Final action; requirements and procedures.

SUMMARY: This document summarizes the procedures and deadlines for the upcoming auction of 3.7 GHz Service Licenses in the 3.7–3.98 GHz Band. The *Auction 107 Procedures Public Notice* summarized here is intended to familiarize applicants with the procedures and other requirements governing participation in Auction 107 by providing details regarding the procedures, terms, conditions, dates, and deadlines, as well as an overview of the post-auction application and payment processes.

DATES: Applications to participate in Auction 107 must be submitted prior to 6 p.m. ET on September 22, 2020. Upfront payments for Auction 107 must be received by 6 p.m. ET on November 2, 2020. Bidding in Auction 107 is scheduled to begin on December 8, 2020.

FOR FURTHER INFORMATION CONTACT: For auction legal questions, Erik Beith or Daniel Habif in the Auctions Division of the Office of Economics and Analytics at (202) 418–0660. For general auction questions, the Auctions Hotline at (717) 338–2868. For 3.7 GHz Service questions, Anna Gentry in the Mobility Division of the Wireless Telecommunications Bureau at (202) 418–1991.

SUPPLEMENTARY INFORMATION: This is a summary of the *Auction 107 Procedures Public Notice,* AU Docket No. 20–25, FCC 20–110, adopted on August 6, 2020, and released on August 7, 2020. The complete text of the public notice, including attachments and any related documents, is available for public inspection and copying from 8 a.m. to 4:30 p.m. ET Monday through Thursday or from 8:00 a.m. to 11:30 a.m. ET on Fridays in the FCC Reference Information Center, located in Room CY–A257, of the FCC Headquarters, 445 12th Street SW, Washington, DC 20554, except when Commission Headquarters is otherwise closed to visitors. *See Public Notice, Restrictions on Visitors to FCC Facilities,* March 12, 2020. The complete text of the *Auction 107 Procedures Public Notice* is also available on the Commission's website at *www.fcc.gov/auction/107.* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *FCC504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

I. General Information

A. Introduction

1. With the *Auction 107 Procedures Public Notice,* the Commission established the procedures to be used for Auction 107, the auction of new flexible-use overlay licenses in the 3.7–3.98 GHz band (the 3.7 GHz Service).

2. The bidding for new licenses in Auction 107 is scheduled to commence on December 8, 2020. The *Auction 107 Procedures Public Notice* provides details regarding the procedures, terms, conditions, dates, and deadlines governing participation in Auction 107 bidding, as well as an overview of the post-auction application and payment processes.

B. Background and Relevant Authority

3. In the *3.7 GHz Report and Order,* 85 FR 31705, May 27, 2020, the Commission made available 280 megahertz of spectrum in the 3.7–3.98 GHz band for licensed use. In that Order, the Commission proposed to modify the licenses and market access authorizations of incumbent Fixed Satellite Service (FSS) operators, transmit receive earth station licensees, and Fixed Service (FS) licensees to clear the 3.7–4.0 GHz band for new flexible-use terrestrial operations in the contiguous United States. Among other things, the Commission authorized both fixed and mobile operations in the 3.7–3.98 GHz band using geographic area licensing, established licensing and operating rules for the new 3.7 GHz Service, and decided to use its competitive bidding rules to assign 3.7 GHz Service licenses.

4. On March 3, 2020, in accordance with section 309(j)(3) of the Communications Act of 1934, as amended, the Commission released the *Auction 107 Comment Public Notice,* 85 FR 23287, April 27, 2020, seeking comment on certain competitive bidding procedures and various other procedures to be used in Auction 107. The Commission received comments from seven parties in response to the

Auction 107 Comment Public Notice, including five reply comments. These comments are available under proceeding 20–25 in the Commission's Electronic Comment Filing System (ECFS). The ECFS home page is publicly accessible at: *www.fcc.gov/ecfs.* In the *Auction 107 Procedures Public Notice,* the Commission resolved all open issues raised in the *Auction 107 Comment Public Notice* and addressed the comments received.

5. Prospective applicants should familiarize themselves with the Commission's rules regarding the 3.7 GHz Service. In addition, prospective applicants should be thoroughly familiar with the procedures, terms, and conditions contained in the *Auction 107 Procedures Public Notice* and any future public notices that may be released in proceeding 20–25.

6. The terms contained in the Commission's rules, relevant orders, and public notices are not negotiable. The Commission may amend or supplement the information contained in its public notices at any time and will issue public notices to convey any new or supplemental generally applicable information to applicants. In addition, the Wireless Telecommunications Bureau (WTB) and the Office of Economics and Analytics (OEA) retain the authority to establish further procedures during the course of the auction. It is the responsibility of all applicants to remain current with all Commission rules and with all public notices pertaining to Auction 107. Copies of most auctions-related Commission documents, including public notices, can be retrieved from the Commission's FCC Auctions internet site at *www.fcc.gov/auctions.* Additionally, documents are available at the Commission's headquarters during normal business hours when the building is open to the public.

C. Description of Licenses To Be Offered in Auction 107

7. Auction 107 will offer 5,684 new flexible-use overlay licenses for spectrum in the 3.7–3.98 GHz band throughout the contiguous United States subject to clearing requirements. The 280 megahertz of spectrum available in Auction 107 will be licensed on an unpaired basis in three blocks divided into 20-megahertz sub-blocks by partial economic area (PEA) in the contiguous states and the District of Columbia (PEAs 1–41, 43–211, 213–263, 265–297, 299–359, and 361–411). Flexible-use overlay licenses will not be issued for Honolulu, Anchorage, Kodiak, Fairbanks, Juneau, Puerto Rico, Guam-Northern Mariana Islands, U.S. Virgin Islands, American Samoa, and the Gulf of Mexico (PEAs 42, 212, 264, 298, 360, 412–416). Specifically, the A Block will cover 100 megahertz from 3.7–3.8 GHz in five 20-megahertz sub-blocks: 3700–3720 MHz (A1), 3720–3740 MHz (A2), 3740–3760 MHz (A3), 3760–3780 MHz (A4), and 3780–3800 MHz (A5). The B Block will cover 100 megahertz from 3.8–3.9 GHz in five 20-megahertz sub-blocks: 3800–3820 MHz (B1), 3820–3840 MHz (B2), 3840–3860 MHz (B3), 3860–3880 MHz (B4), and 3880–3900 MHz (B5). The C Block will cover 80 megahertz from 3.9–3.98 GHz, and four 20-megahertz sub-blocks will be licensed for flexible use: 3900–3920 MHz (C1), 3920–3940 MHz (C2), 3940–3960 MHz (C3), and 3960–3980 MHz (C4). The 20 megahertz at 3980–4000 MHz will be a guard band and not available for auction. 3.7 GHz Service licenses will be issued for 15-year, renewable license terms. Licenses in the 46 PEAs may be issued as paired interim and final licenses, which taken together, provide authorization for a block over the full 15-year license term. A licensee in the 3.7–3.98 GHz band may provide any services permitted under terrestrial fixed or mobile allocations, as set forth in the non-Federal Government column of the Table of Frequency Allocations in section 2.106 of the Commission's rules. A summary of the licenses offered in Auction 107 is available in Attachment A to the *Auction 107 Procedures Public Notice,* which is available on the Auction 107 website at *www.fcc.gov/auction/107.*

8. Incumbent satellite operators have, in aggregate, made sufficient commitments to clear the 3.7–4.0 GHz band on the accelerated timeline described in the *3.7 GHz Report and Order.* As a result, licenses in the A Block in 46 of the top 50 PEAs—PEAs 1–4, 6–10, 12–19, 21–41, and 43–50—will be subject to the Phase I accelerated relocation deadline, and licenses in the B and C Blocks in the 46 PEAs and in the A, B, and C Blocks in the remaining 360 PEAs will be subject to the Phase II accelerated relocation deadline.

D. Auction Specifics

1. Auction Title and Start Date

9. The auction of licenses in the 3.7–3.98 GHz band will be referred to as ''Auction 107.'' Bidding in Auction 107 will begin on Tuesday, December 8, 2020. The initial schedule for bidding rounds in Auction 107 will be announced by public notice at least one week before bidding begins.

10. Unless otherwise announced, bidding on all licenses will be conducted on each business day until bidding has stopped on all licenses.

2. Auction Dates and Deadlines

11. The following dates and deadlines apply to Auction 107: Auction Application Tutorial Available (via internet). No later than August 21, 2020.
Short-Form Application (FCC Form 175) Filing Window Opens—September 9, 2020, 12:00 p.m. Eastern Time (ET)
Short-Form Application (FCC Form 175) Filing Window Deadline—September 22, 2020, 6:00 p.m. ET
Upfront Payments (via wire transfer)—June 19, 2020, 6:00 p.m. ET
Bidding Tutorial Available (via internet)—No later than July 9, 2020
Mock Auction—December 3, 2020
Bidding Begins in Auction 107—December 8, 2020

3. Requirements for Participation

12. Those wishing to participate in Auction 107 must: Submit a short-form application (FCC Form 175) electronically prior to 6:00 p.m. ET on September 22, 2020, following the electronic filing procedures set forth in the FCC Form 175 Instructions (available in the Education section of the Auction 107 website at *www.fcc.gov/auctions/107*); submit a sufficient upfront payment and an FCC Remittance Advice Form (FCC Form 159) by 6:00 p.m. ET on November 2, 2020, following the procedures and instructions set forth in the FCC Form 159 Instructions; and comply with all provisions outlined in the *Auction 107 Procedures Public Notice* and applicable Commission rules.

II. Applying To Participate in Auction 107

A. General Information Regarding Short-Form Applications

13. An application to participate in Auction 107, referred to as a short-form application or FCC Form 175, provides information that the Commission uses to determine whether the applicant has the legal, technical, and financial qualifications to participate in a Commission auction for spectrum licenses. The short-form application is the first part of the Commission's two-phased auction application process. In the first phase, a party seeking to participate in Auction 107 must file a short-form application in which it certifies, under penalty of perjury, that it is qualified to participate. Eligibility to participate in Auction 107 is based on an applicant's short-form application and certifications and on the applicant's submission of a sufficient upfront

payment for the auction. After bidding closes, in the second phase of the process, each winning bidder must file a more comprehensive post-auction, long-form application (FCC Form 601) for the licenses it wins in the auction, and it must have a complete and accurate ownership disclosure information report (FCC Form 602) on file with the Commission. Being deemed qualified to bid in Auction 107 does not constitute a determination that a party is qualified to hold a Commission license or is eligible for a designated entity bidding credit.

14. A party seeking to participate in Auction 107 must file an FCC Form 175 electronically via the Auction Application System prior to 6:00 p.m. ET on September 22, 2020, following the procedures prescribed in the FCC Form 175 Instructions. If an applicant claims eligibility for a bidding credit, then the information provided in its FCC Form 175 as of the filing date will be used to determine whether the applicant may request the claimed bidding credit. An applicant that files an FCC Form 175 for Auction 107 will be subject to the Commission's rule prohibiting certain communications. An applicant is subject to the prohibition beginning at the deadline for filing short-form applications—6:00 p.m. ET on September 22, 2020. The prohibition will end for applicants on the post-auction down payment deadline for Auction 107.

15. An applicant bears full responsibility for submitting an accurate, complete, and timely short-form application. Each applicant must make a series of certifications under penalty of perjury on its FCC Form 175 related to the information provided in its application and its participation in the auction, and it must confirm that it is legally, technically, financially, and otherwise qualified to hold a license. If an Auction 107 applicant fails to make the required certifications in its FCC Form 175 by the filing deadline, then its application will be deemed unacceptable for filing and cannot be corrected after the filing deadline.

16. An applicant should note that submitting an FCC Form 175 (and any amendments thereto) constitutes a representation by the certifying official that he or she is an authorized representative of the applicant with authority to bind the applicant, that he or she has read the form's instructions and certifications, and that the contents of the application, its certifications, and any attachments are true and correct. Submitting a false certification to the Commission may result in penalties, including monetary forfeitures, license forfeitures, ineligibility to participate in future auctions, and/or criminal prosecution.

17. Applicants are cautioned that, because the required information submitted in FCC Form 175 bears on each applicant's qualifications, requests for confidential treatment will not be routinely granted. The Commission generally has held that it may publicly release confidential business information where the party has put that information at issue in a Commission proceeding or where the Commission has identified a compelling public interest in disclosing the information. In this regard, the Commission specifically has held that information submitted in support of receiving bidding credits in auction proceedings should be made available to the public.

18. An applicant must designate at least one individual as an authorized bidder, and no more than three, in its FCC Form 175. The Commission's rules prohibit an individual from serving as an authorized bidder for more than one auction applicant.

19. No individual or entity may file more than one short-form application or have a controlling interest in more than one short-form application. If a party submits multiple short-form applications for an auction, then only one application may form the basis for that party to become qualified to bid in that auction.

20. Similarly, and consistent with the Commission's general prohibition on joint bidding agreements, a party is generally permitted to participate in a Commission auction only through a single bidding entity. Accordingly, the filing of applications in Auction 107 by multiple entities controlled by the same individual or set of individuals generally will not be permitted. This restriction applies across all applications, without regard to the geographic areas selected. There is a limited exception to the general prohibition on the filing of multiple applications by commonly controlled entities for qualified rural wireless partnerships and individual members of such partnerships. Under this limited exception, each qualifying rural wireless partnership and its individual members will be permitted to participate separately in an auction.

21. After the initial short-form application filing deadline, Commission staff will review all timely submitted applications for Auction 107 to determine whether each application complies with the application requirements and whether the applicant has provided all required information concerning the applicant's qualifications for bidding. After this review is completed, a public notice will be released announcing the status of applications and identifying the applications that are complete and those that are incomplete because of minor defects that may be corrected. The public notice will include the deadline for resubmitting modified applications. To become a qualified bidder, an applicant must have a complete application (*i.e.,* have timely filed an application that is deemed complete after the deadline for correcting any identified deficiencies), and must make a timely and sufficient upfront payment. Qualified bidders will be identified by public notice at least 10 days prior to the mock auction.

22. An applicant should consult the Commission's rules to ensure that all required information is included in its short-form application. To the extent the information in the *Auction 107 Procedures Public Notice* does not address a potential applicant's specific operating structure, or if the applicant needs additional information or guidance concerning the described disclosure requirements, the applicant should review the educational materials for Auction 107 (see the Education section of the Auction 107 website at *www.fcc.gov/auction/107*) and/or use the contact information provided to consult with Commission staff to better understand the information it must submit in its short-form application.

B. License Area Selection

23. An applicant must select all the license areas on which it may want to bid from the list of available PEAs on its FCC Form 175. An applicant must carefully review and verify its PEA selections before the FCC Form 175 filing deadline because those selections cannot be changed after the auction application filing deadline. An applicant is not required to place bids on any or all of the license areas selected, but the FCC Auction Bidding System (bidding system) will not accept bids for blocks located in PEAs that the applicant did not select in its FCC Form 175. The auction application system, however, will provide an applicant the option to select ''all PEAs.''

C. Disclosure of Agreements and Bidding Arrangements

24. An applicant must provide in its FCC Form 175 a brief description of, and identify each party to, any partnerships, joint ventures, consortia or agreements, arrangements, or understandings of any kind relating to the licenses being auctioned, including any agreements that address or

communicate directly or indirectly bids (including specific prices), bidding strategies (including the specific licenses on which to bid or not to bid), or the post-auction market structure, to which the applicant, or any party that controls or is controlled by the applicant, is a party. A controlling interest includes all individuals or entities with positive or negative *de jure* or *de facto* control of the applicant. In connection with the agreement disclosure, the applicant must certify under penalty of perjury in its FCC Form 175 that it has described, and identified each party to, any such agreements, arrangements, or understandings to which it (or any party that controls it or that it controls) is a party. If, after the FCC Form 175 filing deadline, an auction applicant enters into any agreement relating to the licenses being auctioned, then it is subject to these same disclosure obligations. All applicants must maintain the accuracy and completeness of the information in their pending auction application.

25. For purposes of making the required agreement disclosures on the FCC Form 175, if parties agree in principle on all material terms prior to the application filing deadline, then each party to the agreement that is submitting an auction application must provide a brief description of, and identify the other party or parties to, the agreement on its respective FCC Form 175, even if the agreement has not been reduced to writing. Parties that have not agreed in principle by the FCC Form 175 filing deadline should not describe, or include the names of parties to, the discussions on their applications.

26. The Commission's rules generally prohibit joint bidding and other arrangements involving auction applicants (including any party that controls or is controlled by such applicants). For purposes of the prohibition, a joint bidding arrangement includes any arrangement relating to the licenses being auctioned that addresses or communicates, directly or indirectly, bidding at the auction, bidding strategies, including arrangements regarding price or the specific licenses on which to bid, and any such arrangement relating to the post-auction market structure.

27. This prohibition applies to joint bidding arrangements involving two or more nationwide providers, as well as joint bidding arrangements involving a nationwide provider and one or more non-nationwide providers, where at least one party to the arrangement is an applicant for the auction. A ''non-nationwide provider'' refers to any provider of communications services that is not a nationwide provider. The Commission considers AT&T, T-Mobile, and Verizon to be nationwide providers for the purpose of implementing the Commission's competitive bidding rules in Auction 107.

28. Under certain circumstances, a non-nationwide provider may enter into an agreement to form a consortium or a joint venture (as applicable) that results in a single party applying to participate in an auction. A designated entity can participate in one consortium or joint venture in an auction, and non-nationwide providers that are not designated entities may participate in an auction through only one joint venture. A non-nationwide provider may enter into only one agreement to form a consortium or joint venture (as applicable), and such consortium or joint venture shall be the exclusive bidding vehicle for its members in the auction. The general prohibition on joint bidding arrangements excludes certain agreements, including those that are solely operational in nature. Under the Commission's rules, agreements that are solely operational in nature are those that address operational aspects of providing a mobile service, such as agreements for roaming, device acquisition, and spectrum leasing and other spectrum use arrangements, provided that any such agreement does not both relate to the licenses at auction and address or communicate, directly or indirectly, bidding at auction (including specific prices to be bid) or bidding strategies (including the specific licenses on which to bid or not to bid) or post-auction market structure.

29. The Commission's rules require each applicant to certify in its short-form application that it has disclosed any arrangements or understandings of any kind relating to the licenses being auctioned to which it (or any party that controls or is controlled by it) is a party. The applicant must also certify that it (or any party that controls or is controlled by it) has not entered and will not enter into any arrangement or understanding of any kind relating directly or indirectly to bidding at auction with, among others, any other applicant or a nationwide provider.

30. Although the Commission's rules do not prohibit auction applicants from communicating about matters that are within the scope of an excepted agreement that has been disclosed in an FCC Form 175, certain discussions or exchanges could nonetheless touch upon impermissible subject matters, and compliance with the Commission's rules will not insulate a party from enforcement of the antitrust laws.

31. A winning bidder will be required to disclose in its FCC Form 601 post-auction application the specific terms, conditions, and parties involved in any agreement relating to the licenses being auctioned into which it had entered prior to the time bidding was completed. This applies to any bidding consortium, joint venture, partnership, or other agreement, arrangement, or understanding of any kind entered into relating to the competitive bidding process, including any agreements relating to the licenses being auctioned that address or communicate directly or indirectly bids (including specific prices), bidding strategies (including the specific licenses on which to bid or not to bid), or the post-auction market structure, to which the applicant, or any party that controls or is controlled by the applicant, is a party.

D. Ownership Disclosure Requirements

32. Each applicant must comply with the applicable part 1 ownership disclosure requirements and provide information required by sections 1.2105 and 1.2112, and, where applicable, section 1.2110, of the Commission's rules. In completing FCC Form 175, an applicant must fully disclose information regarding the real party- or parties-in-interest in the applicant or application and the ownership structure of the applicant, including both direct and indirect ownership interests of 10% or more. Each applicant is responsible for ensuring that information submitted in its short-form application is complete and accurate.

33. In certain circumstances, an applicant may have previously filed an FCC Form 602 ownership disclosure information report or filed an auction application for a previous auction in which ownership information was disclosed. The most current ownership information contained in any FCC Form 602 or previous auction application on file with the Commission that used the same FCC Registration Number (FRN) the applicant is using to submit its FCC Form 175 will automatically be pre-filled into certain ownership sections on the applicant's FCC Form 175, if such information is in an electronic format compatible with FCC Form 175. Applicants are encouraged to submit an FCC Form 602 ownership report or update any ownership information on file with the Commission in an FCC Form 602 ownership report prior to starting a short-form application for Auction 107 to ensure that their most recent ownership information is pre-filled into their short-form application. Each applicant must carefully review any ownership information

automatically entered into its FCC Form 175, including any ownership attachments, to confirm that all information supplied on FCC Form 175 is complete and accurate as of the application filing deadline. Any information that needs to be corrected or updated must be changed directly in FCC Form 175.

E. Foreign Ownership Disclosure Requirements

34. Section 310 of the Communications Act requires the Commission to review foreign investment in radio station licenses and imposes specific restrictions on who may hold certain types of radio licenses. Section 310 applies to applications for initial radio licenses, applications for assignments and transfers of control of radio licenses, and spectrum leasing arrangements under the Commission's secondary market rules. In completing FCC Form 175, an applicant is required to disclose information concerning foreign ownership of the applicant. If an applicant has foreign ownership interests in excess of the applicable limit or benchmark set forth in section 310(b), then it may seek to participate in Auction 107 as long as it has filed a petition for declaratory ruling with the Commission prior to the FCC Form 175 filing deadline. An applicant must certify in its FCC Form 175 that, as of the deadline for filing its application to participate in the auction, the applicant either is in compliance with the foreign ownership provisions of section 310 or has filed a petition for declaratory ruling requesting Commission approval to exceed the applicable foreign ownership limit or benchmark in section 310(b) that is pending before, or has been granted by, the Commission. Additional information concerning foreign ownership disclosure requirements is provided in the FCC Form 175 Instructions.

F. Information Procedures During the Auction Process

35. The Commission is limiting information available in Auction 107 in order to prevent the identification of bidders placing particular bids until after the bidding has closed. The Commission will not make public until after bidding has closed: (1) The license areas that an applicant selects for bidding in its short-form application, (2) the amount of any upfront payment made by or on behalf of an applicant, (3) any applicant's bidding eligibility, and (4) any other bidding-related information that might reveal the identity of the bidder placing a bid.

36. Once the bidding begins in Auction 107, under the limited information procedures (sometimes also referred to as anonymous bidding), information to be made public after each round of bidding will include, for licenses in each geographic area, the supply, the aggregate demand, the price at the end of the last completed round, and the price for the next round. The identities of bidders placing specific bids and the net bid amounts (reflecting bidding credits) will not be disclosed until after the close of bidding.

37. Bidders will have access to additional information related to their own bidding and bidding eligibility through the Commission's bidding system. For example, bidders will be able to view their own level of eligibility, both before and during the auction.

38. After the close of bidding, bidders' PEA selections, upfront payment amounts, bidding eligibility, bids, and other bidding-related actions will be made publicly available.

39. The direct or indirect communication to other applicants or the public disclosure of non-public information (*e.g.,* reductions in eligibility, identities of bidders) could violate the Commission's rule prohibiting certain communications. To the extent an applicant believes that such a disclosure is required by law or regulation, including regulations issued by the U.S. Securities and Exchange Commission, the applicant should consult with the Commission staff in the Auctions Division before making such disclosure.

G. Prohibited Communications and Compliance With Antitrust Laws

40. The rules prohibiting certain communications set forth in section 1.2105(c) apply to each applicant that files a short-form application (FCC Form 175) in Auction 107. Section 1.2105(c)(1) of the Commission's rules provides that, subject to specified exceptions, after the short-form application filing deadline, all applicants are prohibited from cooperating or collaborating with respect to, communicating with or disclosing, to each other or any nationwide provider of communications services that is not an applicant, or, if the applicant is a nationwide provider, any non-nationwide provider that is not an applicant, in any manner the substance of their own, or each other's, or any other applicants' bids or bidding strategies (including post-auction market structure), or discussing or negotiating settlement agreements, until after the down payment deadline.

1. Entities Subject to Section 1.2105(c)

41. An applicant for purposes of this rule includes all controlling interests in the entity submitting the FCC Form 175 auction application, as well as all holders of interests amounting to 10% or more of the entity, and all officers and directors of that entity. A party that submits an application becomes an applicant under the rule at the application deadline, and that status does not change based on later developments. Thus, an auction applicant that does not correct deficiencies in its application, fails to submit a timely and sufficient upfront payment, or does not otherwise become qualified, remains an ''applicant'' for purposes of the rule and remains subject to the prohibition on certain communications until the Auction 107 down payment deadline.

42. The Commission considers AT&T, T-Mobile, and Verizon to be nationwide providers for the purposes of the prohibited communications rule for Auction 107.

2. Prohibition Applies Until Down Payment Deadline

43. Section 1.2105(c)'s prohibition of certain communications begins at an auction's short-form application filing deadline and ends at the auction's down payment deadline after the auction closes, which will be announced in a future public notice.

3. Scope of Prohibition on Certain Communications; Prohibition on Joint Bidding Agreements

44. Section 1.2105(c) of the Commission's rules prohibits certain communications between applicants for an auction, regardless of whether the applicants seek permits or licenses in the same geographic area or market. The rule also applies to communications by applicants with non-applicant nationwide providers of communications services and by nationwide applicants with non-applicant non-nationwide providers. The rule further prohibits joint bidding arrangements, including arrangements relating to the permits or licenses being auctioned that address or communicate, directly or indirectly, bidding at the auction, bidding strategies, including arrangements regarding price or the specific permits or licenses on which to bid, and any such arrangements relating to the post-auction market structure. The rule allows for limited exceptions for communications within the scope of any arrangement consistent with the exclusion from the Commission's rules prohibiting joint bidding, provided such

arrangement is disclosed on the applicant's auction application. Applicants may communicate pursuant to any pre-existing agreements, arrangements, or understandings relating to the licenses being auctioned that are solely operational or that provide for the transfer or assignment of licenses, provided that such agreements, arrangements, or understandings are disclosed on their applications and do not both relate to the licenses at auction and address or communicate bids (including amounts), bidding strategies, or the particular permits or licenses on which to bid or the post-auction market structure.

45. The prohibition against communicating in any manner includes public disclosures as well as private communications and indirect or implicit communications. Consequently, an applicant must take care to determine whether its auction-related communications may reach another applicant. Applicants must determine whether their communications with other parties are permissible under the rule once the prohibition begins at the deadline for submitting applications, even before the public notice identifying applicants is released.

46. Parties subject to section 1.2105(c) should take special care in circumstances where their officers, directors, and employees may receive information directly or indirectly relating to any applicant's bids or bidding strategies. Such information may be deemed to have been received by the applicant under certain circumstances. For example, Commission staff have found that, where an individual serves as an officer and director for two or more applicants, the bids and bidding strategies of one applicant are presumed conveyed to the other applicant through the shared officer, which creates an apparent violation of the rule.

47. Section 1.2105(c)(1) prohibits applicants from communicating with specified other parties only with respect to their own, or each other's, or any other applicant's bids or bidding strategies. A communication conveying bids or bidding strategies (including post-auction market structure) must also relate to the licenses being auctioned in order to be covered by the prohibition. Thus, the prohibition is limited in scope and does not apply to all communications between or among the specified parties. The Commission consistently has made clear that application of the rule prohibiting communications has never required total suspension of essential ongoing business. Entities subject to the prohibition may negotiate agreements during the prohibition period, provided that the communications involved do not relate to both: (1) The licenses being auctioned and (2) bids or bidding strategies or post-auction market structure.

48. Business discussions and negotiations that are unrelated to bidding in Auction 107 and that do not convey information about the bids or bidding strategies, including the post-auction market structure, of an applicant are not prohibited by the rule. Moreover, not all auction-related information is covered by the prohibition. For example, communicating merely whether a party has or has not applied to participate in Auction 107 will not violate the rule. In contrast, communicating how a party will participate, including specific geographic areas selected, specific bid amounts, and/or whether or not the party is placing bids, would convey bids or bidding strategies and would be prohibited.

49. Each applicant must remain vigilant not to communicate, directly or indirectly, information that affects, or could affect, bids or bidding strategies. Certain discussions might touch upon subject matters that could convey price or geographic information related to bidding strategies. Such subject areas include, but are not limited to, management, sales, local marketing agreements, and other transactional agreements.

50. Bids or bidding strategies may be communicated outside of situations that involve one party subject to the prohibition communicating privately and directly with another such party. For example, the Commission has warned that prohibited communications concerning bids and bidding strategies may include communications regarding capital calls or requests for additional funds in support of bids or bidding strategies to the extent such communications convey information concerning the bids and bidding strategies directly or indirectly. Moreover, the Commission found a violation of the rule against prohibited communications when an applicant used the Commission's bidding system to disclose its bidding strategy in a manner that explicitly invited other auction participants to cooperate and collaborate in specific markets, and has placed auction participants on notice that the use of its bidding system to disclose market information to competitors will not be tolerated and will subject bidders to sanctions.

51. When completing a short-form application, each applicant should avoid any statements or disclosures that may violate section 1.2105(c). An applicant should avoid including any information in its short-form application that might convey information regarding its PEA selections, such as referring to certain markets in describing agreements, including any information in application attachments that will be publicly available that may otherwise disclose the applicant's PEA selections, or using applicant names that refer to licenses being offered.

52. Applicants also should be mindful that communicating non-public application or bidding information publicly or privately to another applicant may violate section 1.2105(c) even though that information subsequently may be made public during later periods of the application or bidding processes.

4. Communicating With Third Parties

53. Section 1.2105(c) does not prohibit an applicant from communicating bids or bidding strategies to a third party, such as a consultant or consulting firm, counsel, or lender. The applicant should take appropriate steps, however, to ensure that any third party it employs for advice pertaining to its bids or bidding strategies does not become a conduit for prohibited communications to other specified parties, as that would violate the rule. For example, an applicant might require a third party, such as a lender, to sign a non-disclosure agreement before the applicant communicates any information regarding bids or bidding strategy to the third party. Within third-party firms, separate individual employees, such as attorneys or auction consultants, may advise individual applicants on bids or bidding strategies, as long as such firms implement firewalls and other compliance procedures that prevent such individuals from communicating the bids or bidding strategies of one applicant to other individuals representing separate applicants. Although firewalls and/or other procedures should be used, their existence is not an absolute defense to liability if a violation of the rule has occurred.

54. In the case of an individual, the objective precautionary measure of a firewall is not available. An individual that is privy to bids or bidding information of more than one applicant presents a greater risk of becoming a conduit for a prohibited communication. Whether a prohibited communication has taken place in a

given case will depend on all the facts pertaining to the case, including who possessed what information, what information was conveyed to whom, and the course of bidding in the auction.

55. Potential applicants may discuss the short-form application or bids for specific licenses or license areas with the counsel, consultant, or expert of their choice before the short-form application deadline. The same third-party individual could continue to give advice after the short-form deadline regarding the application, provided that no information pertaining to bids or bidding strategies, including PEAs selected on the short-form application, is conveyed to that individual. To the extent potential applicants can develop bidding instructions prior to the short-form deadline that a third party could implement without changes during bidding, the third party could follow such instructions for multiple applicants provided that those applicants do not communicate with the third party during the prohibition period.

56. Applicants also should use caution in their dealings with other parties, such as members of the press, financial analysts, or others who might become conduits for the communication of prohibited bidding information. For example, even though communicating that it has applied to participate in the auction will not violate the rule, an applicant's statement to the press that it intends to stop bidding in an auction could give rise to a finding of a section 1.2105 violation. Similarly, an applicant's public statement of intent not to place bids during bidding in Auction 107 could also violate the rule.

5. Section 1.2105(c) Certifications

57. By electronically submitting its FCC Form 175 auction application, each applicant for Auction 107 certifies its compliance with section 1.2105(c) of the rules. If an applicant has a non-controlling interest with respect to more than one application, the applicant must certify that it has established internal control procedures to preclude any person acting on behalf of the applicant from possessing information about the bids or bidding strategies of more than one applicant or communicating such information with respect to either applicant to another person acting on behalf of and possessing such information regarding another applicant. The mere filing of a certifying statement as part of an application will not outweigh specific evidence that a prohibited communication has occurred, nor will it preclude the initiation of an investigation when warranted. Any applicant found to have violated these communication prohibitions may be subject to sanctions.

6. Duty To Report Prohibited Communications

58. Section 1.2105(c)(4) requires that any applicant that makes or receives a communication that appears to violate section 1.2105(c) must report such communication in writing to the Commission immediately, and in no case later than five business days after the communication occurs. Each applicant's obligation to report any such communication continues beyond the five-day period after the communication is made, even if the report is not made within the five-day period.

7. Procedures for Reporting Prohibited Communications

59. A party reporting any information or communication pursuant to sections 1.65, 1.2105(a)(2), or 1.2105(c)(4) must take care to ensure that any report of a prohibited communication does not itself give rise to a violation of section 1.2105(c). For example, a party's report of a prohibited communication could violate the rule by communicating prohibited information to other parties specified under the rule through the use of Commission filing procedures that allow such materials to be made available for public inspection.

60. Parties must file only a single report concerning a prohibited communication and must file that report with the Commission personnel expressly charged with administering the Commission's auctions. This rule is designed to minimize the risk of inadvertent dissemination of information in such reports. Any reports required by section 1.2105(c) must be filed consistent with the instructions set forth in the *Auction 107 Procedures Public Notice.* Such reports must be filed with the Chief of the Auctions Division, Office of Economics and Analytics, by the most expeditious means available. Any such report should be submitted by email to the Auctions Division Chief and sent to *auction107@fcc.gov.* If you choose to submit a report in hard copy, contact Auctions Division staff at *auction107@fcc.gov* or (202) 418–0660 for guidance.

61. A party seeking to report such a prohibited communication should consider submitting its report with a request that the report or portions of the submission be withheld from public inspection by following the procedures specified in section 0.459 of the Commission's rules. Filers requesting confidential treatment of documents must be sure that the cover page of the filing prominently displays that the documents seek confidential treatment. For example, a filing might include a cover page stamped with ''Request for Confidential Treatment Attached'' or ''Not for Public Inspection.'' Any such request must cover all the material to which the request applies. Because the hand-delivery filing location at FCC Headquarters is permanently closed, such materials should be submitted in accordance with the procedures described in *Order, Amendment of the Commission's Rules of Practice and Procedure,* May 28, 2020. Such parties are encouraged to coordinate with the Auctions Division staff about the procedures for submitting such reports.

8. Winning Bidders Must Disclose Terms of Agreements

62. Each applicant that is a winning bidder will be required to provide as part of its long-form application any agreement or arrangement it has entered into and a summary of the specific terms, conditions, and parties involved in any agreement it has entered into. Such agreements must have been entered into prior to the filing of short-form applications. This applies to any bidding consortia, joint venture, partnership, or agreement, understanding, or other arrangement entered into relating to the competitive bidding process, including any agreement relating to the post-auction market structure. Failure to comply with the Commission's rules can result in enforcement action.

9. Additional Information Concerning Prohibition on Certain Communications in Commission Auctions

63. A summary listing of documents issued by the Commission and OEA/WTB addressing the application of section 1.2105(c) is available on the Commission's auction web page at *www.fcc.gov/summary-listing-documents-addressing-application-rule-prohibiting-certain-communications.*

10. Antitrust Laws

64. Applicants remain subject to the antitrust laws. Compliance with the disclosure requirements of section 1.2105(c)(4) will not insulate a party from enforcement of the antitrust laws. For instance, a violation of the antitrust laws could arise out of actions taking place well before any party submits a short-form application. The Commission has cited a number of examples of potentially anticompetitive actions that would be prohibited under antitrust laws: For example, actual or potential competitors may not agree to divide

territories in order to minimize competition, regardless of whether they split a market in which they both do business, or whether they merely reserve one market for one and another market for the other.

65. To the extent the Commission becomes aware of specific allegations that suggest that violations of the federal antitrust laws may have occurred, the Commission may refer such allegations to the United States Department of Justice for investigation. If an applicant is found to have violated the antitrust laws or the Commission's rules in connection with its participation in the competitive bidding process, it may be subject to a forfeiture and may be prohibited from participating further in Auction 107 and in future auctions, among other sanctions.

H. Provisions for Small Businesses and Rural Service Providers

66. In Auction 107, bidding credits will be available to applicants demonstrating eligibility for a small business or a rural service provider bidding credit and subsequently winning license(s). A bidding credit represents an amount by which a bidder's winning bid will be discounted. These bidding credits will not be cumulative—an applicant is permitted to claim either a small business bidding credit or a rural service provider bidding credit, but not both. Each applicant must also certify that it is eligible for the claimed bidding credit in its FCC Form 175. Each applicant should review carefully the Commission's decisions regarding the designated entity provisions as well as the part 1 rules.

67. Applicants applying for designated entity bidding credits should take due account of the requirements of the Commission's rules and implementing orders regarding *de jure* and *de facto* control of such applicants. These rules include a prohibition, which applies to all applicants (whether they seek bidding credits or not), against changes in ownership of the applicant that would constitute an assignment or transfer of control. Applicants should not expect to receive any opportunities to revise their ownership structure after the filing of their short- and long-form applications, including making revisions to their agreements or other arrangements with interest holders, lenders, or others in order to address potential concerns relating to compliance with the designated entity bidding credit requirements.

1. Small Business Bidding Credit

68. For Auction 107, bidding credits will be available to eligible small businesses and consortia thereof. Under the service rules applicable to the 3.7 GHz Service licenses to be offered in Auction 107, the level of bidding credit available is determined as follows: A bidder with attributed average annual gross revenues that do not exceed $55 million for the preceding five years is eligible to receive a 15% discount on its winning bid; a bidder with attributed average annual gross revenues that do not exceed $20 million for the preceding five years is eligible to receive a 25% discount on its winning bid.

69. Small business bidding credits are not cumulative; an eligible applicant may receive either the 15% or the 25% bidding credit on its winning bid, but not both. The Commission's unjust enrichment provisions also apply to a winning bidder that uses a bidding credit and subsequently seeks to assign or transfer control of its license within a certain period to an entity not qualifying for at least the same level of small business bidding credit. Thus, for example, the Commission's unjust enrichment provisions would not apply to a winning bidder that uses the 15% small business bidding credit and seeks to transfer control of its license to an entity that qualifies for either the 15% small business bidding credit or the rural service provider bidding credit. The provisions would apply, however, if that same winning bidder uses the 25% small business bidding credit, unless the proposed transferee also qualifies for the 25% small business bidding credit.

70. Each applicant claiming a small business bidding credit must disclose the gross revenues for the preceding five years for each of the following: (1) The applicant, (2) its affiliates, (3) its controlling interests, and (4) the affiliates of its controlling interests. The applicant must also submit an attachment that lists all parties with which the applicant has entered into any spectrum use agreements or arrangements for any licenses that may be won by the applicant in Auction 107. In addition, to the extent that an applicant has an agreement with any disclosable interest holder for the use of more than 25% of the spectrum capacity of any license that may be won in Auction 107, the identity and the attributable gross revenues of any such disclosable interest holder must be disclosed. This attribution rule will be applied on a license-by-license basis. As a result, an applicant may be eligible for a bidding credit on some, but not all, of the licenses for which it is bidding in Auction 107. If an applicant is applying as a consortium of small businesses, then the disclosures described in this paragraph must be provided for each consortium member.

2. Rural Service Provider Bidding Credit

71. An eligible applicant may request a 15% discount on its winning bid using a rural service provider bidding credit. To be eligible for a rural service provider bidding credit, an applicant must: (1) Be a service provider that is in the business of providing commercial communications services and, together with its controlling interests, affiliates, and the affiliates of its controlling interests, has fewer than 250,000 combined wireless, wireline, broadband, and cable subscribers; and (2) serve predominantly rural areas, defined as counties with a population density of 100 or fewer persons per square mile. An applicant seeking a rural service provider bidding credit must provide the number of subscribers served as of the short-form application deadline. An applicant may count any subscriber as a single subscriber even if that subscriber receives more than one service. For instance, a subscriber receiving both wireline and telephone service and broadband would be counted as a single subscriber.

72. Each applicant seeking a rural service provider bidding credit must disclose the number of its subscribers, along with the number of subscribers of its affiliates, controlling interests, and the affiliates of its controlling interests. The applicant must also submit an attachment that lists all parties with which the applicant has entered into any spectrum use agreements or arrangements for any licenses that may be won by the applicant in Auction 107. To the extent that an applicant has an agreement with any disclosable interest holder for the use of more than 25% of the spectrum capacity of any license that may be won in Auction 107, the identity and the attributable subscribers of any such disclosable interest holder must be disclosed. Eligible rural service providers may form a consortium. If an applicant is applying as a consortium of rural service providers, then the disclosures described in this paragraph, including the certification, must be provided for each consortium member.

3. Caps on Bidding Credits

73. Eligible applicants claiming either a small business or rural service provider bidding credit will be subject to specified caps on the total amount of bidding credit discounts that they may receive. The Commission adopted a $25

million cap on the total amount of bidding credit discounts that may be awarded to an eligible small business, and a $10 million cap on the total amount of bidding credit discounts that may be awarded to an eligible rural service provider in Auction 107. No winning designated entity bidder will receive more than $10 million in bidding credit discounts in total for licenses won in markets with a population of 500,000 or less. To the extent an applicant seeking a small business bidding credit does not claim the full $10 million in bidding credits in those smaller markets, it may apply the remaining balance to its winning bids on licenses in larger markets, up to the aggregate $25 million cap.

4. Attributable Interests

a. Controlling Interests and Affiliates

74. An applicant's eligibility for designated entity benefits is determined by attributing the gross revenues (for those seeking small business benefits) or subscribers (for those seeking rural service provider benefits) of the applicant, its affiliates, its controlling interests, and the affiliates of its controlling interests. Controlling interests of an applicant include individuals and entities with either *de facto* or *de jure* control of the applicant. Typically, ownership of greater than 50% of an entity's voting stock evidences *de jure* control. *De facto* control is determined on a case-by-case basis based on the totality of the circumstances. The following are some common indicia of *de facto* control: The entity constitutes or appoints more than 50% of the board of directors or management committee; the entity has authority to appoint, promote, demote, and fire senior executives that control the day-to-day activities of the licensee; and the entity plays an integral role in management decisions.

75. Applicants should refer to section 1.2110(c)(2) of the Commission's rules and the FCC Form 175 Instructions to understand how certain interests are calculated in determining control for purposes of attributing gross revenues. For example, officers and directors of an applicant are considered to have a controlling interest in the applicant.

76. Affiliates of an applicant or controlling interest include an individual or entity that: (1) Directly or indirectly controls or has the power to control the applicant, (2) is directly or indirectly controlled by the applicant, (3) is directly or indirectly controlled by a third party that also controls or has the power to control the applicant, or (4) has an ''identity of interest'' with the applicant. The Commission's definition of an affiliate of the applicant encompasses both controlling interests of the applicant and affiliates of controlling interests of the applicant.

77. An applicant seeking a small business bidding credit must demonstrate its eligibility for the bidding credit by: (1) Meeting the applicable small business size standard, based on the controlling interest and affiliation rules, and (2) retaining control, on a license-by-license basis, over the spectrum associated with the licenses for which it seeks small business benefits. Control and affiliation may arise through, among other things, ownership interests, voting interests, management and other operating agreements, or the terms of any other types of agreements—including spectrum lease agreements—that independently or together create a controlling, or potentially controlling, interest in the applicant's or licensee's business as a whole. Except under the limited provisions provided for spectrum manager lessors, the Commission's decision to discontinue its policy requiring designated entity licensees to operate as primarily facilities-based providers of service directly to the public does not alter the rules that require the Commission to consider whether any particular use agreement may confer control of or create affiliation with the applicant. Once an applicant demonstrates eligibility as a small business under the first prong, it must also be eligible for benefits on a license-by-license basis under the second prong. As part of making the FCC Form 175 certification that it is qualified as a designated entity under section 1.2110, an applicant is certifying that it does not have any spectrum use or other agreements that would confer either *de jure* or *de facto* control of any license it seeks to acquire with bidding credits. For instance, if an applicant has a spectrum use agreement on a particular license that calls into question whether, under the Commission's affiliation rules, the user's revenues should be attributed to the applicant for that particular license, rather than for its overall business operations, the applicant could be ineligible to acquire or retain benefits with respect to that particular license.

78. If an applicant executes a spectrum use agreement that does not comply with the Commission's relevant standard of *de facto* control, then it will be subject to unjust enrichment obligations for the benefits associated with that particular license, as well as the penalties associated with any violation of section 310(d) of the Communications Act and related regulations, which require Commission approval of transfers of control. Although in this scenario the applicant may not be eligible for a bidding credit and may be subject to the Commission's unjust enrichment rules, the applicant need not be eligible for small business benefits on each of the spectrum licenses it holds in order to demonstrate its overall eligibility for such benefits. If that spectrum use agreement (either alone or in combination with the designated entity controlling interest and attribution rules) goes so far as to confer control of the applicant's overall business, then the gross revenues of the additional interest holders will be attributed to the applicant, which could render the applicant ineligible for all current and future small business benefits on all licenses. The Commission applies the same *de facto* control standard to designated entity spectrum manager lessors that is applied to non-designated entity spectrum manager lessors.

b. Limitation on Spectrum Use

79. The gross revenues (or the subscribers, in the case of a rural service provider) of an applicant's disclosable interest holder are attributable to the applicant, on a license-by-license basis, if the disclosable interest holder has an agreement with the applicant to use, in any manner, more than 25% of the spectrum capacity of any license won by the applicant and acquired with a bidding credit during the five-year unjust enrichment period for the applicable license. A disclosable interest holder of an applicant seeking designated entity benefits is defined as any individual or entity holding a 10% or greater interest of any kind in the applicant, including but not limited to, a 10% or greater interest in any class of stock, warrants, options, or debt securities in the applicant or licensee. Any applicant seeking a bidding credit for licenses won in Auction 107 will be subject to this attribution rule and must make the requisite disclosures.

80. Certain disclosable interest holders may be excluded from this attribution rule. An applicant claiming the rural service provider bidding credit may have spectrum license use agreements with a disclosable interest holder, without having to attribute the disclosable interest holder's subscribers, so long as the disclosable interest holder is independently eligible for a rural service provider credit and the use agreement is otherwise permissible under the Commission's existing rules. If applicable, the applicant must attach to its FCC Form 175 any additional

information as may be required to indicate any license (or license area) that may be subject to this attribution rule or to demonstrate its eligibility for the exception from this attribution rule. The Commission intends to withhold from public disclosure all information contained in any such attachments until after the close of Auction 107.

c. Exceptions From Attribution Rules for Small Businesses and Rural Service Providers

81. Applicants claiming designated entity benefits may be eligible for certain exceptions from the Commission's attribution rules. For example, in calculating an applicant's gross revenues under the controlling interest standard, the Commission will not attribute to the applicant the personal net worth, including personal income, of its officers and directors. To the extent that the officers and directors of the applicant are controlling interest holders of other entities, the gross revenues of those entities will be attributed to the applicant. Moreover, if an officer or director operates a separate business, the gross revenues derived from that separate business would be attributed to the applicant, although any personal income from such separate business would not be attributed. The Commission has also exempted from attribution to the applicant the gross revenues of the affiliates of a rural telephone cooperative's officers and directors, if certain conditions specified in section 1.2110(b)(4)(iii) of the Commission's rules are met. An applicant claiming this exemption must provide, in an attachment, an affirmative statement that the applicant, affiliate and/or controlling interest is an eligible rural telephone cooperative within the meaning of section 1.2110(b)(4)(iii), and the applicant must supply any additional information as may be required to demonstrate eligibility for the exemption from the attribution rule.

82. An applicant claiming a rural service provider bidding credit may be eligible for an exception from the Commission's attribution rules as an existing rural partnership. To qualify for this exception, an applicant must be a rural partnership providing service as of July 16, 2015, and each member of the rural partnership must individually have fewer than 250,000 combined wireless, wireline, broadband, and cable subscribers. The Commission will evaluate eligibility for an existing rural wireless partnership on the same basis as it would for an applicant applying for a bidding credit as a consortium of rural service providers. A partnership that includes a nationwide provider as a member will not be eligible for the benefit. Members of such partnerships that fall under this exception may also apply as individual applicants or members of a consortium (to the extent that it is otherwise permissible to do so under the Commission's rules) and seek eligibility for a rural service provider bidding credit.

83. A consortium of small businesses or rural service providers may seek an exception from the Commission's attribution rules. A consortium of small businesses or rural service providers is a conglomerate organization composed of two or more entities, each of which individually satisfies the definition of small business or rural service provider. A consortium must provide additional information for each member demonstrating each member's eligibility for the claimed bidding credit in order to show that the applicant satisfies the eligibility criteria for the bidding credit. The gross revenue or subscriber information of each consortium member will not be aggregated for purposes of determining the consortium's eligibility for the claimed bidding credit. This information must be provided to ensure that each consortium member qualifies for the bidding credit sought by the consortium.

I. Provisions Regarding Former and Current Defaulters

84. Each applicant must make certifications regarding whether it is a current or former defaulter or delinquent. A current defaulter or delinquent is not eligible to participate in Auction 107, but a former defaulter or delinquent may participate so long as it is otherwise qualified and makes an upfront payment that is 50% more than would otherwise be necessary. An applicant is considered a current defaulter or a current delinquent when it, any of its affiliates, any of its controlling interests, or any of the affiliates of its controlling interests, is in default on any payment for any Commission construction permit or license (including a down payment) or is delinquent on any non-tax debt owed to any Federal agency as of the filing deadline for auction applications. Non-tax debt owed to any Federal agency includes, within the meaning of the rule, all amounts owed under Federal programs, including contributions to the Universal Service Fund (USF), Telecommunications Relay Services Fund, and the North American Numbering Plan Administration, notwithstanding that the administrator of any such fund may not be considered a Federal ''agency'' under the Debt Collection Improvement Act of 1996. For example, an applicant with a past due USF contribution as of the auction application filing deadline would be disqualified from participating in Auction 107 under the Commission's rules. If the applicant cures the overdue debt prior to the auction application filing deadline (and such debt does not fall within one of the exclusions described in section 1.2105(a)(2)(xii)), it may be eligible to participate in Auction 107 as a former defaulter. Each applicant must certify under penalty of perjury on its FCC Form 175 that it, its affiliates, its controlling interests, and the affiliates of its controlling interests are not in default on any payment for a Commission construction permit or license (including down payments) and that it is not delinquent on any non-tax debt owed to any Federal agency. Additionally, an applicant must certify under penalty of perjury whether it (along with its controlling interests) has ever been in default on any payment for a Commission construction permit or license (including down payments) or has ever been delinquent on any non-tax debt owed to any Federal agency, subject to the exclusions. The term ''controlling interest'' is defined in section 1.2105(a)(4)(i) of the Commission rules.

85. An applicant is considered a former defaulter or a former delinquent when, as of the FCC Form 175 deadline, the applicant or any of its controlling interests has defaulted on any Commission construction permit or license or has been delinquent on any non-tax debt owed to any Federal agency, but has since remedied all such defaults and cured all of the outstanding non-tax delinquencies. The applicant may exclude from consideration any cured default on a Commission construction permit or license or cured delinquency on a non-tax debt owed to a Federal agency for which any of the following criteria are met: (1) The notice of the final payment deadline or delinquency was received more than seven years before the FCC Form 175 filing deadline, (2) the default or delinquency amounted to less than $100,000, (3) the default or delinquency was paid within two quarters (*i.e.,* six months) after receiving the notice of the final payment deadline or delinquency, or (4) the default or delinquency was the subject of a legal or arbitration proceeding and was cured upon resolution of the proceeding. Notice to a debtor may include notice of a final payment deadline or notice of delinquency and may be express or implied depending on the origin of any

Federal non-tax debt giving rise to a default or delinquency. The date of receipt of the notice of a final default deadline or delinquency by the intended party or debtor will be used for purposes of verifying receipt of notice. A debt will not be deemed to be in default or delinquent until after the expiration of a final payment deadline. To the extent that the rules providing for payment of a specific federal debt permit payment after an original payment deadline accompanied by late fee(s), such debts would not be in default or delinquent for purposes of applying the former defaulter rules until after the late payment deadline. Any winning bidder that fails to timely pay its post-auction down payment or the balance of its final winning bid amount(s) or is disqualified for any reason after the close of an auction will be in default and subject to a default payment. Commission staff provide individual notice of the amount of such a default payment as well as procedures and information required by the Debt Collection Improvement Act of 1996, including the payment due date and any charges, interest, and/or penalties that accrue in the event of delinquency. Such notice provided by Commission staff assessing a default payment arising out of a default on a winning bid, constitutes notice of the final payment deadline with respect to a default on a Commission license.

86. Applicants are encouraged to review previous guidance on default and delinquency disclosure requirements in the context of the auction short-form application process. Parties are also encouraged to consult with Auctions Division staff if they have any questions about default and delinquency disclosure requirements.

87. The Commission considers outstanding debts owed to the United States Government, in any amount, to be a serious matter. The Commission has previously adopted rules, including a provision referred to as the ''red light rule,'' that implement its obligations under the Debt Collection Improvement Act of 1996, which governs the collection of debts owed to the United States. Under the red light rule, applications and other requests for benefits filed by parties that have outstanding debts owed to the Commission will not be processed. The Commission's adoption of the red light rule does not alter the applicability of any of its competitive bidding rules, including the provisions and certifications of sections 1.2105 and 1.2106, with regard to current and former defaults or delinquencies.

88. The Commission's Red Light Display System, which provides information regarding debts currently owed to the Commission, may not be determinative of an auction applicant's ability to comply with the default and delinquency disclosure requirements of section 1.2105. Thus, while the red light rule ultimately may prevent the processing of long-form applications by auction winners, an auction applicant's lack of current red light status is not necessarily determinative of its eligibility to participate in an auction (or whether it may be subject to an increased upfront payment obligation). A prospective applicant in Auction 107 should note that any long-form applications filed after the close of bidding will be reviewed for compliance with the Commission's red light rule, and such review may result in the dismissal of a winning bidder's long-form application. Applicants that have their long-form applications dismissed will be deemed to have defaulted and will be subject to default payments under sections 1.2104(g) and 1.2109(c) of the Commission's rules. Each applicant should carefully review all records and other available Federal agency databases and information sources to determine whether the applicant, or any of its affiliates, or any of its controlling interests, or any of the affiliates of its controlling interests, owes or was ever delinquent in the payment of non-tax debt owed to any Federal agency. To access the Commission's Red Light Display System, go to: *https://apps.fcc.gov/redlight/login.cfm.*

J. Optional Applicant Status Identification

89. Applicants owned by members of minority groups and/or women, as defined in section 1.2110(c)(3), and rural telephone companies, as defined in section 1.2110(c)(4), may identify themselves regarding this status in filling out their FCC Form 175 applications. This applicant status information is collected for statistical purposes only and assists the Commission in monitoring the participation of various groups in its auctions.

K. Modifications to FCC Form 175

1. Only Minor Modifications Allowed

90. After the initial FCC Form 175 filing deadline, an Auction 107 applicant will be permitted to make only minor changes to its application consistent with the Commission's rules. Minor amendments include any changes that are not major, such as correcting typographical errors and supplying or correcting information as requested to support the certifications made in the application. Examples of minor changes include the deletion or addition of authorized bidders (to a maximum of three) and the revision of addresses and telephone numbers of the applicant, its responsible party, and its contact person. Major modification to an FCC Form 175 (*e.g.,* change of PEA selection, certain changes in ownership that would constitute an assignment or transfer of control of the applicant, change in the required certifications, change in applicant's legal classification that results in a change in control, or change in claimed eligibility for a higher percentage of bidding credit) will not be permitted after the initial FCC Form 175 filing deadline. If an amendment reporting changes is a ''major amendment,'' as described in section 1.2105(b)(2), the major amendment will not be accepted and may result in the dismissal of the application. Any change in control of an applicant will be considered a major modification, and the application will consequently be dismissed. Even if an applicant's FCC Form 175 is dismissed, the applicant would remain subject to the communication prohibitions of section 1.2105(c) until the down payment deadline for Auction 107.

2. Duty To Maintain Accuracy and Completeness of FCC Form 175

91. Each applicant has a continuing obligation to maintain the accuracy and completeness of information furnished in a pending application, including a pending application to participate in Auction 107. An applicant's FCC Form 175 and associated attachments will remain pending until the release of a public notice announcing the close of the auction. Auction 107 applicants remain subject to the section 1.2105(c) prohibition on certain communications until the post-auction deadline for making down payments on winning bids in Auction 107. An applicant's post-auction application (FCC Form 601) is considered pending from the time it is accepted for filing by the Commission until a Commission grant or denial of the application is no longer subject to reconsideration by the Commission or to review by any court. An applicant for Auction 107 must furnish additional or corrected information to the Commission within five business days after a significant occurrence or amend its FCC Form 175 no more than five business days after the applicant becomes aware of the need for the amendment. An applicant is obligated to amend its pending

application even if a reported change may result in the dismissal of the application because it is subsequently determined to be a major modification.

3. Modifying an FCC Form 175

92. A party seeking to participate in Auction 107 must file an FCC Form 175 electronically via the FCC's Auction Application System. During the initial filing window, an applicant will be able to make any necessary modifications to its FCC Form 175 in the Auction Application System. An applicant that has certified and submitted its FCC Form 175 before the close of the initial filing window may continue to make modifications as often as necessary until the close of that window; the applicant must re-certify and re-submit its FCC Form 175 before the close of the initial filing window to confirm and effect its latest application changes. After each submission, a confirmation page will be displayed stating the submission time and submission date. Applicants are advised to retain a copy of this confirmation page.

93. An applicant will also be allowed to modify its FCC Form 175 in the Auction Application System, except for certain fields, during the resubmission filing window and after the release of the public notice announcing the qualified bidders for an auction. An applicant will not be allowed to modify electronically in the Auction Application System the applicant's legal classification, the applicant's name, or the certifying official. During the resubmission filing window and after the release of the public notice announcing the qualified bidders for an auction, if an applicant needs to make permissible minor changes to its FCC Form 175 or must make changes in order to maintain the accuracy and completeness of its application pursuant to sections 1.65 and 1.2105(b)(4), then it must make the change(s) in the Auction Application System and re-certify and re-submit its application to confirm and effect the change(s).

94. An applicant's ability to modify its FCC Form 175 in the Auction Application System will be limited between the closing of the initial filing window and the opening of the application resubmission filing window, and between the closing of the resubmission filing window and the release of the public notice announcing the qualified bidders for an auction. During these periods, an applicant will be able to view its submitted application, but will be permitted to modify only the applicant's address, responsible party address, and contact information (*e.g.,* name, address, telephone number, etc.) in the Auction Application System. An applicant will not be able to modify any other pages of the FCC Form 175 in the Auction Application System during these periods. If, during these periods, an applicant needs to make other permissible minor changes to its FCC Form 175, or changes to maintain the accuracy and completeness of its application, the applicant must submit a letter briefly summarizing the changes to its FCC Form 175 via email to *auction107@fcc.gov.* The email summarizing the changes must include a subject line referring to Auction 107 and the name of the applicant, for example, ''Re: Changes to Auction 107 Auction Application of XYZ Corp.'' Any attachments to the email must be formatted as Adobe® Acrobat® (PDF) or Microsoft® Word documents. An applicant that submits its changes in this manner must subsequently modify, certify, and submit its FCC Form 175 application(s) electronically in the Auction Application System once it is again open and available to applicants.

95. Applicants should also note that even at times when the Auction Application System is open and available to applicants, the system will not allow an applicant to make certain other permissible changes itself (*e.g.,* correcting a misstatement of the applicant's legal classification). If an applicant needs to make a permissible minor change of this nature, then it must submit a written request by email to the Auctions Division Chief, via *auction107@fcc.gov,* requesting that the Commission manually make the change on the applicant's behalf. Once Commission staff has informed the applicant that the change has been made in the Auction Application System, the applicant must then re-certify and re-submit its FCC Form 175 in the Auction Application System to confirm and effect the change(s).

96. Any amendment(s) to the application and related statements of fact must be certified by an authorized representative of the applicant with authority to bind the applicant. Submission of any such amendment or related statement of fact constitutes a representation by the person certifying that he or she is an authorized representative with such authority and that the contents of the amendment or statement of fact are true and correct.

97. Applicants must not submit application-specific material through the Commission's Electronic Comment Filing System. Parties submitting information related to their applications should use caution to ensure that their submissions do not contain confidential information or communicate information that would violate section 1.2105(c) or the limited information procedures adopted for Auction 107. An applicant seeking to submit, outside of the Auction Application System, information that might reflect non-public information, such as an applicant's PEA selection(s), upfront payment amount, or bidding eligibility, should consider including in its email a request that the filing or portions of the filing be withheld from public inspection until the end of the prohibition on certain communications.

98. Questions about FCC Form 175 amendments should be directed to the Auctions Division at (202) 418–0660.

III. Preparing for Bidding in Auction 107

A. Due Diligence

99. Each potential bidder is solely responsible for investigating and evaluating all technical and marketplace factors that may have a bearing on the value of the licenses that it is seeking in Auction 107. The Commission makes no representations or warranties about the use of this spectrum or these licenses for particular services. Each applicant should be aware that a Commission auction represents an opportunity to become a Commission licensee, subject to certain conditions and regulations. This includes the established authority of the Commission to alter the terms of existing licenses by rulemaking, which is equally applicable to licenses awarded by auction. A Commission auction does not constitute an endorsement by the Commission of any particular service, technology, or product, nor does a Commission license constitute a guarantee of business success.

100. An applicant should perform its due diligence research and analysis before proceeding, as it would with any new business venture. Each potential bidder should perform technical analyses and/or refresh its previous analyses to assure itself that, should it become a winning bidder for any Auction 107 license, it will be able to build and operate facilities that will fully comply with all applicable technical and legal requirements. Each applicant should inspect any prospective sites for communications facilities located in, or near, the geographic area for which it plans to bid, confirm the availability of such sites, and to familiarize itself with the Commission's rules regarding the National Environmental Policy Act (NEPA), the National Historic

Preservation Act (NHPA), and other environmental statutes.

101. Each applicant in Auction 107 should continue to conduct its own research throughout the auction in order to determine the existence of pending or future administrative or judicial proceedings that might affect its decision on continued participation in the auction. Each applicant is responsible for assessing the likelihood of the various possible outcomes and for considering the potential impact on licenses available in an auction. The due diligence considerations mentioned in the *Auction 107 Procedures Public Notice* do not constitute an exhaustive list of steps that should be undertaken prior to participating in Auction 107. The burden is on the potential bidder to determine how much research to undertake, depending upon the specific facts and circumstances related to its interests. For example, applicants should pay particular attention to the framework adopted in the *3.7 GHz Report and Order* that requires new overlay licensees to pay a specified share of accelerated relocation payments as well as relocation expenses to reimburse incumbents for the reasonable costs of transitioning out of the lower 300 megahertz of the band in the contiguous United States.

102. Applicants are solely responsible for identifying associated risks and for investigating and evaluating the degree to which such matters may affect their ability to bid on, otherwise acquire, or make use of the licenses available in Auction 107. Each potential bidder is responsible for undertaking research to ensure that any licenses won in the auction will be suitable for its business plans and needs. Each potential bidder must undertake its own assessment of the relevance and importance of information gathered as part of its due diligence efforts.

103. The Commission makes no representations or guarantees regarding the accuracy or completeness of information in its databases or any third-party databases, including, for example, court docketing systems. To the extent the Commission's databases may not include all information deemed necessary or desirable by an applicant, it must obtain or verify such information from independent sources or assume the risk of any incompleteness or inaccuracy in said databases. Furthermore, the Commission makes no representations or guarantees regarding the accuracy or completeness of information that has been provided by incumbent licensees and incorporated into its databases.

B. Licensing Considerations

1. Transition of Incumbent Operations

104. Potential applicants in Auction 107 should consider carefully the process for transitioning incumbent operations out of the 3.7–3.98 GHz band when developing business plans, assessing market conditions, and evaluating the availability of equipment for 3.7 GHz Service operations. Each applicant should follow closely releases from the Commission concerning these issues and consider carefully the technical and economic implications for commercial use of the 3.7–3.98 GHz band.

2. International Coordination

105. Potential bidders seeking licenses for geographic areas adjacent to the Canadian and Mexican borders should be aware that the use of the 3.7 GHz Service frequencies they acquire in Auction 107 are subject to current and future agreements with the governments of Canada and Mexico.

106. The Commission routinely works with the United States Department of State and Canadian and Mexican government officials to ensure the efficient use of the spectrum as well as interference-free operations in the border areas near Canada and Mexico. Until such time as any adjusted agreements, as needed, between the United States, Mexico, and/or Canada can be agreed to, operations in the 3.7–3.98 GHz band must not cause harmful interference across the border, consistent with the terms of the agreements currently in force.

3. Environmental Review Requirements

107. Licensees must comply with the Commission's rules for environmental review under the NEPA, the NHPA, and other environmental statutes. Licensees and other applicants that propose to build certain types of communications facilities for licensed service must follow Commission procedures implementing obligations under NEPA and NHPA prior to constructing the facilities. Under NEPA, a licensee or applicant must assess if certain environmentally sensitive conditions specified in the Commission's rules are relevant to the proposed facilities, and prepare an environmental assessment when applicable. This assessment may require consultation with expert agencies having environmental responsibilities, such as U.S. Fish and Wildlife Service, the U.S. Army Corps of Engineers, and the Federal Emergency Management Agency, among others. If an environmental assessment is required, then facilities may not be constructed until environmental processing is completed. Under NHPA, a licensee or applicant must follow the procedures in section 1.1320 of the Commission's rules, the *Nationwide Programmatic Agreement for Collocation of Wireless Antennas* and the *Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process.* Compliance with section 106 of the NHPA requires tribal consultation, and if construction of the communications facilities would have adverse effects on historic or tribally significant properties, an environmental assessment must be prepared.

4. Mobile Spectrum Holdings Policies

108. Bidders are reminded of the Commission's mobile spectrum holdings policies applicable to the 3.7–3.98 GHz band. Specifically, the Commission did not impose a pre-auction bright-line limit on acquisitions of the 3.7–3.98 GHz band. Instead, the Commission incorporated into the spectrum screen the 280 megahertz of spectrum available in the 3.7–3.98 GHz band. The Commission will also perform case-by-case review of the long-form license applications filed as a result of Auction 107.

C. Bidder Education

109. Before the opening of the short-form filing window for Auction 107, detailed educational information will be provided in various formats to would-be participants on the Auction 107 web page. OEA will provide various materials on the pre-bidding processes in advance of the opening of the short-form application window, beginning with the release of step-by-step instructions for completing the FCC Form 175, which OEA has made available in the Education section of the Auction 107 website at *www.fcc.gov/auction/107.* OEA will provide an online application procedures tutorial for the auction, covering information on pre-bidding preparation, completing short-form applications, and the application review process.

110. In advance of the start of the mock auction, OEA will provide educational materials on the bidding procedures for Auction 107, beginning with release of a user guide for the bidding system and bidding system file formats, followed by an online bidding procedures tutorial. The educational materials shall be released as soon as reasonably possible to provide potential applicants and bidders with time to understand them and ask questions before bidding begins.

111. The online tutorials will allow viewers to navigate the presentation outline, review written notes, and listen to audio of the notes. Additional features of this web-based tool include links to auction-specific Commission releases, email links for contacting Commission staff, and screen shots of the online application and bidding systems. The online tutorials will be accessible in the Education section of the Auction 107 website at *www.fcc.gov/auction/107.* Once posted, the tutorials will be accessible anytime.

D. Short-Form Applications: Due Before 6:00 p.m. ET on September 22, 2020

112. In order to be eligible to bid in Auction 107, an applicant must first follow the procedures to submit a short-form application (FCC Form 175) electronically via the Auction Application System, following the instructions set forth in the FCC Form 175 Instructions. The short-form application will become available with the opening of the initial filing window and must be submitted prior to 6:00 p.m. ET on September 22, 2020. Late applications will not be accepted. No application fee is required.

113. Applications may be filed at any time beginning at noon ET on September 9, 2020, until the filing window closes at 6:00 p.m. ET on September 22, 2020. Applicants should file early and are responsible for allowing adequate time for filing their applications. There are no limits or restrictions on the number of times an application can be updated or amended until the initial filing deadline on September 22, 2020.

114. An applicant must always click on the CERTIFY & SUBMIT button on the ''Certify & Submit'' screen to successfully submit its FCC Form 175 and any modifications; otherwise the application or changes to the application will not be received or reviewed by Commission staff. Additional information about accessing, completing, and viewing the FCC Form 175 is provided in the FCC Form 175 Instructions. Applicants requiring technical assistance should contact FCC Auctions Technical Support at (877) 480–3201, option nine; (202) 414–1250; or (202) 414–1255 (text telephone (TTY)); hours of service are Monday through Friday, from 8:00 a.m. to 6:00 p.m. ET. All calls to Technical Support are recorded.

115. Applicants are cautioned that the Commission periodically performs scheduled maintenance of its IT systems. During scheduled maintenance activities, which typically occur over the weekends, every effort is made to minimize any downtime to auction-related systems, including the Auction Application System. However, there are occasions when auction-related systems may be temporarily unavailable.

E. Application Processing and Minor Modifications

1. Public Notice of Applicants' Initial Application Status and Opportunity for Minor Modifications

116. After the deadline for filing auction applications, the Commission will process all timely submitted applications to determine whether each applicant has complied with the application requirements and provided all information concerning its qualifications for bidding. OEA will issue a public notice with applicants' initial application status, identifying: (1) Those that are complete; and (2) those that are incomplete or deficient because of defects that may be corrected. The public notice will include the deadline for resubmitting corrected applications and an electronic copy will be sent by email to the contact address listed in the FCC Form 175 for each applicant. In addition, each applicant with an incomplete application will be sent information on the nature of the deficiencies in its application, along with the name and contact information of a Commission staff member who can answer questions specific to the application.

117. After the initial application filing deadline on September 22, 2020, applicants can make only minor modifications to their applications. Major modifications (*e.g.,* change of PEA selection, certain changes in ownership that would constitute an assignment or transfer of control of the applicant, change in the required certifications, change in applicant's legal classification that results in a change in control, or change in claimed eligibility for a higher percentage of bidding credit) will not be permitted. After the deadline for resubmitting corrected applications, an applicant will have no further opportunity to cure any deficiencies in its application or provide any additional information that may affect Commission staff's ultimate determination of whether and to what extent the applicant is qualified to participate in Auction 107.

118. Commission staff will communicate only with an applicant's contact person or certifying official, as designated on the applicant's FCC Form 175, unless the applicant's certifying official or contact person notifies Commission staff in writing that another representative is authorized to speak on the applicant's behalf. In no event, however, will the Commission send auction registration materials to anyone other than the contact person listed on the applicant's FCC Form 175 or respond to a request for replacement registration materials from anyone other than the authorized bidder, contact person, or certifying official listed on the applicant's FCC Form 175. Authorizations may be sent by email to *auction107@fcc.gov.*

2. Public Notice of Applicants' Final Application Status After Upfront Payment Deadline

119. After Commission staff reviews resubmitted applications and upfront payments, OEA will release a public notice identifying applicants that have become qualified bidders for the auction. A *Qualified Bidders Public Notice* will be issued before bidding in the auction begins. Qualified bidders are those applicants with submitted FCC Form 175 applications that are deemed timely filed and complete and that have made a sufficient upfront payment.

F. Upfront Payments

120. In order to be eligible to bid in Auction 107, a sufficient upfront payment and a complete and accurate FCC Remittance Advice Form (FCC Form 159, Revised 2/03) must be submitted before 6:00 p.m. ET on November 2, 2020. After completing its short-form application, an applicant will have access to an electronic pre-filled version of the FCC Form 159. An accurate and complete FCC Form 159 must accompany each payment. Proper completion of this form is critical to ensuring correct crediting of upfront payments. Payers using the pre-filled FCC Form 159 are responsible for ensuring that all the information on the form, including payment amounts, is accurate. Instructions for completing FCC Form 159 for Auction 107 are provided in the *Auction 107 Procedures Public Notice.*

1. Making Upfront Payments by Wire Transfer for Auction 107

121. Upfront payments for Auction 107 must be wired to, and will be deposited in, the U.S. Treasury.

122. Wire transfer payments for Auction 107 must be received before 6:00 p.m. ET on November 2, 2020. An applicant must initiate the wire transfer through its bank, authorizing the bank to wire funds from the applicant's account to the proper account at the U.S. Treasury. No other payment method is acceptable. To avoid untimely payments, applicants should discuss arrangements (including bank

closing schedules and other specific bank wire transfer requirements, such as an in-person written request before a specified time of day) with their bankers several days before they plan to make the wire transfer, and must allow sufficient time for the transfer to be initiated and completed before the deadline. The information needed to place an order for a wire transfer is set forth in the *Auction 107 Procedures Public Notice.*

123. At least one hour before placing the order for the wire transfer (but on the same business day), applicants must print and fax a completed FCC Form 159 (Revised 2/03) to the FCC at (202) 418–2843. Alternatively, the completed form can be scanned and sent as an attachment to an email to *RROGWireFaxes@fcc.gov.* On the fax cover sheet or in the email subject header, write ''Wire Transfer—Auction Payment for Auction 107''. To meet the upfront payment deadline, an applicant's payment must be credited to the Commission's account for Auction 107 before the deadline.

124. Each applicant is responsible for ensuring timely submission of its upfront payment and for timely filing of an accurate and complete FCC Form 159. An applicant should coordinate with its financial institution well ahead of the due date regarding its wire transfer and allow sufficient time for the transfer to be initiated and completed prior to the deadline. Among other things, each applicant is cautioned to plan ahead regarding any potential delays in its or its financial institution's ability to complete wire transfers due to the COVID–19 pandemic. The Commission repeatedly has cautioned auction participants about the importance of planning ahead to prepare for unforeseen last-minute difficulties in making payments by wire transfer. Each applicant also is responsible for obtaining confirmation from its financial institution that its wire transfer to the U.S. Treasury was successful and from Commission staff that its upfront payment was timely received and that it was deposited into the proper account. To receive confirmation from Commission staff, contact Scott Radcliffe of the Office of Managing Director's Revenue & Receivables Operations Group/Auctions at (202) 418–7518 or Theresa Meeks at (202) 418–2945.

125. All payments must be made in U.S. dollars. All payments must be made by wire transfer. Upfront payments for Auction 107 go to an account number different from the accounts used in previous FCC auctions.

126. Failure to deliver a sufficient upfront payment as instructed herein by the upfront payment deadline will result in dismissal of the short-form application and disqualification from participation in the auction.

2. Completing and Submitting FCC Form 159

127. Information that supplements the standard instructions for FCC Form 159 (Revised 2/03) is provided in the *Auction 107 Procedures Public Notice* to help ensure correct completion of FCC Form 159 for upfront payments for Auction 107. Applicants need to complete FCC Form 159 carefully, because mistakes may affect bidding eligibility and lack of consistency between information provided in FCC Form 159 (Revised 2/03), FCC Form 175, long-form application (FCC Form 601), and correspondence about an application may cause processing delays. Appropriate cross-references between the FCC Form Remittance Advise and the short-form application are described in the *Auction 107 Procedures Public Notice.*

3. Upfront Payments and Bidding Eligibility

128. An upfront payment is a refundable deposit made by each applicant seeking to participate in bidding to establish its eligibility to bid on licenses.

129. Applicants that are former defaulters must pay upfront payments 50% greater than non-former defaulters. For purposes of this classification as a former defaulter or a former delinquent, defaults and delinquencies of the applicant itself and its controlling interests are included.

130. An applicant must make an upfront payment sufficient to obtain bidding eligibility on the generic blocks on which it will bid. Upfront payments are based on MHz-pops, and the amount of the upfront payment submitted by an applicant will determine its initial bidding eligibility, the maximum number of bidding units on which a bidder may place bids in any single round. In order to bid for a block, qualified bidders must have a current eligibility level that meets or exceeds the number of bidding units assigned to that generic block in a PEA. At a minimum, an applicant's total upfront payment must be enough to establish eligibility to bid on at least one block in one of the PEAs selected on its FCC Form 175 for Auction 107, or else the applicant will not become qualified to participate in the auction. The total upfront payment does not affect the total dollar amount the bidder may bid.

131. Upfront payments for a generic block in a PEA are based on $0.015 per MHz-pop for PEAs 1–50, $0.0030 per MHz-pop for PEAs 51–100, and $0.0015 per MHz-pop for all other PEAs, subject to a minimum of $500. The results of the upfront payment calculations will be rounded as follows: Results above $10,000 will be rounded to the nearest $1,000; results below $10,000 but above $1,000 will be rounded to the nearest $100; and results below $1,000 will be rounded to the nearest $10. The upfront payment amount per block in each PEA is set forth in the Attachment A file, available at *www.fcc.gov/auction/107.* The upfront payment amounts are approximately half the minimum opening bid amounts.

132. Each generic block in a PEA is assigned a specific number of bidding units, equal to one bidding unit per $10 of the upfront payment. The number of bidding units for one block in a given PEA is fixed, since it is based on the MHz-pops in the block and does not change during the auction as prices change. Thus, in calculating its upfront payment amount, an applicant should determine the maximum number of bidding units on which it may wish to bid in any single round and submit an upfront payment amount for the auction covering that number of bidding units. In some cases, a qualified bidder's maximum eligibility may be less than the amount of its upfront payment because the qualified bidder has either previously been in default on a Commission construction permit or license or delinquent on non-tax debt owed to a Federal agency, or has submitted an upfront payment that exceeds the total amount of bidding units associated with the license areas it selected on its FCC Form 175. In order to make this calculation, an applicant should add together the bidding units for the number of blocks in PEAs on which it seeks to be active in any given round. Applicants should check their calculations carefully, as there is no provision for increasing a bidder's eligibility after the upfront payment deadline.

133. If an applicant is a former defaulter, it must calculate its upfront payment for the maximum amount of generic blocks in each PEA on which it plans to bid by multiplying the number of bidding units on which it wishes to be active by 1.5. In order to calculate the number of bidding units to assign to former defaulters, the Commission will calculate the number of bidding units a non-former defaulter would get for the upfront payment received, divide that number by 1.5, and round the result up to the nearest bidding unit. If a former

defaulter fails to submit a sufficient upfront payment to establish eligibility to bid on at least one generic block in a PEA, the applicant will not be eligible to participate in Auction 107.

G. Auction Registration

134. All qualified bidders for Auction 107 are automatically registered for the auction. Registration materials will be distributed prior to the auction by overnight delivery. The mailing will be sent only to the contact person at the contact address listed in the FCC Form 175 and will include the SecurID® tokens that will be required to place bids.

135. Qualified bidders that do not receive this registration mailing will not be able to submit bids. Therefore, any qualified bidder for Auction 107 that has not received this mailing by noon on November 25, 2020, should call the Auctions Hotline at (717) 338–2868. Receipt of this registration mailing is critical to participating in the auction, and each applicant is responsible for ensuring it has received all the registration materials.

136. If a SecurID® token is lost or damaged, only a person who has been designated as an authorized bidder, the contact person, or the certifying official on the applicant's short-form application may request a replacement. To request a replacement, call the Auction Bidder Line at the telephone number provided in the registration materials or the Auction Hotline at (717) 338–2868.

H. Remote Electronic Bidding via the FCC Auction Bidding System

137. Bidders will be able to participate in Auction 107 over the internet using the FCC Auction Bidding System (bidding system). Bidders will have the option of placing bids by telephone through a dedicated auction bidder line. Please note that the telephonic bid assistants are required to use a script when entering bids placed by telephone. Telephonic bidders are therefore reminded to allow sufficient time to bid by placing their calls well in advance of the close of a round. The length of a call to place a telephonic bid may vary; please allow a minimum of 10 minutes. The toll-free telephone number for the auction bidder line will be provided to qualified bidders prior to the stat of bidding in the auction.

138. Only qualified bidders are permitted to bid. Each authorized bidder must have his or her own SecurID® token, which the Commission will provide at no charge. Each applicant will be issued three SecurID® tokens. A bidder cannot bid without his or her SecurID® token. In order to access the bidding function of the bidding system, bidders must be logged in during the bidding round using the passcode generated by the SecurID® token and a personal identification number (PIN) created by the bidder. Bidders are strongly encouraged to print a *bid summary* for each round after they have completed all their activity for that round. For security purposes, the SecurID® tokens and a telephone number for bidding questions are only mailed to the contact person at the contact address listed on the FCC Form 175. Each SecurID® token is tailored to a specific auction. SecurID® tokens issued for other auctions or obtained from a source other than the FCC will not work for Auction 107. The SecurID® tokens can be recycled, and the Commission requests that bidders return the tokens to the FCC. Pre-addressed envelopes will be provided to return the tokens once the auction has ended.

139. The Commission makes no warranties whatsoever and shall not be deemed to have made any warranties, with respect to the bidding system, including any implied warranties of merchantability or fitness for a particular purpose. In no event shall the Commission, or any of its officers, employees, or agents, be liable for any damages whatsoever (including, but not limited to, loss of business profits, business interruption, loss of use, revenue, or business information, or any other direct, indirect, or consequential damages) arising out of or relating to the existence, furnishing, functioning, or use of the bidding system. Moreover, no obligation or liability will arise out of the Commission's technical, programming, or other advice or service provided in connection with the bidding system.

140. To the extent an issue arises with the bidding system itself, the Commission will take all appropriate measures to resolve such issues quickly and equitably. Should an issue arise that is outside the bidding system or attributable to a bidder, including, but not limited to, a bidder's hardware, software, or internet access problem that prevents the bidder from submitting a bid prior to the end of a round, the Commission shall have no obligation to resolve or remediate such an issue on behalf of the bidder. Similarly, if an issue arises due to bidder error using the bidding system, the Commission shall have no obligation to resolve or remediate such an issue on behalf of the bidder. Accordingly, after the close of a bidding round, the results of bid processing will not be altered absent evidence of any failure in the bidding system.

I. Mock Auction

141. All qualified bidders will be eligible to participate in a mock auction for the clock phase, which will begin on December 3, 2020. Only those bidders that are qualified to participate in Auction 107 will be eligible to participate in the mock auction. The mock auction will enable qualified bidders to become familiar with the bidding system and to practice submitting bids prior to the auction. All qualified bidders, including all their authorized bidders, are encouraged to participate to assure that they can log in to the bidding system and gain experience with the bidding procedures. Participating in the mock auction may reduce the likelihood of a bidder making a mistake during the auction. Details regarding the mock auction will be announced in the *Qualified Bidders Public Notice* for Auction 107.

142. After the clock phase of the auction concludes, a separate mock auction for the assignment phase will be held for those qualified bidders that won generic blocks in the clock phase.

J. Auction Delay, Suspension, or Cancellation

143. At any time before or during the bidding process, OEA, in conjunction with WTB, may delay, suspend, or cancel bidding in Auction 107 in the event of a natural disaster, technical obstacle, network interruption, administrative or weather necessity, evidence of an auction security breach or unlawful bidding activity, or for any other reason that affects the fair and efficient conduct of competitive bidding. OEA will notify participants of any such delay, suspension, or cancellation by public notice and/or through the bidding system's announcement function. If the bidding is delayed or suspended, then OEA may, in its sole discretion, elect to resume the auction starting from the beginning of the current round or from some previous round, or cancel the auction in its entirety. OEA and WTB will exercise this authority at their discretion.

K. Fraud Alert

144. As is the case with many business investment opportunities, some unscrupulous entrepreneurs may attempt to use Auction 107 to deceive and defraud unsuspecting investors. Common warning signals of fraud include the following:

- The first contact is a ''cold call'' from a telemarketer or is made in

response to an inquiry prompted by a radio or television infomercial.

- The offering materials used to invest in the venture appear to be targeted at IRA funds, for example, by including all documents and papers needed for the transfer of funds maintained in IRA accounts.
- The amount of investment is less than $25,000.
- The sales representative makes verbal representations that: (a) The Internal Revenue Service, Federal Trade Commission (FTC), Securities and Exchange Commission (SEC), FCC, or other government agency has approved the investment; (b) the investment is not subject to state or federal securities laws; or (c) the investment will yield unrealistically high short-term profits. In addition, the offering materials often include copies of actual FCC releases, or quotes from FCC personnel, giving the appearance of FCC knowledge or approval of the solicitation.

145. Information about deceptive telemarketing investment schemes is available from the FCC, as well as the FTC and SEC. Additional sources of information for potential bidders and investors may be obtained from the following sources:

- The FCC's Consumer Call Center at (888) 225–5322 or by visiting *www.fcc.gov/general/frauds-scams-and-alerts-guides*.
- the FTC at (877) FTC–HELP ((877) 382–4357) or by visiting *www.consumer.ftc.gov/articles/0238-investment-risks*.
- the SEC at (202) 942–7040 or by visiting *www.sec.gov/investor*.

146. Complaints about specific deceptive telemarketing investment schemes should be directed to the FTC, the SEC, or the National Fraud Information Center at (202) 835–0618.

IV. Bidding Procedures

147. Auction 107 will be conducted using an ascending clock auction design with two phases. The first phase of the auction—the clock phase—will consist of successive clock bidding rounds in which bidders indicate their demands for a number of generic license blocks in specific categories and PEAs. In the second phase—the assignment phase—winning clock phase bidders will have the opportunity to bid for their preferred combinations of frequency-specific license assignments, consistent with their clock phase winnings, in a series of single sealed-bid rounds conducted by PEA or, in some cases, PEA group.

148. Updated technical guides that provide the mathematical details of the auction design and algorithms for the clock and assignment phases of Auction 107 are available in the Education section of the Auction 107 website (*www.fcc.gov/auction/107*). The information in the updated technical guides supplements the *Auction 107 Procedures Public Notice.*

A. Clock Phase

1. Clock Auction Design

149. During the clock phase of Auction 107, bidders will indicate their demands for generic license blocks in up to two bidding categories in specific geographic areas—in this case, PEAs. Under the clock auction format, the auction will proceed in a series of rounds, with bidding conducted simultaneously for all spectrum blocks in all PEAs available in the auction. During each bidding round, the bidding system will announce a per-block clock price for each product—a category in a PEA—and qualified bidders will submit, for each product for which they wish to bid, the number of blocks they seek at the clock prices associated with the current round. Bidding rounds will be open for predetermined periods of time. Bidders will be subject to activity and eligibility rules that govern the pace at which they participate in the auction.

150. In Auction 107, For each product, the clock price for a generic license block will increase from round to round if bidders indicate total demand for blocks in that product that exceeds the number of blocks available. The bidding rounds will continue until, for all products, the total number of blocks that bidders demand does not exceed the supply of available blocks. At that point, those bidders indicating demand for a product at the final price will be deemed winning bidders.

151. Following the clock phase, the assignment phase will offer clock phase winners the opportunity to bid an additional amount for licenses with specific frequencies. All winning bidders, regardless of whether they bid in the assignment phase, will be assigned licenses for contiguous blocks within each PEA.

2. Generic License Blocks and Bidding Categories

152. The clock phase categories will be determined based on the specific clearing deadline to which incumbent earth stations are subject, *i.e.,* Phase I or Phase II.

153. In the 46 PEAs where certain blocks are subject to the Phase I deadline and others only to the Phase II deadline, clock phase bidding will be conducted for two categories of generic blocks based on whether the Phase I or Phase II deadline applies to the specific blocks. Accordingly, in the 46 PEAs where certain blocks are subject to the Phase I deadline, the first category of generic blocks will consist of the 20-megahertz sub-blocks between 3.7–3.8 GHz. This category, designated Category A, will comprise the five blocks subject to the Phase I deadline. The second category of blocks, Category BC, will consist of the nine blocks that are subject to the Phase II deadline. In the remaining 360 PEAs where there are no blocks subject to the Phase I deadline there will be a single bidding category, designated ABC, consisting of all of the 14 20-megahertz blocks between 3.7–3.98 GHz.

154. In each bidding round, a bidder will have the opportunity to bid for the quantity of generic blocks it demands in each bidding category available in each PEA. Bidding in the clock phase will determine a single price for all the generic blocks in each category in each PEA.

3. Bidding Rounds

155. Auction 107 will consist of sequential bidding rounds, each followed by the release of round results. The Commission will conduct bidding simultaneously for all spectrum blocks in all bidding categories for all PEAs available in the auction. In the first bidding round of Auction 107, a bidder will indicate, for each product, how many generic license blocks it demands at the minimum opening bid price.

156. The initial bidding schedule will be announced in a public notice to be released at least one week before the start of bidding. The bidding schedule may be changed in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. Such changes may include the amount of time for bidding rounds, the amount of time between rounds, or the number of rounds per day, depending upon bidding activity and other factors. The bidding system will announce any such changes to the bidding schedule several rounds before the change occurs.

157. A bidder may submit its bids using the bidding system's *upload* function, which allows bid files in a comma-separated value (CSV) format to be uploaded. A bidder may also submit bids through the auction bidding system user interface or using the telephonic bidder line. The bidding system will not allow bids to be submitted unless the bidder selected the PEAs on its FCC Form 175 and the bidder has sufficient bidding eligibility.

158. During each round, a bidder may also remove bids placed in the current

round. If a bidder modifies its bids for blocks in a PEA in a round, the system takes the last bid submission as that bidder's bid for the round.

4. Stopping Rule

159. The Commission will use a simultaneous stopping rule for the clock phase of Auction 107, under which all blocks in both categories in all PEAs will remain available for bidding until the bidding stops in every PEA. In the clock phase, bidding will close for blocks in all PEAs after the first round in which there is no excess processed demand in any product. Consequently, it is not possible to determine in advance how long the bidding in Auction 107 will last. No bids may be withdrawn after the close of a round.

5. Availability of Bidding Information

160. The Commission will make public after each clock round of Auction 107, for each category in each PEA: (1) The supply, (2) the aggregate demand, (3) the posted price of the last completed round (which generally is the clock price of the previous round if demand exceeds supply; the start-of-round price of the previous round if supply exceeds demand; or the price at which a reduction caused demand to equal supply), and (4) the clock price for the next round. The identities of bidders demanding blocks in a specific category or PEA will not be disclosed until after Auction 107 concludes (*i.e.,* after the close of bidding).

161. Each bidder will have access to additional information related to its own bidding and bid eligibility. After the bids of a round have been processed, the bidding system will inform each bidder of the number of blocks it holds after the round (its processed demand) for every product and its eligibility for the next round.

6. Activity Requirement and Activity Upper Limit

162. *Activity requirement.* Bidders are required to maintain a minimum, high level of activity in each clock round in order to maintain bidding eligibility. The activity requirement (*the activity requirement percentage*) will be between 90% and 100% of a bidder's bidding eligibility in all clock rounds. The initial activity requirement percentage will be 95%. Failure to maintain the requisite activity level will result in a reduction in the bidder's eligibility, possibly curtailing or eliminating the bidder's ability to place additional bids in the auction. Bidders that do not place any bids in the first round of the auction will have their eligibility reduced to zero, and will be eliminated from bidding during the remainder of the auction.

163. The Commission will use upfront payments to determine a bidder's initial (maximum) eligibility in terms of bidding units. Each spectrum block in a PEA will be assigned a specific number of bidding units based on the number of MHz-pops in the PEA. Therefore, a bidder's upfront payment will determine the maximum number of blocks as measured by their associated bidding units that a bidder can demand at the start of the auction.

164. The activity rule will be satisfied when a bidder has bidding activity on blocks with bidding units that total at least the activity requirement percentage of its eligibility in the round. If the activity rule is met, then the bidder's eligibility will not change in the next round. Bidding eligibility will be reduced as the auction progresses if a bidder does not meet the activity requirement. The bidding system will reduce the bidder's eligibility to the amount at which the bidder would be meeting the activity requirement, which can be calculated by multiplying the bidder's activity by the reciprocal of the activity requirement. For example, with an activity requirement of 95%, the eligibility of a bidder not meeting the activity requirement would be calculated as the bidder's activity multiplied by 100/95, rounded up to the nearest integer.

165. For this clock auction, a bidder's activity in a round for purposes of the activity rule will be the sum of the bidding units associated with the bidder's processed demands, which may not be equal to its submitted demands. For instance, if a bidder requests a reduction in the quantity of blocks it demands in a product, but the bidding system does not apply the request because demand for the product would fall below the available supply, the bidder's activity will reflect its unreduced demand. Under the ascending clock auction format, the FCC auction bidding system will not allow a bidder to reduce the quantity of blocks it demands in a product if the reduction would result in aggregate demand falling below (or further below) the available supply of blocks in the product.

166. *Activity upper limit.* A bidder will be allowed to submit bids with associated bidding activity greater than its current bidding eligibility, noting, however, that a bidder's activity *as applied* by the auction bidding system during bid processing will not exceed the bidder's current bidding eligibility. Because a bidder's eligibility for the next round is calculated based on the bidder's demands as applied by the auction bidding system during bid processing, a bidder's eligibility may be reduced even if the bidder submitted bids that meet its activity requirement for the round. This may occur, for example, if the bidder bids to reduce its demand in PEA X by two blocks (with 10 bidding units each) and bids to increase its demand by one block (with 20 bidding units) in PEA Y. If the bidder's demand can only be reduced by one block in PEA X (because there is only one block of excess demand), the increase in PEA Y cannot be applied, and absent other bidding activity the bidder's eligibility would be reduced. The Commission anticipates that an ''activity upper limit'' will help a bidder avoid having its eligibility reduced as a result of submitted bids that cannot be applied during bid processing. For example, depending upon the bidder's overall bidding eligibility and the activity limit percentage, a bidder could submit an ''additional'' bid or bids that would be considered (in price point order with its other bids) and applied as available eligibility permits during the bid processing.

167. When submitting bids with associated bidding activity greater than its current bidding eligibility, a bidder should consider the price points associated with each of its bids to indicate the order in which it wishes the bidding system to consider its bid requests. Therefore, if bids submitted at lower price points cannot be applied as requested, thereby leaving the bidder with unused eligibility, then the system will consider the additional bids submitted at higher price points to use the otherwise lost eligibility. Although a bidder may submit bids with associated bidding units exceeding 100% of its current bidding eligibility, its processed activity can never exceed its eligibility. Thus, if a bidder submits bids with associated bidding units exceeding the bidder's current eligibility, the bidding system will not apply all of those bids.

168. After Round 1, a bidder may submit bids with bidding units totaling up to its *activity upper limit,* which is equal to the bidder's current bidding eligibility for the round times a percentage (the *activity limit percentage*) equal to or greater than 100%. An initial activity limit percentage of 120% will apply to Round 2 and subsequent rounds. In any bidding round, the auction bidding system will advise the bidder of its current bidding eligibility, its required bidding activity, and its activity upper limit.

169. OEA retains the discretion to change the activity requirement

percentage and the activity limit percentage during the auction, and to set the activity limit percentage within a range of 100% and 140%. The bidding system will announce any such changes in advance of the round in which they would take effect, giving bidders adequate notice to adjust their bidding strategies.

170. *Missing bids.* Under the clock auction format, a bidder is required to indicate its demands in every round, even if its demands at the new round's prices are unchanged from the previous round. Missing bids—bids that are not reconfirmed—are treated by the auction bidding system as bids that request to reduce to a quantity of zero blocks for the product at the start-of-round price. If these bids are applied, or applied partially, then a bidder's bidding activity, and its bidding eligibility for the next round, may be reduced.

7. Acceptable Bids

a. Minimum Opening Bids and Reserve Price

171. The Commission established in the *Auction 107 Procedures Public Notice* minimum opening bid amounts for Auction 107. The bidding system will not accept bids lower than the minimum opening bids for each product. Based on the Commission's experience in past auctions, setting minimum opening bid amounts judiciously is an effective tool for accelerating the competitive bidding process.

172. In the first bidding round of Auction 107, a bidder will indicate how many generic license blocks in a PEA it demands at the minimum opening bid price. Minimum opening bid amounts are calculated based on bandwidth and license area population using a tiered approach, under which minimum opening bid amounts will vary by market population. For PEAs 1–50, minimum opening bid amounts are based on $0.03 per MHz-pop; for PEAs 51–100, minimum opening bid amounts are based on $0.006 per MHz-pop; and for all other PEAs, minimum opening bid amounts are based on $0.003 per MHz-pop, subject to a minimum of $1,000. These minimum opening bid amounts are specified in the Attachment A file.

b. Clock Price Increments

173. After bidding in the first round and before each subsequent round, the FCC auction bidding system will announce the start-of-round price and the clock price for each product for the upcoming round—that is, the lowest price and the highest price at which bidders can specify the number of blocks they demand during the round. The start-of-round price is also referred to as the posted price of the previous round. As long as aggregate demand for blocks in the product exceeds the supply of blocks, the start-of-round price will be equal to the clock price from the prior round. Aggregate demand for a product is equal to the total number of blocks for which bidders have processed demand. If aggregate demand equals supply at a price in a previous round, either a clock price or an intra-round price, then the start-of-round price for the next round will be equal to the price at which demand equaled supply. If demand was less than supply in the previous round, then the start-of-round price for the next round will not increase.

174. The Commission will set the clock price for blocks in a specific product for a round by adding a percentage increment to the start-of-round price. For example, if the start-of-round price for a block in a given product is $10,000, and the percentage increment is 20%, then the clock price for the round will be $12,000. Results above $10,000 will be rounded up to the nearest $1,000; results below $10,000 but above $1,000 will be rounded up to the nearest $100; and results below $1,000 will be rounded up to the nearest $10.

175. The Commission will set the clock price for blocks in a PEA by adding a fixed increment percentage to the start-of-round price. The Commission will set the increment percentage within a range of 5% to 20% inclusive and will set the initial increment percentage at 10%. The Commission may adjust the increment as rounds continue.

c. Intra-Round Bids

176. A bidder may make intra-round bids by indicating a point between the start-of-round price and the clock price at which its demand for blocks changes. In placing an intra-round bid, a bidder would indicate a specific price and a quantity of blocks it demands if the price for blocks should increase beyond that price. For example, if a bidder has processed demand of three blocks at the start-of-round price of $100, but wishes to hold only two blocks if the price increases by more than $10 (assuming the bid increment is greater than $10), then the bidder will indicate a bid quantity of two at a price of $110 ($100 + $10). Similarly, if the bidder wishes to reduce its demand to zero should the price increase at all above $100, then the bidder will indicate a bid quantity of zero at the start-of-round price of $100.

177. Intra-round bids are optional; a bidder may choose to express its demands only at the clock prices.

8. Bids To Change Demand, Bid Types, and Bid Processing

178. A bidder that is willing to maintain the same demand in a product at the new clock price will bid for that quantity at the clock price, indicating that it is willing to pay up to and including that price, if need be, for the specified quantity. Bids to maintain demand will always be applied by the auction bidding system. A bidder that wishes to change the quantity it demands in a product (relative to its demand from the previous round as processed by the bidding system) can express its demand at the clock price or at an intra-round price, but depending upon the bidder's eligibility and the aggregate demand for the product, the bidding system may not be able to apply the requested change.

179. In order to facilitate bidding for multiple blocks in a product, bidders will be permitted to make two types of bids: Simple bids and switch bids.

- A ''simple'' bid indicates a desired quantity of blocks in a product at a price (either the clock price or an intra-round price). Simple bids may be applied partially. A simple bid that involves a reduction from the bidder's previous demands may be implemented partially if aggregate excess demand is insufficient to support the entire reduction. A simple bid to increase a bidder's demand in a category may be applied partially if the total number of bidding units associated with the bidder's full increase in demand exceeds the bidder's bidding eligibility for the round.
- A ''switch'' bid, applicable in PEAs in which there are blocks in both A and BC categories, allows the bidder to request to move its demand for a quantity of blocks from the A category to the BC category, or vice versa, within the same PEA. A switch bid may be applied partially, but the increase in demand in the ''to'' category will always match in quantity the reduction in the ''from'' category.

180. These bid types will allow bidders to express their demand for blocks in the next clock round without running the risk that they will be forced to purchase more spectrum at a higher price than they wish. When a bid to reduce demand can be applied only partially, the uniform price for the category will stop increasing at that point, since the partial application of the bid results in demand falling to

equal supply. Hence, a bidder that makes a simple bid or a switch bid that cannot be applied fully will not face a price that is higher than its bid price for the remaining demand.

181. A bidder may bid for multiple blocks in a bidding category in a PEA and may submit bids for multiple PEAs. The assignment phase will assign contiguous blocks to winners of multiple blocks in a PEA and give bidders an opportunity to express their preferences for specific frequency blocks, thereby facilitating aggregations of licenses.

182. The auction bidding system will, after each bidding round, process bids to change demand to determine the *processed demand* of each bidder for each product and a *posted price* for each product that would serve as the start-of-round price for the next round.

a. No Excess Supply Rule for Bids To Reduce Demand

183. The FCC auction bidding system will not apply a bid to reduce the quantity of blocks a bidder demands in a product if the reduction would result in aggregate demand falling below (or further below) the available supply of blocks in the product. Therefore, if a bidder submits a simple bid to reduce the number of blocks for which it has processed demand as of the previous round, then the FCC auction bidding system will treat the bid as a request to reduce demand that will be applied only if the ''no excess supply'' rule would be satisfied. Similarly, if a bidder submits a switch bid to move its demand for a quantity of blocks from the A category to the BC category within the same PEA, the FCC auction bidding system will treat the bid as a request that will be applied only if the ''no excess supply'' rule would be satisfied for the A category in the PEA.

b. Eligibility Rule for Bids To Increase Demand

184. The bidding system will not allow a bidder to increase the quantity of blocks it demands in a product if the total number of bidding units associated with the bidder's demand exceeds the bidder's bidding eligibility for the round. Therefore, if a bidder submits a simple bid to increase the number of blocks for which it has processed demand as of the previous round, the FCC auction bidding system will treat the bid as a request to increase demand that will be applied only if that would not cause the bidder's activity to exceed its eligibility.

c. Partial Application of Bids

185. A bid (simple bid or switch bid) that involves a reduction from the bidder's previous demands will be applied partially—that is, reduced by fewer blocks than requested in the bid—if excess demand is insufficient to support the entire reduction. A switch bid may be applied partially, but the increase in demand in the ''to'' category will always match in quantity the reduction in the ''from'' category. A simple bid to increase a bidder's demand will be applied partially if the total number of bidding units associated with the bidder's demand exceeds the bidder's bidding eligibility for the round.

d. Processed Demands

186. After a round ends, the bidding system will process bids to change demand in order of price point, where the price point represents the percentage of the bidding interval for the round. Bids to maintain demand are always applied before the bidding system considers bids to change demand. For example, if the start-of-round price is $5,000 and the clock price is $6,000, a price of $5,100 will correspond to the 10% price point, since it is 10% of the bidding interval between $5,000 and $6,000. The bidding system will first consider intra-round bids in ascending order of price point and then bids at the clock price. The system will consider bids at the lowest price point across all products, then look at bids at the next price point in all products, and so on. If there are multiple bids at a single price point, the system will process bids in order of a bid-specific pseudo-random number. As it considers each submitted bid during bid processing, the bidding system will determine the extent to which there is excess demand in each product at that point in the processing to determine whether a bidder's request to reduce demand can be applied. Similarly, the auction bidding system will evaluate the activity associated with the bidder's most recently determined demands at that point in the processing to determine whether a request to increase demand can be applied.

187. Because in any given round some bidders may request to increase demands for licenses while others may request reductions, the price point at which a bid is considered by the auction bidding system can affect whether it is applied. Bids not applied because of insufficient aggregate demand or insufficient eligibility will be held in a queue and considered, again in order of price point, if there should be excess demand or sufficient eligibility later in the processing after other bids are processed.

188. Once a round closes, the auction bidding system will process bids to change demand by first considering the bid submitted at the lowest price point and determining the maximum extent to which that bid can be applied given bidders' demands as determined at that point in the bid processing. If the bid can be applied (either in full or partially), the number of licenses the bidder holds at that point in the processing will be adjusted, and aggregate demand will be recalculated accordingly. If the bid cannot be applied in full, the unfulfilled bid, or portion thereof, will be held in a queue to be considered later during bid processing for that round. The bidding system will then consider the bid submitted at the next highest price point, applying it in full, in part, or not at all, given the most recently determined demands of bidders. Any unfulfilled requests will again be held in the queue, and aggregate demand will again be recalculated. Every time a bid or part of a bid is applied, the unfulfilled bids held in the queue will be reconsidered, in the order of their original price points (and by pseudo-random number, in the case of tied price points). The auction bidding system will not carry over unfulfilled bid requests to the next round, however. The bidding system will advise bidders of the status of their bids when round results are released.

e. Price Determination

189. The *Auction 107 Procedures Public Notice* describes the bid processing procedures to determine, based on aggregate demand, the posted price for each product for the round that will serve as the start-of-round price for the next round. The uniform price for all of the blocks in a product will increase from round to round as long as there is excess demand for blocks in the product, but will not increase if aggregate demand does not exceed the available supply of blocks.

190. If, at the end of a round, the aggregate demand for blocks in the product exceeds the supply of blocks, then the posted price will equal the clock price for the round. If a reduction in demand was applied during the round and caused demand in the product to equal supply, then the posted price will be the price at which the reduction was applied. If aggregate demand is less than or equal to supply and no bid to reduce demand was applied for the product, then the posted price will equal the start-of-round price for the round. The range of acceptable

bid amounts for the next round will be set by adding the percentage increment to the posted price.

191. When a bid to reduce demand can be applied only partially, the uniform price for the product will stop increasing at that point, since the partial application of the bid will result in demand falling to equal supply. Hence, a bidder that makes a bid to reduce demand that cannot be fully applied will not face a price for the remaining demand that is higher than its bid price.

192. After the bids of the round have been processed, if the stopping rule has not been met, the FCC auction bidding system will announce clock prices to indicate a range of acceptable bids for the next round. Each bidder will be informed of its processed demand and the extent of excess demand for blocks in each product.

9. Winning Bids in the Clock Phase

193. Under the clock auction format for Auction 107, bidders with processed demand for a product at the time the stopping rule is met will become the winning bidders of licenses corresponding to that number of blocks and will be assigned specific frequencies in the assignment phase. The final clock phase price for a generic block in a product will be the posted price for the final round.

B. Assignment Phase

194. The assignment phase will determine which frequency-specific licenses will be won by the winning bidders of generic blocks during the clock phase. In the assignment phase, winning bidders will have the opportunity to bid for preferred combinations of frequency-specific licenses. A bidder can indicate a price using a sealed bid for one or more possible frequency assignments for which it wishes to express a preference, consistent with its winning bids for generic blocks in the clock phase. The bid prices will represent the maximum payment that the bidder is willing to pay for the frequency-specific license assignment, in addition to the final price established in the clock phase for the generic blocks. The *Auction 107 Procedures Public Notice* will determine the optimal assignment of licenses within each assignment category in each PEA based on bid amounts in the assignment phase.

195. The assignment phase will use an alternative approach for PEAs with blocks in two clock phase categories that allows for final frequency specific assignments of contiguous blocks within each PEA. Accordingly, the assignment phase procedures for the 46 PEAs where certain blocks are subject to the Phase I deadline will make a separate interim assignment of contiguous blocks within Category A, *i.e.,* those blocks subject to the Phase I deadline, and will make a separate final assignment of contiguous blocks for all of a bidder's clock phase winnings whether in Category A and/or BC. In the 360 PEAs where there are no blocks subject to the Phase I deadline, the assignment phase procedures will make one assignment for all of a bidder's clock phase winnings in Category ABC, consisting of all of the 14 20-megahertz blocks between 3.7–3.98 GHz. Procedures to implement this approach are set forth in more detail in the *Auction 107 Procedures Public Notice.*

196. Participation in the assignment phase is voluntary; a winning bidder in the clock phase of Auction 107 need not bid in order to be assigned contiguous licenses corresponding to the outcome of the clock phase. Moreover, a bidder that wins multiple blocks in Category A in one of the 46 PEAs with blocks subject to the Phase I deadline will receive an interim assignment for contiguous blocks of licenses in conjunction with a final assignment for contiguous blocks, which could include blocks in any of the 14 available blocks in the PEA, even without bidding in the assignment phase. More specifically, to provide each winning bidder with frequency-specific licenses based on its interim and final assignments, the bidding system will match interim and final assignments as follows: First, any blocks that appear both in a bidder's interim and final assignment will be matched together. Then, considering all remaining blocks in the bidder's interim assignment (from lowest to highest), each will be matched with the lowest available block in the bidder's final assignment.

1. Sequencing and Grouping of PEAs

197. *Sequencing of rounds.* Assignment rounds will be conducted for the largest markets first. This sequencing will enable bidders to establish a ''footprint,'' making it easier for a bidder to incorporate frequency assignments from previously assigned areas into its bid preferences for other areas, and recognizes that a bidder winning blocks in multiple PEAs may prefer contiguous blocks across adjacent PEAs.

198. Specifically, the Commission will conduct a separate assignment round for each of the top 20 PEAs sequentially, beginning with the largest PEAs. Once the top 20 PEAs have been assigned, the Commission will conduct, for each Regional Economic Area Grouping (REAG), a series of assignment rounds for the remaining PEAs within that region. Top 20 PEAs are PEAs 1–20. The six REAGs are: Northeast, Southeast, Great Lakes, Mississippi Valley, Central, and West. The assignment rounds will be sequenced within a REAG in descending order of population for a PEA group or individual PEA.

199. *Grouping of PEAs.* To reduce the total amount of time required to complete the assignment phase, the Commission will group for assignment any non-top 20 PEAs within a REAG in which the same bidders won the same number of blocks in each clock phase category, and all are subject to the small markets bidding cap or all are not subject to the cap. This approach will also help maximize contiguity across PEAs. Accordingly, where these criteria are met, a bidder will submit a single set of bids for assignment options that will apply to all the PEAs in the group and will be assigned the same frequency-specific licenses in each PEA.

200. The Commission will conduct the bidding for the different REAGs in parallel. That is, bidding for assignments in multiple PEAs or PEA groups will take place during the same timed bidding round.

2. Acceptable Bids and Bid Processing

201. Prior to the start of the assignment phase, the bidding system will provide each clock phase winner with bidding options for all possible contiguous frequency assignments for blocks won in the clock phase. More specifically, in the 46 PEAs with blocks subject to the Phase I deadline, a winner of Category A blocks will have options for all possible contiguous interim assignments for the quantity of A blocks it won and all possible contiguous final assignments of all blocks it won in the clock phase regardless of the clock phase bidding category. A bidder will not see a separate set of bidding options for generic BC blocks won. They will be assigned as part of the final joint assignment of A and BC blocks. For example, suppose that, in one of the 46 PEAs subject to the Phase I deadline, a bidder won three Category A blocks and four Category BC blocks. Then, the bidder will be assigned three blocks in the interim assignment and seven blocks in the final assignment. The bidder will have three bidding options for the interim frequency assignment (A1–A3, A2–A4, and A3–A5) and eight bidding options for the final frequency assignment (A1–B2, A2–B3, A3–B4, A4–B5, A5–C1, B1–C2, B2–C3, and B3–C4). In the 360 PEAs where there are no blocks subject to the Phase I deadline,

a clock phase winner will have one set of options for all possible contiguous assignments for its clock phase winnings in Category ABC, consisting of all of the 14 20-megahertz blocks between 3.7–3.98 GHz.

202. A bidder will not see a separate set of bidding options for generic BC blocks won. They will be assigned as part of the final joint assignment of A and BC blocks.

203. An optimization approach will be used to determine the winning frequency assignment for each assignment category in each PEA or PEA group. The bidding system will select the assignment that maximizes the sum of bid amounts among all assignments in which each bidder's assignment is contiguous. If there are multiple blocks in a category that remain unsold, the unsold licenses will be contiguous.

204. Further, the additional price a bidder will pay for a specific frequency assignment (above the final clock phase price) will be calculated consistent with a generalized ''second price'' approach—that is, the winner will pay a price that would be just sufficient to result in the bidder receiving that same winning frequency assignment while ensuring that no group of bidders is willing to pay more for an alternative assignment in which every bidder is assigned contiguous spectrum. This price will be less than or equal to the price the bidder indicated it was willing to pay for the assignment. Determining prices in this way encourages bidders to bid their full value for the assignment, knowing that if the assignment is selected, they will pay no more than would be necessary to ensure that the outcome is competitive.

3. Information Available to Bidders During the Assignment Phase

205. After the clock phase concludes but before bidding begins in the assignment phase, the bidding system will provide to each assignment phase bidder a menu of bidding options consisting of possible configurations of frequency-specific licenses on which it can bid. These bidding options will be consistent with the bidder's clock-phase winnings. The bidding system will also announce the order in which assignment rounds will take place and indicate which PEAs will be grouped together for bidding. The bidding system will provide clock phase winning bidders with this information as soon as possible and will announce a schedule of assignment phase rounds that will commence no sooner than five business days later.

206. After each assignment round, the bidding system will inform each bidder of its own assignment and assignment payment for each assignment category for each PEA or PEA group assigned in the round. The bidding system will also provide each bidder with its current total payment, which is calculated as the sum of the bidder's total clock payment across all PEAs and the bidder's assignment payments for the PEAs for which an assignment round has already completed. This information will provide the bidder a running estimate during the assignment rounds of the dollar amount it will owe at the end of the auction. A bidder that is claiming a bidding credit will also be informed about its current bidding credit discount and whether the discount has been capped.

4. Final Payment Calculations

207. When all assignment rounds have been completed, a bidder's final payment takes into account the sum of final clock phase prices across all licenses that it won, the sum of all of the bidder's assignment payments, and any claimed bidding credits. Specifically, if a bidder is not claiming a bidding credit, its final payment is determined by summing the final clock phase prices across all licenses that it won and its assignment payments across all PEAs or PEA groups.

208. If a bidder claims a bidding credit, a bidding credit discount is calculated by applying the bidder's bidding credit percentage to the sum of the bidder's clock payments and assignment payments, capping the bidding credit discount if it exceeds the applicable caps for small businesses, rural service providers, and small markets. The resulting bidding credit discount is subtracted from the sum of the bidder's clock payments and assignment payments to determine the final payment for a bidder with a bidding credit.

C. License Authorizations for Interim and Final Assignments

209. The Commission will condition the 3.7 GHz licenses awarded post-auction for the interim and final frequency assignments deadline.

210. For a given frequency block in the 46 PEAs with blocks subject to the Phase I deadline, the interim and final authorizations may be awarded via either a single standard license authorization (where both the interim and final assignments are for the same frequency block(s)) or through a two-license paired authorization (including an interim assignment and a final assignment of different specific frequency blocks) that collectively provides authority for the full 15-year license term. In the paired authorization approach, the interim assignment of the pair would expire on the earlier of December 5, 2025, or the date the relevant PEA is confirmed cleared, with no option for renewal, and the resulting final license would provide for operation after the interim authorization expires until the remainder of the 15-year term. The B1–C4 blocks in a PEA will be confirmed cleared consistent with the process for validation of a space station operator's Certification of Accelerated Relocation that it satisfied the Phase II clearing deadline, as described in section 27.1412(g) of the Commission's rules. These paired authorizations together provide the full range of interim and final rights over the license term. To ensure consistent treatment of licenses for frequencies in the A block, paired interim and final licenses will be conditioned to clarify that if they are transferred/assigned, they must be transferred/assigned together, in the same manner. There is no restriction on spectrum leasing for either of the paired authorizations.

211. The assignment phase results will dictate whether a particular winning bidder may be awarded a single or paired license authorizations. For example, if a winner of clock phase Category A blocks (in the 46 PEAs subject to the Phase I deadline) is assigned to the same frequencies for both interim and final assignments, a single authorization will be issued providing both interim and final rights for those A block frequencies. If the winner of the interim assignment for specific frequencies in the A block does not also win the final assignment for the same frequencies in that block, a paired authorization will be issued to the bidder for an interim assignment in blocks A1–A5 and final assignment in blocks A1–C4 that together provide interim and final rights. In all other cases where one or more clock phase Category A blocks are not won and therefore no interim assignment is made, the winner of a final assignment will be issued a single authorization conveying final rights. For example, if the bidder wins only BC or ABC blocks in the PEA in the clock phase. The resulting final license will provide for operation on the earlier of December 5, 2025 or the date the relevant PEA is confirmed cleared. That is, in the event a Category A generic block is unsold and therefore interim rights are not assigned to a bidder, interim rights revert to the licensee holding the final authorization for that frequency block.

D. Calculating Individual ''Per-License'' Prices

212. While final auction payments for winning bidders will be calculated with bidding credit caps and assignment payments applied on an aggregate basis, rather than to individual license authorizations (single or paired), the bidding system will also calculate a ''per-license'' price for each license authorization. Such individual prices may be needed if a licensee later incurs license-specific obligations, such as unjust enrichment payments.

213. After the assignment phase, the auction bidding system will determine a net and gross post-auction price for each license authorization (or paired authorization, if the authorization comprises both an interim and final frequency assignment) that was won by a bidder by apportioning assignment payments and bidding credit discounts (only applicable for the net price) across all the license authorizations or paired authorizations that the bidder won. To calculate the gross per-license price, the auction bidding system will apportion the assignment payment to authorizations in proportion to the final clock phase price of the blocks that the bidder is assigned in that assignment category and PEA (or PEA group). To calculate the net price, the auction bidding system will first apportion any applicable bidding credit discounts to each PEA or PEA group in proportion to the gross payment for that market. Then, for each PEA or PEA group, the auction bidding system will apportion the assignment payment and the discount to licenses in proportion to the final clock phase price of the blocks that the bidder is assigned in that assignment category for that PEA (or PEA group).

E. Auction Results

214. The bidding system will determine winning bidders as described in the *Auction 107 Procedures Public Notice.* After release of the public notice announcing auction results, the public will be able to view and download bidding and results data through the FCC Public Reporting System (PRS).

F. Auction Announcements

215. Commission staff will use auction announcements to report necessary information, such as schedule changes, to bidders. All auction announcements will be available by clicking a link in the bidding system.

V. Post-Auction Procedures

216. The public notice announcing the close of the bidding and auction results will be released shortly after bidding has ended in Auction 107. This public notice will also establish the deadlines for submitting down payments, final payments, and the long-form applications (FCC Form 601) for the auction.

A. Down Payments

217. Within 10 business days after release of the auction closing public notice for Auction 107, each winning bidder must submit sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Commission to 20% of the net amount of its winning bids (less any bidding credits, if applicable).

B. Final Payments

218. Each winning bidder will be required to submit the balance of the net amount for each of its winning bids within 10 business days after the deadline for submitting down payments.

C. Long-Form Application (FCC Form 601)

219. Within 10 business days after release of the auction closing public notice, winning bidders must electronically submit a properly completed post-auction application (FCC Form 601) for the license(s) they won through the auction.

220. A winning bidder claiming eligibility for a small business bidding credit or a rural service provider bidding credit must demonstrate its eligibility for the bidding credit sought in its FCC Form 601 post-auction application. Further instructions on these and other filing requirements will be provided to winning bidders in the auction closing public notice for Auction 107.

221. Winning bidders organized as bidding consortia must comply with the FCC Form 601 post-auction application procedures set forth in section 1.2107(g) of the Commission's rules. Specifically, license(s) won by a consortium must be applied for as follows: (a) An individual member of the consortium or a new legal entity comprising two or more individual consortium members must file for licenses covered by the winning bids; (b) each member or group of members of a winning consortium seeking separate licenses will be required to file a separate FCC Form 601 for its/their respective license(s) in their legal business name; (c) in the case of a license to be partitioned or disaggregated, the member or group filing the applicable FCC Form 601 shall include the parties' partitioning or disaggregation agreement with the FCC Form 601; and (d) if a designated entity credit is sought (either small business or rural service provider), the applicant must meet the applicable eligibility requirements in the Commission's rules for the credit.

D. Ownership Disclosure Information Report (FCC Form 602)

222. Within 10 business days after release of the auction closing public notice for Auction 107, each winning bidder must also comply with the ownership reporting requirements in sections 1.913, 1.919, and 1.2112 of the Commission's rules by submitting an ownership disclosure information report for wireless telecommunications services (FCC Form 602) with its FCC Form 601 post-auction application.

223. If a winning bidder already has a complete and accurate FCC Form 602 on file in the FCC's Universal Licensing System (ULS), then it is not necessary to file a new report, but the winning bidder must certify in its FCC Form 601 application that the information on file with the Commission is complete and accurate. If the winning bidder does not have an FCC Form 602 on file, or if it is not complete and accurate, it must submit a new one.

224. When a winning bidder submits an FCC Form 175, ULS automatically creates an ownership record. This record is not an FCC Form 602, but it may be used to pre-fill the FCC Form 602 with the ownership information submitted on the winning bidder's FCC Form 175 application. A winning bidder must review the pre-filled information and confirm that it is complete and accurate as of the filing date of the FCC Form 601 post-auction application before certifying and submitting the FCC Form 602. Further instructions will be provided to winning bidders in the auction closing public notice.

E. Default and Disqualification

225. Any winning bidder that defaults or is disqualified after the close of an auction (*i.e.,* fails to remit the required down payment by the specified deadline, fails to submit a timely long-form application, fails to make a full and timely final payment, or is otherwise disqualified) is liable for default payments as described in section 1.2104(g)(2). A default payment consists of a deficiency payment, equal to the difference between the amount of the bidder's winning bid and the amount of the winning bid the next time a license covering the same spectrum is won in an auction, plus an additional payment equal to a percentage of the defaulter's bid or of the subsequent winning bid, whichever is less.

226. The percentage of the applicable bid to be assessed as an additional payment for defaults in a particular

auction is established in advance of the auction. The additional default payment for Auction 107 is 15% of the applicable bid for winning bids. The bidding system will calculate individual per-license prices that are separate from final auction payments, which are calculated on an aggregate basis. These prices determine the defaulted bid amount on individual licenses.

227. Finally, in the event of a default, the Commission has the discretion to re-auction the license or offer it to the next highest bidder (in descending order) at its final bid amount. In addition, if a default or disqualification involves gross misconduct, misrepresentation, or bad faith by an applicant, then the Commission may declare the applicant and its principals ineligible to bid in future auctions and may take any other action that it deems necessary, including institution of proceedings to revoke any existing authorizations held by the applicant.

F. Refund of Remaining Upfront Payment Balance

228. All refunds of upfront payment balances will be returned to the payer of record as identified on the FCC Form 159 unless the payer submits written authorization instructing otherwise. Bidders are encouraged to use the Refund Information icon found on the *Auction Application Manager* page or the Refund Form link available on the *Auction Application Submit Confirmation* page in the FCC Auction Application System to access the form. After the required information is completed on the blank form, the form should be printed, signed, and submitted to the Commission by mail, fax, or email as instructed in the *Auction 107 Procedures Public Notice.*

VI. Procedural Matters

229. *Supplemental Final Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act of 1980, as amended (RFA), a Supplemental Initial Regulatory Flexibility Analysis (Supplemental IRFA) was incorporated in the *Auction 107 Comment Public Notice* released in March 2020. The Commission sought public comment on the proposals in the *Auction 107 Comment Public Notice,* including comments on the Supplemental IRFA. No comments were filed addressing the Supplemental IRFA. The *Auction 107 Procedures Public Notice* establishes the procedures to be used for Auction 107 and supplements the Initial and Final Regulatory Flexibility Analyses completed by the Commission in the *3.7 GHz Notice of Proposed Rulemaking,* 83 FR 44128, August 29, 2018, and the *3.7 GHz Report and Order,* and other Commission orders pursuant to which Auction 107 will be conducted. This present Supplemental Final Regulatory Flexibility Analysis (Supplemental FRFA) conforms to the RFA.

230. *Need for, and Objectives of, the Rules.* The *Auction 107 Procedures Public Notice* implements auction procedures for those entities that seek to bid to acquire licenses in Auction 107. Auction 107 will be the Commission's second auction of mid-band spectrum in furtherance of the deployment of fifth-generation (5G) wireless, the Internet of Things (IoT), and other advanced spectrum-based services. The Public Notice adopts procedural rules and terms and conditions governing Auction 107, and the post-auction application and payment processes, as well as sets the minimum opening bid amounts for flexible-use overlay licenses in the 3.7–3.98 GHz band (3.7 GHz Service) that will be offered in Auction 107.

231. To promote the efficient and fair administration of the competitive bidding process for all Auction 107 participants, the Commission adopted the following procedures proposed in the *Auction 107 Comment Public Notice:*

- Use of anonymous bidding/limited information procedures which will not make public: (1) The license areas that an applicant selects for bidding in its auction application (FCC Form 175); (2) the amount of any upfront payment made by or on behalf of an applicant for Auction 107; (3) an applicant's bidding eligibility; and (4) any other bidding-related information that might reveal the identity of the bidder placing a bid, until after bidding has closed;
- establishment of bidding credit caps for eligible small businesses and rural service providers in Auction 107;
- adjustment of the bidding schedule as necessary in order to manage the pace of Auction 107;
- use of a simultaneous stopping rule in Auction 107, under which all blocks in both categories in all PEAs will remain available for bidding until bidding has stopped in every PEA;
- provision of discretionary authority to OEA, in conjunction with WTB, to delay, suspend, or cancel bidding in Auction 107 for any reason that affects the ability of the competitive bidding process to be conducted fairly and efficiently;
- use of a clock auction format for Auction 107 under which each qualified bidder will indicate in successive clock bidding rounds its demands for categories of generic blocks in specific PEAs, and associated bidding and bid processing procedures to implement the clock auction format;
- use of an activity rule, which requires a bidder to bid actively during the auction on a high percentage of its bidding eligibility, including a modification that would allow a bidder to submit bids, but not to be assigned bids, that exceed its bidding eligibility;
- use of an activity rule that does not include a waiver of the rule to preserve a bidder's eligibility;
- a requirement that bidders be active on between 90% and 100% of a bidder's bidding eligibility in all clock rounds;
- a specific minimum opening bid amount for generic blocks in each product available in Auction 107;
- a specific upfront payment amount for generic blocks in each product available in Auction 107;
- establishment of a bidder's initial bidding eligibility in bidding units based on that bidder's upfront payment through assignment of a specific number of bidding units for each generic block;
- establishment of acceptable bid amounts, including clock price increments and intra-round bids, along with a methodology for calculating such amounts;
- a methodology for processing bids and requests to reduce and increase demand subject to the no excess supply rule for bids to reduce demand and the eligibility rule for bids to increase demand;
- use of bid processing procedures that the auction bidding system will use, after each bidding round, to process bids to determine the processed demand of each bidder and a posted price for each product that would serve as the start-of-round price for the next round;
- establishment of an assignment phase that will determine which frequency-specific licenses will be won by the winning bidders of generic blocks during the clock phase; and
- establishment of additional default payments of 15% for bids pursuant to section 1.2104(g)(2) of the rules in the event that a winning bidder defaults or is disqualified after the auction.

232. The procedures for the conduct of Auction 107 constitute the more specific implementation of the competitive bidding rules contemplated by Parts 1 and 96 of the Commission's rules and the underlying rulemaking orders, including the *3.7 GHz Report and Order,* and relevant competitive bidding orders, and are fully consistent therewith.

233. *Summary of Significant Issues Raised by Public Comments in Response to the IRFA.* There were no comments filed that specifically address the

procedures and policies proposed in the Supplemental IRFA.

234. *Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration.* Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the SBA and to provide a detailed statement of any changes made to the proposed procedures as a result of those comments. The Chief Counsel did not file any comments in response to the procedures that were proposed in the *Auction 107 Comment Public Notice.*

235. *Description and Estimate of the Number of Small Entities to Which the Rules Will Apply.* The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the rules and policies adopted herein. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one which: (1) Is independently owned and operated, (2) is not dominant in its field of operation, and (3) satisfies any additional criteria established by the SBA.

236. As noted above, Regulatory Flexibility Analyses were incorporated into the *3.7 GHz Notice of Proposed Rule Making* and *3.7 GHz Report and Order.* These orders provide the underlying authority for the procedures proposed in the *Auction 107 Comment Public Notice* and are adopted herein for Auction 107. In those regulatory flexibility analyses, the Commission described in detail the small entities that might be significantly affected. In the *Auction 107 Procedures Public Notice,* the Commission incorporated by reference the descriptions and estimates of the number of small entities from the previous Regulatory Flexibility Analyses in the *3.7 GHz Notice of Proposed Rulemaking* and *3.7 GHz Report and Order.*

237. *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities.* The Commission designed the auction application process itself to minimize reporting and compliance requirements for applicants, including small business applicants. In the first part of the Commission's two-phased auction application process, parties desiring to participate in an auction file streamlined, short-form applications in which they certify under penalty of perjury as to their qualifications. Eligibility to participate in bidding is based on an applicant's short-form application and certifications, as well as its upfront payment. In the second phase of the process, winning bidders file a more comprehensive long-form application. Thus, an applicant that fails to become a winning bidder does not need to file a long-form application or provide the additional showings and more detailed demonstrations required of a winning bidder.

238. The Commission does not expect that the processes and procedures adopted in the *Auction 107 Procedures Public Notice* will require small entities to hire attorneys, engineers, consultants, or other professionals to participate in Auction 107 and comply with the procedures the Commission adopts because of the information, resources, and guidance it makes available to potential and actual participants. The Commission cannot quantify the cost of compliance with the procedures, however, the Commission does not believe that the cost of compliance will unduly burden small entities that choose to participate in the auction. The processes and procedures are consistent with existing Commission policies and procedures used in prior auctions. Thus, some small entities may already be familiar with such procedures and have the processes and procedures in place to facilitate compliance resulting in minimal incremental costs to comply. For those small entities that may be new to the Commission's auction process, the various resources that will be made available, including, but not limited to, the mock auction, remote electronic bidding, and access to hotlines for both technical and auction assistance, should help facilitate participation without the need to hire professionals. For example, the Commission will release an online tutorial that will help applicants understand the procedures for filing the auction short-form applications (FCC Form 175). The Commission will offer other educational opportunities for applicants in Auction 107 to familiarize themselves with the FCC Auction Application System and the bidding system. By providing these resources as well as the resources discussed below, the Commission expects small entities that use the available resources to experience lower participation and compliance costs.

239. *Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered.* The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its approach, which may include the following four alternatives (among others): ''(1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.''

240. The Commission has taken steps to minimize any economic impact of its auction procedures on small entities through, among other things, the many free resources the Commission provides to potential auction participants. Consistent with the past practices in prior auctions, small entities that are potential participants will have access to detailed educational information and Commission personnel to help guide their participation in Auction 107, which should alleviate any need to hire professionals. More specifically, small entities and other auction participants may seek clarification of, or guidance on, complying with competitive bidding rules and procedures, reporting requirements, and using the bidding system. Additionally, an FCC Auctions Hotline will provide small entities one-on-one access to Commission staff for information about the auction process and procedures. Further, the FCC Auctions Technical Support Hotline is another resource that provides technical assistance to applicants, including small entities, on issues such as access to or navigation within the electronic FCC Form 175 and use of the bidding system. Small entities and other would-be participants will also be provided with various materials on the pre-bidding process in advance of the short-form application filing window, which includes step-by-step instructions on how to complete FCC Form 175. In addition, small entities will have access to the web-based, interactive online tutorials produced by Commission staff to familiarize themselves with auction procedures, filing requirements, bidding procedures, and other matters related to an auction.

241. Various databases and other sources of information, including the Auctions program websites and copies of Commission decisions, are available to the public without charge, providing a low-cost mechanism for small entities to conduct research prior to and throughout the auction. Prior to and at the close of Auction 107, the

Commission will post public notices on the Auctions website, which articulate the procedures and deadlines for the auction. The Commission will make this information easily accessible and without charge to benefit all Auction 107 applicants, including small entities, thereby lowering their administrative costs to comply with the Commission's competitive bidding rules.

242. Eligible bidders will be given an opportunity to become familiar with auction procedures and the bidding system by participating in a mock auction. Eligible bidders will have access to a user guide for the bidding system, bidding file formats, and an online bidding procedures tutorial in advance of the mock auction. Further, the Commission intends to conduct Auction 107 electronically over the internet using a web-based auction system that eliminates the need for small entities and other bidders to be physically present in a specific location. These mechanisms are made available to facilitate participation in Auction 107 by all eligible bidders and may result in significant cost savings for small entities that use them. Moreover, the adoption of bidding procedures in advance of the auction, consistent with statutory directive, is designed to ensure that the auction will be administered predictably and fairly for all participants, including small businesses.

243. Another step taken to minimize the economic impact for small entities participating in Auction 107 is the Commission's adoption of bidding credits for small businesses. In accordance with the service rules applicable to the 3.7 GHz Service licenses to be offered in Auction 107, bidding credit discounts will be available to eligible small businesses and small business consortiums on the following basis: (1) A bidder with attributed average annual gross revenues that do not exceed $55 million for the preceding five years is eligible to receive a 15% discount on its winning bid or (2) a bidder with attributed average annual gross revenues that do not exceed $20 million for the preceding five years is eligible to receive a 25% discount on its winning bid. Eligible applicants can receive only one of the available bidding credits—not both.

244. The total amount of bidding credit discounts that may be awarded to an eligible small business is capped at $25 million. In addition, the Commission adopts a $10 million cap on the overall amount of bidding credits that any winning small business bidder may apply to winning licenses in markets with a population of 500,000 or less. Based on the technical characteristics of the 3.7–3.98 GHz band and the Commission's analysis of past auction data, the Commission anticipates that the caps will allow the majority of small businesses to take full advantage of the bidding credit program, thereby lowering the relative costs of participation for small businesses. The Commission declined to adopt a small business bidding credit cap of at least $200 million requested by one commenter, Moise Advisory, because, as the Commission previously explained, the proposed $25 million cap in past auctions would have allowed the vast majority of eligible small businesses to realize the full value of their bidding credits.

245. These procedures for the conduct of Auction 107 constitute the more specific implementation of the competitive bidding rules contemplated by Parts 1 and 96 of the Commission's rules and the underlying rulemaking orders, including the *3.7 GHz Report and Order* and relevant competitive bidding orders, and are fully consistent therewith.

246. *Report to Congress.* The Commission will send a copy of the *Auction 107 Procedures Public Notice,* including the Supplemental FRFA, in a report to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the *Auction 107 Procedures Public Notice,* including the Supplemental FRFA to the Chief Counsel for Advocacy of the SBA.

Federal Communications Commission.

Marlene Dortch,

Secretary.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 9

[PS Docket No. 07–114; FCC 20–98; FRS 16998]

Wireless E911 Location Accuracy Requirements

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (the FCC or Commission) builds upon the Commission's efforts to improve its wireless Enhanced 911 (E911) location accuracy rules by enabling 911 call centers and first responders to more accurately identify the floor level for wireless 911 calls made from multi-story buildings. The *Sixth Report and Order and Order on Reconsideration* affirms the April 3, 2021, and April 3, 2023, z-axis location accuracy requirements for nationwide wireless providers and rejects an untimely proposal to weaken these requirements; allows wireless providers to deploy technologies that focus on multi-story buildings, where vertical location information is most vital to first responders, and handset-based deployment solutions that meet the z-axis metric; requires nationwide wireless providers to deploy z-axis technology nationwide by April 3, 2025 (non-nationwide wireless providers would have an additional year to deploy z-axis technology throughout their service areas (*i.e.,* April 3, 2026)); and requires wireless providers, beginning January 6, 2022, to provide dispatchable location with wireless 911 calls when it is technically feasible to do so. Finally, we deny a Petition for Reconsideration of the Fifth Report and Order.

DATES: *Effective date:* September 28, 2020.

Compliance date: Compliance will not be required for § 9.10(i)(4)(iv) and (v), (j)(4), and (k) until the Commission publishes a document in the **Federal Register** announcing the compliance date.

ADDRESSES: The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW, Room CY–A257, Washington, DC 20554. Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID–19. See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy,* Public Notice, DA 20–304 (March 19, 2020). *https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy.* During the time the Commission's building is closed to the general public and until further notice.

FOR FURTHER INFORMATION CONTACT: Brenda Boykin, Attorney-Advisor, Policy and Licensing Division, Public Safety and Homeland Security Bureau, (202) 418–2062 or via email at *Brenda.Boykin@fcc.gov,* and John A. Evanoff, Deputy Chief, Policy and Licensing Division, Public Safety and Homeland Security Bureau, (202) 418–

0848 or via email at *John.Evanoff@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Sixth Report and Order and Order on Reconsideration,* FCC 20–98, adopted on July 16, 2020, and released on July 17, 2020. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW, Room CY–A257, Washington, DC 20554. To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *FCC504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). The complete text of the order also is available on the Commission's website at *http://www.fcc.gov.*

Synopsis

I. Introduction

1. The Sixth Report and Order and Order on Reconsideration builds upon this framework for improving the delivery and accuracy of vertical location requirements, consistent with our commitment to ensuring that *all* Americans have access to timely and effective emergency response when calling 911 from indoor and outdoor locations. We affirm the April 2021 and April 2023 vertical accuracy requirements that nationwide CMRS providers must meet in major markets and reject an untimely proposal to weaken these requirements. We allow CMRS providers to deploy technologies that focus on multi-story buildings, where vertical location information is most vital to first responders, and we require nationwide CMRS providers to deploy z-axis technology nationwide by April 2025. We also afford CMRS providers additional flexibility to provide dispatchable location (street address plus additional information such as floor level to identify the 911 caller's location), and we require dispatchable location to be delivered with wireless 911 calls when it is technically feasible and cost-effective to do so beginning January 6, 2022. Taken together, these actions place wireless carriers on track for providing PSAPs and first responders the best available vertical location information for the benefit of 911 callers seeking emergency assistance.

II. Background

2. In the *Fifth Report and Order,* we adopted a z-axis location accuracy metric of 3 meters above or below the handset (plus or minus 3 meters) for 80% of calls made from z-axis capable devices as demonstrated in the test bed. We concluded that implementing the 3-meter metric within the existing compliance timeline was technically feasible and would yield significant public safety benefits. We required CMRS providers to deliver z-axis information to PSAPs in Height Above Ellipsoid and to provide floor level information when available. Deployment must be consistent with the configuration used in the test bed, and CMRS providers must comply with requirements for confidence and uncertainty data, compliance certifications, and live call data reporting. Finally, we amended our rules to provide explicit privacy protection for z-axis location information, stating that such information may only be used for 911 purposes, except with prior express consent or as required by law.

3. In the *Fifth Further Notice,* we sought comment on additional issues associated with implementation of vertical location accuracy requirements. Specifically, we sought comment on the feasibility of phasing in a stricter z-axis standard (*e.g.,* 2 meters) over time, and ultimately whether to require CMRS providers to deliver floor level information in addition to or instead of z-axis measurements for wireless indoor 911 calls. We also proposed to adopt additional z-axis deployment options for CMRS providers to choose from as alternatives to the CMA-based deployment metric in the current rules. Finally, we proposed to revise our dispatchable location rules to allow provision of dispatchable location information from sources other than the National Emergency Address Database.

4. In response to the *Fifth Further Notice,* we received 20 comments and 12 reply comments, filed by public safety entities, technology vendors, wireless carriers, technology companies, and industry associations. In addition, APCO filed a Petition for Clarification of the *Fifth Report and Order* regarding implementation and testing of location accuracy technology and certification of compliance by CMRS providers. BRETSA filed a Petition for Reconsideration of certain portions of the *Fifth Report and Order* regarding performance testing and correlating z-axis information to floor level. CTIA, AT&T, and T-Mobile filed oppositions to the BRETSA Petition, and BRETSA filed a reply to oppositions.

5. After the close of the comment and reply comment cycle, the Commission received additional submissions. CTIA, on behalf of the 9–1–1 Location Technologies Test Bed, LLC (Test Bed), submitted a test bed report (Stage Za Report) to update the Commission on the most recent testing of 911 z-axis location technologies, Stage Za, by the Test Bed. Stage Za testing evaluated Google's Android-based Emergency Location Service. According to CTIA, ''Google's [Emergency Location Service] achieved ±3 meter accuracy for more than half of calls in the test bed, and exceeded the 80th percentile metric in one morphology.'' On June 25, 2020, the Public Safety and Homeland Security Bureau granted the Test Bed and Google's request for confidential treatment of the Stage Za Report.

6. Finally, Polaris filed a Petition for Emergency Declaratory Ruling asking the Commission to (1) reaffirm the deadlines established in the *Fifth Report and Order* and (2) dismiss certain alternative proposals advanced in comments.

III. Sixth Report and Order

7. With this *Sixth Report and Order,* we adopt our proposals in the *Fifth Further Notice* to expand the options for CMRS providers choosing to deploy z-axis technology to meet the April 2021 and April 2023 compliance benchmarks, with some revisions and clarifications. We also require nationwide CMRS providers to deploy z-axis technology nationwide by April 2025 and require non-nationwide CMRS providers to do the same throughout their service areas by April 2026. We adopt our proposal to allow CMRS providers flexibility to develop dispatchable location solutions that do not depend on the National Emergency Address Database, which has been discontinued. In addition, to make our wireless dispatchable location rules consistent with our dispatchable location rules for other services adopted pursuant to Section 506 of RAY BAUM'S Act, as of January 6, 2022, we require CMRS providers to provide dispatchable location for wireless 911 calls when it is technically feasible and cost-effective for them to do so. We also address implementation issues for dispatchable location solutions that are not based on the National Emergency Address Database, including (1) privacy and security and (2) confidence and uncertainty data requirements.

8. For the time being, we defer the issues raised in the *Fifth Further Notice* of whether to migrate from 3 meters to a stricter z-axis metric or to require CMRS providers to deliver floor level information. Based on the comments received on these issues, we believe that further work is needed to develop improved location technology that can achieve these capabilities and that

adopting a timetable for such requirements at this stage would be premature. We direct the Public Safety and Homeland Security Bureau to consider whether to refer certain technical issues to a federal advisory committee, such as the Communications Security, Reliability and Interoperability Council (CSRIC). In response to APCO's Petition for Clarification, we address other implementation matters and clarify certain aspects of the *Fifth Report and Order.*

9. We deny BRETSA's Petition for Reconsideration of the *Fifth Report and Order.* We defer consideration of a number of other issues raised in comments that fall outside the scope of the *Fifth Further Notice.* Finally, we grant Polaris' Petition for Emergency Declaratory Ruling to the extent stated herein. Taken together, we conclude that the benefits of today's decision outweigh the costs and that our actions will assist PSAPs and first responders in locating wireless 911 callers in the most populous areas in the near term and nationwide over the long term.

A. Timely Z-Axis Deployment

10. Under the current vertical location accuracy rules, nationwide CMRS providers electing the z-axis option for meeting vertical accuracy requirements must deploy z-axis technology meeting the 3-meter accuracy standard (for 80% of calls made from z-axis capable devices as demonstrated in the test bed) in each of the top 25 CMAs by April 3, 2021, and in each of the top 50 CMAs by April 3, 2023. As a preliminary matter, we grant Polaris's Petition for Emergency Declaratory Ruling to the extent it asks the Commission to reaffirm the deadlines established in the *Fifth Report and Order.* We did not seek comment on changing those deadlines (and no one petitioned to reconsider those deadlines) and hence doing so now would be beyond the scope of the current proceeding.

1. Alternative Means To Demonstrate Compliance Within a CMA

11. Deployment within a CMA is established by deploying the technology to cover 80% of the CMA population. In the *Fifth Further Notice,* we sought comment on expanding the z-axis deployment options available to CMRS providers for meeting the 80% coverage threshold. First, we sought comment on an alternative that would focus on deployment where multi-story buildings are concentrated, for example, an option to cover 80% of the buildings that exceed three stories in the CMA. Second, we sought comment on an alternative that would allow CMRS providers to rely on handset-based solutions to hit our benchmark (the 3-meter accuracy standard for 80% of calls made from z-axis capable devices as demonstrated in the test bed), which would imply a nationwide deployment.

12. *Urban and Dense Urban Morphologies.* We now afford nationwide CMRS providers the option of deploying z-axis technology to cover 80% of the buildings that exceed three stories in the CMA rather than 80% of the population. Public safety and industry commenters support this option, and no commenter opposes it. IAFF states that first responders need vertical location information for tall structures, which are not limited to the top CMA population centers. IAFF also states that transitioning from a population-based compliance approach to one focused on tall structures would presumably assist emergency personnel by ''ensuring that vertical location capabilities are made available as much as possible where they are most needed, and not just in low-rise residential areas where the vertical dimension is not a significant factor for public safety.'' iCERT asserts that this alternative approach will help to ensure that network infrastructure investments are directed to areas of the country where there is a greater percentage of large, multi-story buildings. NextNav states that tall buildings remain relatively clustered in a discrete number of locations in each community. NextNav asserts that, as a result, providing vertical location coverage to 80% of tall buildings is technically feasible and economically efficient, and it redirects the placement of z-axis infrastructure to those locations where it is truly needed.

13. We find that such an alternative may lower the costs for CMRS providers of timely deploying a z-axis solution consistent with our existing deadlines. NextNav states that its vertical location service will be available for use by wireless carriers and public safety within the top 25 and top 50 CMAs ''well in advance'' of the Commission's April 2021 and April 2023 compliance deadlines, respectively, and that its network will be able to provide z-axis service covering more than 80% of the tall buildings in these CMAs. NextNav also notes that in constructing its network, it employed the services of a privately managed, commercially-available database of tall multi-tenant buildings in the United States to identify the locations of tall buildings. In other words, cost-effective mechanisms already exist to identify buildings that exceed three stories for providers that choose this option, and this additional option will give providers valuable flexibility in determining how they meet their obligations. We thus disagree with CTIA's assertion that such an alternative may require a nationwide database of building structures, which in turn would require significant resources to develop. What is more, we find that affording CMRS providers an option based on coverage of tall buildings rather than population in the CMA will encourage providers to invest in z-axis solutions that focus on the areas with the greatest need for vertical location information—*i.e.,* those areas with the greatest concentration of multi-story buildings.

14. *Handset Deployment.* We also adopt our proposal in the *Fifth Further Notice* to afford nationwide CMRS providers the option of meeting vertical location accuracy requirements by deploying z-axis technology on handsets. No commenter opposes such an option. And we find that because a handset-based technology would be expected to be available nationwide, it would implicitly be available to 80% of the population of a CMA and thus meet our deployment metrics (so long, of course, as it meets the 3-meter accuracy standard for 80% of calls made from z-axis capable devices as demonstrated in the test bed).[1]

15. To ensure sufficient coverage for consumers and public safety, we sought comment on how to ensure that a handset-based solution would be widely available to consumers. The record indicates that the principal z-axis location solutions available to CMRS providers in the near term can all be delivered via software upgrades to a wide range of legacy handsets. Google's Emergency Location Service is already installed on most Android devices, and Apple's Hybridized Emergency Location is already installed on most iOS devices. In addition, the Cover Letter to the Stage Za Report states that Google's Emergency Location Service achieved 3-meter accuracy for more than 50% of calls in the test bed, ''and exceeded the 80th percentile metric in one morphology.'' Google's participation in the test bed underscores that z-axis

[1] We clarify that CMRS providers may use different z-axis technologies in different areas to meet the nationwide benchmark, so long as all technologies used are validated by testing to meet the accuracy requirements. For example, CMRS providers may deploy one z-axis technology in a particular morphology (*e.g.,* urban) and another technology in the remaining morphologies, so long as the combination results in nationwide coverage. This approach adds flexibility by allowing CMRS providers to focus infrastructure-based solutions in urban and dense urban areas while using handset-based solutions to target suburban and rural morphologies.

technology continues to rapidly improve, and commercial solutions such as Emergency Location Service are widely available today. Google's comments suggest that Google will continue to refine its z-axis solution, and we expect that those enhancements could be made available in advance of the April 2021 deadline or with even greater likelihood before the April 2023 deadline. Further, Apple will test its Hybridized Emergency Location solution in the Test Bed's Stage Zb testing campaign, which is scheduled to begin field testing in October 2020. Consequently, we expect that any upgrade to Google's Emergency Location Service or Apple's Hybridized Emergency Location to support z-axis capability will be widely available to consumers. We also expect that the solutions offered by Polaris and NextNav could be made widely available to consumers. Although the latter solutions will only work with handsets equipped with barometric sensors, we have previously noted that most smartphones in the market are equipped with such sensors. Moreover, data show that as of 2019, 81% of Americans owned a smartphone.

16. NENA suggests that the Commission ''require manufacturers and carriers take reasonable efforts to measure and report z-axis handset penetration during the transition period to a z-axis-only handset marketplace.'' We note that CMRS providers must certify their compliance with the vertical location accuracy requirements within 60 days after each benchmark, and we expect these certifications to provide information on the extent to which z-axis capable handsets are being deployed on carrier networks. We do not believe additional reporting is warranted at this time. However, we will continue to monitor developments on these issues.

2. Establishing a Nationwide Z-Axis Deployment Benchmark

17. Under our existing rules, a nationwide CMRS provider choosing the CMA-based deployment option to meet the April 2021 and 2023 benchmarks would have no further obligation to support vertical location outside the top 50 CMAs. In the *Fifth Further Notice,* we sought comment on mandating nationwide deployment of z-axis technology with a particular focus on handset-based versus network-based solutions.

18. Commenters generally support deploying z-axis technology on a nationwide basis. APCO suggests expanding the requirements in the rules beyond the top 50 CMAs, and NENA states that ''the ultimate goal is accurate z-axis location information for the entire country.'' iCERT states that reliance on a CMA-by-CMA, population-based approach to assess conformance ''appears to run counter to the direction of today's leading 911 location solutions.'' T-Mobile asserts that as promulgated, the Commission's vertical location rules would cover only a percentage of the U.S. population, ''thus leaving millions of Americans outside of the designated CMAs potentially without any vertical location information.'' Google states that carriers should be permitted to deploy z-axis capable handsets nationwide and should be encouraged to do so if these solutions prove superior overall.

19. The record also indicates that deploying z-axis technology on a nationwide basis is technically feasible—or at least will be in the near future. CTIA states that Google's Android Emergency Location Service and Apple's Hybridized Emergency Location ''have the potential to provide granular location information to [PSAPs] without deployment of new network infrastructure and with use of hardware with diverse capabilities (*i.e.,* barometric pressure sensors with varying degrees of accuracy or non-barometric pressure sensor based solutions).'' Google notes that many handset solutions involve determination of location on the device itself, without deployment or maintenance of new infrastructure, and that this makes deployments ''readily scalable, up to nationwide approaches.'' T-Mobile points out that mobile operating system (OS) provider z-axis solutions such as those offered by Google and Apple ''have the ability to be deployed nationwide and are available on nearly all existing devices.''

20. We agree with commenters who contend that our deployment requirements should ultimately ensure that vertical location information meeting our accuracy standards is provided nationwide. As the Commission stated in the *Fourth Report and Order* in this proceeding, ''our ultimate objective is that all Americans using mobile phones—whether they are calling from urban or rural areas, from indoors or outdoors—have technology that is functionally capable of providing accurate location information so that they receive the support they need in times of emergency.'' And we conclude that requiring nationwide deployment on an appropriate timescale will allow CMRS providers to use nascent z-axis technologies that can be widely deployed in consumer handsets through software-based upgrades. In addition, nationwide deployment means first responders and emergency callers everywhere will benefit from these technologies.

21. Accordingly, we require nationwide CMRS providers to deploy z-axis location technology or dispatchable location to all CMAs nationwide by April 2025.[2] This will ensure that all regions of the country and all consumers receive the benefits of z-axis location by a date certain, even if nationwide providers choose to deploy CMA-focused solutions to meet the earlier deadlines. The record strongly supports our conclusion that it is technically feasible for all nationwide providers to deploy z-axis technology nationwide by April 2025, if not sooner. No commenter opposes our conclusion. As evidenced in comments responding to the *Fifth Further Notice,* z-axis technology is improving rapidly, and new and innovative solutions are likely to become widely available. Therefore, it is appropriate for us to take this further action to help make all Americans safer.

22. In contrast, we reject calls by some quarters to weaken our existing benchmarks and replace them with exclusive nationwide benchmarks that do not meet our current accuracy target. In their comments, CMRS providers propose an alternative timeline for deployment of z-axis technology meeting the accuracy standard adopted by the Commission in the *Fifth Report and Order.* T-Mobile, Verizon, and AT&T support an option for nationwide deployment that would require meeting the ±3-meter vertical location accuracy metric for 50% of calls by April 2021, 70% of calls by April 2023, and 80% of calls by April 2025. T-Mobile asserts that under this alternative, z-axis technology would be available ''across the country on nearly all devices'' by April 2021. Verizon and AT&T also support a schedule for introducing z-axis capable devices nationwide.

23. *We agree with IAFF:* While the Commission ''fully supports expanding vertical location requirements beyond the largest 50 CMAs,'' it does not support any deployment option that delays or diminishes the Commission's vertical location accuracy rules. What is more, the CMRS providers' alternative proposal constitutes an untimely petition for reconsideration of issues

[2] As in the case of our 2021 and 2023 deployment benchmarks, CMRS providers may deploy dispatchable location as opposed to z-axis technology to meet this requirement and we require deployment to cover 80% of the population or 3-story buildings in each CMA, which may be shown by the deployment of a widely available handset-based solution.

that were settled in the *Fifth Report and Order* and are outside the scope of the issues raised in the *Fifth Further Notice.* CMRS providers propose a weaker accuracy standard and longer timeline based on the same arguments they raised prior to the *Fifth Report and Order, i.e.,* that no party has demonstrated in the test bed process that 3-meter accuracy for 80% of calls can be met by the 2021 or 2023 deadlines and that a phased-in approach starting with a less rigorous metric is therefore warranted. We considered and rejected these arguments in the *Fifth Report and Order* when we established the z-axis location accuracy standard of plus or minus 3 meters for 80% of wireless E911 calls and affirmed the 2021 and 2023 deadlines for implementation of this standard.

24. We disagree with T-Mobile's assertion that our exploration of additional z-axis deployment options in the *Fifth Further Notice* was an invitation to commenters to revisit the adopted accuracy standard or timetable; the *Fifth Further Notice* sought comment on how to expand the options to implement the earlier adopted requirements or make vertical location accuracy available to wireless 911 callers on an equally strong basis. The *Fifth Further Notice* sought comment ''on establishing an option for CMRS providers to deploy z-axis capable handsets nationwide *as a means of complying with our z-axis deployment requirements,*'' *i.e.,* the requirements and deadlines adopted in the *Fifth Report & Order.* It also sought comment on tightening the 3-meter standard over time, *e.g.,* to 2 meters or 1 meter. Thus, contrary to T-Mobile's assertion, the alternatives on which the *Fifth Further Notice* sought comment did not include *weakening* the z-axis metric or extending the 2021 or 2023 deadlines. In addition, CMRS providers offer no new facts to indicate that they will be unable to meet the Commission's longstanding benchmarks, while the vendors of both solutions tested in Stage Z of the test bed continue to indicate that their solutions will be available to CMRS providers in time to enable them to meet the April 2021 benchmark. As IAFF states, ''[t]he process of reaching a consensus position on these important issues is too demanding on key stakeholders to constantly revisit the decision year after year.''

25. As a separate and independent ground for rejecting CMRS providers' alternative proposal, even if the CMRS providers' alternative proposal were timely, we conclude that there is no basis for taking this approach. We disagree with the assertion by T-Mobile and CTIA that their proposal should be preferred because it would provide z-axis location information for more 911 calls overall than solutions that only support z-axis location for 911 calls in major markets. While T-Mobile and CTIA argue that their solution could be quickly deployed nationwide and would work in most handsets, the fact remains that their solution would not meet the Commission's 3-meter/80% of calls accuracy standard by April 2021 or even by April 2023 in any market, but would delay compliance in all markets until 2025.

26. Moreover, as public safety commenters note, if CMRS providers intend to use a 911 location technology that is still under development and currently incapable of meeting the +/− 3-meter benchmark more than 50% of the time, the technology needs to be improved within the timetable adopted by the Commission to meet the standard; the standard should not be weakened to conform to the current status of the technology in development when other solutions that meet the standard are technically feasible. The National Sheriffs' Association (NSA) points out that in an emergency dispatch situation where time is of the essence, ''it is critically important that the information that is provided to law enforcement officers in the field be accurate and reliable.'' Further, ''[a]ny location information that may not be sufficiently accurate as much as 50% of the time cannot be used as a resource for public safety and must be discarded.'' With only 50% reliability, passing such z-axis information to PSAPs could waste precious minutes while first responders search in vain the wrong floors of a building—and ultimately lead the public safety community to simply ignore z-axis information over the longer term. Such an outcome would serve no one—not first responders, not the public, and not the CMRS providers that invested in such technologies.

27. We also disagree with T-Mobile's assertion that the CMRS providers' alternative is superior because it would be deployed nationwide rather than being limited to major markets. T-Mobile's preferred solution instead is just a trade-off—potentially earlier nationwide deployment of a technology solution that does not meet the accuracy levels needed to protect public safety. And T-Mobile ignores the reasons why the Commission adopted the market-based approach to z-axis deployment in the 2015 *Fourth Report and Order*—an approach that was taken directly from the 2015 Amended Roadmap jointly agreed to and submitted by the wireless carriers and public safety entities. The parties to the Roadmap proposed deployment of z-axis technology in the top 50 markets because identifying a 911 caller's vertical location is most crucial for calls coming from multi-story buildings. The Commission's analysis of U.S. Geological Survey data indicates that more than 84% of census block groups with average building heights of three or more stories are located in the top 50 markets. In other words, federal data showing the average height of buildings by census block group show that over 84% of block groups in the three tallest quantiles are in the top 50 markets. As the wireless providers acknowledged in the Amended Roadmap, it is much more important to have reliable z-axis information for 911 calls from these environments, even if they represent a small percentage of overall calls, than for the many 911 calls that come from ground level (*e.g.,* calls from outdoor locations, single family homes, and other single story buildings). Yet the T-Mobile/CTIA alternative would allow CMRS providers to abandon this targeted approach to z-axis deployment, which has been in the Commission's rules since the 2015 *Fourth Report and Order* and which encourages deployment of vertical location resources in the areas where they are most needed.

28. In addition, we disagree with T-Mobile and CTIA's argument that their OS-based alternative would provide greater consumer benefits than solutions offered by NextNav and Polaris because (1) the OS-based alternative would be available on most current handsets, whereas the NextNav and Polaris solutions will only work on handsets equipped with barometric sensors, and (2) the OS-based alternative can be made available to consumers automatically, whereas the NextNav and Polaris solutions require consumers to ''opt in'' and many consumers may decline to do so. We find these arguments unpersuasive. NextNav argues that the CMRS providers underestimate the availability of barometer-equipped handsets and contends that its software ''can be uploaded/pushed to capable devices without user opt-in.'' CTIA also provides no support, other than conjecture, for its estimate that only 5% of consumers asked to opt in to a 911 solution would do so. Moreover, even if we assume that the NextNav and Polaris solutions would only benefit consumers in major markets who have barometer-equipped handsets and who choose to opt in, those consumers would have access by April 2021 to z-axis solutions meeting the 3-meter/80% of calls

standard. In addition, consumers without z-axis capable devices would have the ability to acquire them. By contrast, the T-Mobile/CTIA alternative would provide far less consumer benefit because it would deprive *all* consumers of access to z-axis solutions meeting the 3-meter/80% of calls standard for an additional four years—until April 2025. Aside from failing to quantify how many legacy handsets a change in approach might address, T-Mobile's argument fails to address the same fundamental problem: Enabling E911 technology that delivers accurate location information only 50% of the time is not useful to public safety officials, will not be used by PSAPs, and thus eliminates the benefits of deployment in 2021 and 2023.

29. Finally, there is no merit to T-Mobile's argument that our rejection of its alternative proposal is arbitrary and capricious because we have not undertaken a cost-benefit comparison of its preferred OS-based solution against the solutions proffered by NextNav and Polaris. First, despite our request in the *Fifth Further Notice* for commenters to provide data on costs and benefits for alternative solutions, neither T-Mobile nor any other CMRS provider submitted cost/benefit data that would be needed to make such a comparison. Second, and more fundamentally, because our location accuracy rules are technology-neutral, the purpose of our cost-benefit analysis is not to compare the costs and benefits of particular location methodologies, but rather to show that the cost ceiling imposed by our location requirements is below the expected benefit floor. In the *Fifth Report and Order,* we determined that the cost ceiling imposed by our z-axis standard would not exceed $36 million and that this was well below the expected annual benefit floor. Once these values are established, CMRS providers are free to adopt whatever technology they want, including OS-based solutions, as long as it meets our prescribed standards. The fact that one technology is more or less costly than another does not require us to re-do our cost-benefit analysis or mean that use of either one would cause costs to exceed benefits. Finally, while the costs of T-Mobile's alternative may be lower in 2021 and 2023 (although T-Mobile does not quantify how much lower), the record also shows that T-Mobile's proposed approach would largely eliminate the benefits of the 2021 and 2023 benchmarks because the results would be insufficiently accurate for first responders to actually use them. As a result, the net benefits of our approach exceed the net benefits of T-Mobile's proposed alternative.

3. Deployment of Location Software to Z-Axis Capable Handsets

30. In the *Fifth Report and Order,* we stated that the 3-meter metric should apply to all ''z-axis capable'' handsets, which we defined as handsets that ''can measure and report vertical location without a hardware upgrade.'' We further used this definition as the basis for our deployment requirements, stating that ''any device technically capable of measuring and reporting vertical location information without a change in hardware must be enabled to do so.''

31. Several commenters direct their comments toward the definition of ''z-axis capable handset,'' while others seek more specification on what mechanisms for making handsets z-axis capable will be considered sufficient to meet the Commission's deployment requirements. We address these issues below and codify our previously adopted definition and refinements thereto.

32. APCO points out that the handset-based location solutions offered by NextNav and Polaris require the deployment of external data sources such as beacons, weather stations, or location databases to support location determination in the handset. APCO asks us to confirm that in such instances, our rules require not just deployment of z-axis capable handsets, but also deployment of any network infrastructure that is necessary to support delivery of location information by the handset. We agree. In order to meet deployment thresholds under either the CMA-based or the nationwide handset-based alternative, CMRS providers must deploy and activate all network infrastructure necessary to support z-axis location by z-axis capable handsets throughout the deployment area.

33. Polaris asks the Commission to confirm that for barometric-based location solutions, only devices with barometric sensors can be considered z-axis capable. We agree that the definition of what constitutes a ''z-axis capable'' handset may vary depending on the specific location solution being used. Because we defined z-axis capability in the *Fifth Report and Order* to exclude handsets that require a hardware upgrade, the applicability of the definition to particular handsets may vary depending on what hardware is required for a particular 911 location solution to work. Thus, we agree with Polaris that for location solutions that rely on barometric pressure sensor information, only handsets that have such sensors installed would be considered z-axis capable. On the other hand, in the case of location solutions that do not require barometric pressure sensor information, both handsets with and without barometric sensors would be considered z-axis capable, assuming they are software-upgradable.

34. T-Mobile questions whether CMRS providers can rely on third-party apps to deliver location software upgrades. CMRS providers may deliver upgrades to handsets either by installing the location software as an upgrade to the handset OS or by offering it to end users as an over-the-top software upgrade. This approach will give CMRS providers additional flexibility in meeting the April 2021 deadline.

35. AT&T asks whether a handset will be considered z-axis capable if activating the software requires customer consent, and the customer declines to do so. We recognize, as AT&T points out, that some location software upgrades may require affirmative consent by the end user to activate the software in the handset. In such instances, the CMRS provider will be deemed to have met its deployment obligation so long as it either pre-installs or affirmatively ''pushes'' the location software to end users so that they receive a prompt or other notice informing them that the application or service is available and what they need to do to download and enable the technology on their phone.[3] Moreover, the CMRS provider will be deemed in compliance when it makes location software available to the end user in this manner even if the end user declines to use the software or subsequently disables it.[4] However, we expect CMRS providers to clearly and conspicuously disclose the benefits of any location solution they offer so that consumers can make informed decisions whether to enable it.

36. Some carriers question whether older barometer-equipped handsets can be software-upgraded to support the Polaris or NextNav solutions. AT&T contends that only 26% of Android devices ''have the capability to be upgraded to support vertical location'' and that ''a not-insignificant number of Apple devices may also face limitations in receiving updates.'' CTIA states that

[3] Conversely, it would not be sufficient for the provider merely to make the location application available to customers in an app store.

[4] In other words, handsets that fall into this category will not be counted against the CMRS provider in determining compliance with the deployment benchmarks herein. The location solution must also comply with the privacy protections applicable to 911 location information.

NextNav's comments about the challenges of integrating its proprietary solution into wireless handsets suggest that it is ''not currently on a path that will deliver a scalable and consistent solution that will meet the April 2021 deadline.''

37. We do not share these concerns. First, the record indicates that barometric sensor-based solutions, such as those offered by Polaris and NextNav, can be made widely available to consumers. Although these solutions will only work with handsets equipped with barometric sensors, we have previously noted that most smartphones in the market are so equipped. Second, Polaris contends that its software can be widely deployed as part of an OS upgrade or a carrier upgrade, and NextNav states that software updates for its solution can be uploaded to most z-axis capable handsets that were previously purchased.

38. Most newer handset models can receive such upgrades because they have not reached end-of-life status. Accordingly, they should be considered z-axis capable under our rules. In addition, CMRS providers can deploy software upgrades by means of over-the-top apps as well as operating system or firmware upgrades. In light of this, we require that CMRS providers using any z-axis option must affirmatively ''push'' the z-axis technology to all existing z-axis capable handset models on the provider's network that can receive it, and that CMRS providers must continue to support the z-axis technology on these handsets thereafter. A CMRS provider using the handset-based deployment option must make the software available to existing z-axis capable handsets nationwide; a provider using a CMA-based deployment option must make it available to all z-axis capable handsets in the CMA. For all new z-axis capable handsets marketed to consumers, the technology must be pre-installed.

39. Verizon and AT&T ask the Commission to take regulatory action directed at device manufacturers to require their cooperation with wireless providers to meet the z-axis deadlines. We continue to believe that the flexibility, technology neutrality, and privacy protections afforded by our rules will enable CMRS providers to negotiate requirements with such third parties and establish contractual timelines that will enable timely deployment of z-axis solutions. We expect device manufacturers and others to cooperate and work in good faith with CMRS providers to expedite these efforts as needed to meet the upcoming deadlines. Moreover, as we stated in the *Fifth Report and Order,* we will closely monitor the roll-out of z-axis capable devices to the American public and will ''take all appropriate action against any party that obstructs the effective deployment of such technologies in a timely manner.''

40. Finally, we decline to adopt AT&T's suggestion that we measure the deployment of technology to z-axis capable handsets based on the percentage of new handset models offered for sale. Such an approach would provide vertical location technology only to handsets newly introduced to the market, leaving the entire base of legacy handsets without this potentially lifesaving technology.

4. Deployment Timeline for Non-Nationwide Providers

41. Under our existing rules, non-nationwide CMRS providers serving any of the top 25 or 50 CMAs have an additional year to meet each of the vertical location benchmarks specified in the rules. Accordingly, these non-nationwide providers will have an additional year to implement the nationwide deployment requirement we adopt in this order. However, the current vertical location requirements do not extend to non-nationwide CMRS providers that do not serve any of the top 50 CMAs. In the *Fifth Further Notice,* we noted that CCA has urged the Commission to ''implement a glide path for non-nationwide carriers to comply with any adopted timeframes, particularly if these carriers operate outside of the FNPRM's proposed benchmark of the top 50 markets.'' We also sought comment on appropriate timelines for non-nationwide CMRS providers to comply with additional z-axis deployment options, such as nationwide deployment or deployment on the basis of building type.

42. In its comments, CCA notes that many non-nationwide providers are dependent on vendors to update network capabilities that support location accuracy services, and delays by such vendors may be outside of a carrier's control. CCA also notes that many non-nationwide providers are not privy to the test bed process and the technologies that are deemed viable; ''[o]nly once solutions are certified out of the test bed do carriers undergo their own interoperability testing, a process that could take many months.'' CCA asserts that its small and rural carrier members have ''finite resources,'' and cautions that ''technical and marketplace barriers may delay small and rural carrier deployment beyond a year.'' However, NENA contends that non-nationwide providers should not be given additional implementation time beyond the one-year period afforded by the current rules.

43. Consistent with our objectives in this proceeding, we conclude that the benefits of improved vertical location accuracy should be available to customers of all CMRS providers, including non-nationwide providers serving areas outside the major population centers. In light of our decision to require nationwide CMRS providers to provide nationwide z-axis location by April 2025, we afford non-nationwide carriers an additional year, *i.e.,* until April 2026, to provide z-axis location throughout their service areas. Accordingly, non-nationwide providers that do not serve any of the top 50 CMAs must also support z-axis location throughout their network footprint by April 2026. Given the constraints and technical challenges non-nationwide CMRS providers may face in selecting and deploying z-axis technologies, we find that allowing these providers an additional year beyond the 2025 nationwide deployment date for nationwide carriers is appropriate. This will afford non-nationwide CMRS providers operating outside the top 50 CMAs more than five years to comply with our vertical location requirements. In addition, like all other CMRS providers already subject to vertical location requirements, these providers also must comply with applicable requirements for compliance certifications, privacy and security protections, provision of confidence/uncertainty data, and live call data reporting.

B. Dispatchable Location Without the National Emergency Address Database

44. The Commission's current dispatchable location rules specify that CMRS providers must use the National Emergency Address Database as the source of dispatchable location reference points to meet CMA-based vertical location requirements. In the *Fifth Further Notice,* we noted the significant challenges facing the National Emergency Address Database and proposed to expand the rules to allow CMRS providers to use non-National Emergency Address Database based dispatchable location solutions to meet these requirements, provided that such solutions afforded equivalent privacy and security protections to consumers. We observed that our proposal was consistent with the flexible and technology-neutral approach to dispatchable location we adopted for non-CMRS providers in the Kari's Law/RAY BAUM'S Act proceeding.

45. As proposed, we revise the rules to allow CMRS providers to deploy dispatchable location solutions that do not rely on the National Emergency Address Database, which was formally terminated shortly after the *Fifth Further Notice*.[5] Given the National Emergency Address Database's demise, commenters uniformly support this change. Commenters also affirm that a diverse array of technological approaches could be used to provide dispatchable location. CTIA states that ''location solution providers are developing a variety of technology approaches to derive address-based information, such as reverse geocoding, device contextual information, and mapping locations within large buildings or other structures such as airports or shopping malls.'' Verizon states that it has begun delivering dispatchable location to PSAPs for 911 calls from certain devices when the information can be determined reliably, and that it plans to incorporate dispatchable location capabilities into 5G home voice products. AT&T and Google suggest that dispatchable location solutions may be technically feasible if carriers can leverage other data sources, including handset-based approaches.

46. The *Fifth Further Notice* also sought comment on alternative approaches to dispatchable location, including whether to mandate the provision of both dispatchable location and vertical location data for 911 calls originating from multi-story buildings. Some public safety commenters support revising the current rules—which give CMRS providers the option of providing either dispatchable location or z-axis information—to require provision of dispatchable location for a minimum percentage of 911 calls. On the other hand, CMRS providers express concerns about requiring dispatchable location, arguing that many challenges remain and that solutions are still in early stages of development. However, there is broad support for treating dispatchable location as the preferred indoor location solution as it becomes technically feasible. IAFF states that it ''continues to support efforts to develop alternative dispatchable location solutions, particularly those that may provide an exact floor label along with altitude information.'' Verizon states that ''nothing should stop service providers today from generating and delivering dispatchable location information to PSAPs when feasible.'' APCO also advocates requiring provision of dispatchable location ''when technically feasible.''

47. Dispatchable location is already being provided for some number of 911 calls, and dispatchable location solutions are likely to become increasingly available with the rollout of 5G networks and improved indoor mapping of large buildings and other structures. As these solutions are developed and deployed, we believe it is appropriate to designate dispatchable location as the preferred approach for any indoor wireless 911 call where providing dispatchable location is technically feasible and cost-effective.[6] This is consistent with the core goals of this proceeding and with our approach to dispatchable location for non-CMRS services pursuant to Section 506 of RAY BAUM'S Act.

48. In the *Kari's Law/RAY BAUM'S Act Report and Order,* we adopted location accuracy rules for mobile text, multi-line telephone systems (MLTS), interconnected Voice over internet Protocol (VoIP), Telecommunications Relay Services (TRS), mobile text, and fixed telephony, which require the provision of dispatchable location if it is technically feasible to do so (and alternative location information if it is not). We also noted that for purposes of this requirement, dispatchable location solutions must be cost-effective. For non-fixed services, the requirements adopted in the *Kari's Law/RAY BAUM'S Act Report and Order* will take effect on January 6, 2022. We adopt the same approach and effective date here. Accordingly, as of January 6, 2022, all CMRS providers will be required to provide dispatchable location for individual 911 calls if it is technically feasible and cost-effective for them to do so.[7]

49. Given this requirement, we decline to adopt minimum percentage thresholds for dispatchable location 911 calls or to require provision of dispatchable location for 911 calls originating from multi-story buildings. We agree with CMRS providers that such particularized requirements that go beyond what is technically feasible and cost-effective are not warranted given that development of dispatchable location solutions is still in early stages.

50. *Privacy and Security.* In the *Fifth Report and Order,* we adopted privacy and security requirements for z-axis location information. We made explicit that CMRS providers and the location vendors upon which they rely may only use 911 location information for 911 purposes, except with prior express consent or as required by law. We also expanded the rules requiring CMRS providers to maintain the privacy and security of data stored in the National Emergency Address Database to apply to any stored data used for 911 location purposes. We concluded that ''all 911 location data should be treated consistently from a privacy and security perspective.''

51. In the *Fifth Further Notice,* as part of our proposal to allow CMRS providers to deploy non-National Emergency Address Database based dispatchable location solutions, we proposed that any dispatchable location alternative should include equivalent privacy and security safeguards to those applied to the National Emergency Address Database. Apple and NextNav support our proposal, and no commenter opposes it.

52. We adopt our proposal to require CMRS providers to implement privacy and security safeguards to non-National Emergency Address Database dispatchable location technologies equivalent to those that applied to the National Emergency Address Database. In approving the privacy and security plan in 2017, the Commission found that the proposed plan included ''sufficient provisions to safeguard the privacy, security, and resiliency of the [National Emergency Address Database] when it is launched.'' To ensure compliance, CMRS providers must certify that neither they nor any third party they rely on to obtain dispatchable location information for 911 purposes will use such information for any non-

[5] On February 14, 2020, the NEAD, LLC informed us that the National Emergency Address Database Platform had ceased operation and was ''no longer available to support wireless providers' provision of dispatchable location information.'' Although we delete the reference to the NEAD in the rules, we retain the metric for measuring a carrier's deployment of dispatchable location reference points. Specifically, for any CMRS provider that relies on dispatchable location to meet the April 2021 or 2023 benchmarks in a CMA, we continue to require the provider to provision a total number of dispatchable location reference points (*e.g.,* WiFi access points or Bluetooth beacons) equal to 25% of the CMA population. Reference point data may be stored in any database so long as the database meets the privacy and security requirements adopted in the *Fifth Report and Order.*

[6] Under our current rules, however, CMRS providers must validate any dispatchable location technology intended for indoor location accuracy through the test bed process. 47 CFR 9.10(i)(3).

[7] As a result of the demise of the National Emergency Address Database and the rule changes adopted in this *Sixth Report and Order,* we find good cause to update Section 9.10(i)(2)(ii). Specifically, we revise and streamline the organizational structure of the rule to clearly reflect the vertical location compliance timelines and expanded z-axis and dispatchable location deployment options. *See infra* Appx. A. As part of this restructuring of the rule, we reiterate that CMRS providers must continue to comply with the testing and live call data reporting requirements in the rules.

911 purpose, except with prior express consent or as required by law.

53. We decline to adopt additional restrictions proposed by Apple, which we conclude are unnecessary. In the *Fifth Report and Order,* we declined to adopt a similar prohibition on data-sharing because we regarded it as ''needlessly prescriptive, since the broader privacy protections apply to any data that is shared.'' Here again, we conclude that the broad privacy protections we have adopted are sufficient to address Apple's concerns without the need for additional highly prescriptive technical requirements. The protections we adopt require CMRS providers to safeguard the privacy and security of emergency location data throughout all elements of their systems for determining 911 location and delivering location information to PSAPs. Similarly, CMRS providers who work with third-party vendors are responsible for ensuring that those vendors take appropriate measures to address privacy and security concerns.

54. T-Mobile and CTIA raise concerns that different z-axis solutions might carry different levels of risk to consumer privacy and that consumers might disable location technology on their phones for privacy reasons. The privacy protections we have adopted in this proceeding fully address CMRS providers' obligation to protect consumer privacy while also enabling location-accurate E911 technologies, and apply uniformly to all z-axis solutions. CMRS providers should fully disclose and explain these privacy protections to consumers so that consumers can make fully informed decisions where consent is required.

55. *Confidence and Uncertainty.* In the *Fifth Report and Order,* we extended the confidence and uncertainty requirements previously adopted for x/y location data to also apply to dispatchable location, z-axis data, and floor level information under Section 9.10(j) of the rules. Thus, as with horizontal confidence and uncertainty data, CMRS providers must report vertical confidence and uncertainty data using a confidence level of 90%. In the *Fifth Further Notice,* we sought input on how to account for uncertainty in dispatchable location data for a broad range of emerging solutions and on whether we should extend confidence and uncertainty requirements to alternative dispatchable location mechanisms, and, if so, what the required confidence and uncertainty percentage should be.

56. Commenters generally support having dispatchable location information accompanied by a confidence and uncertainty value of some kind to help PSAPs evaluate the reliability of the location data. No commenters disagree with this approach. However, commenters also note that determining a dispatchable location confidence and uncertainty value is complex because dispatchable location, unlike geodetic location, involves the provision of a civic address rather than a measurement. NENA notes that there are no established conventions for calculating or communicating the uncertainty associated with dispatchable location. Apple submits that location systems cannot accurately express uncertainty in terms of civic address ranges because address ranges—even when available—are not standardized, and do not convey information about actual distances or other spatial relations between addresses.

57. Although several commenters suggest that confidence and uncertainty values could be developed for dispatchable location, the record indicates that no standard currently exists, and additional work is needed to develop a standardized approach. We therefore defer consideration of this issue to a future proceeding. We also encourage carriers, public safety organizations, and other interested parties to create standards for conveying uncertainty for dispatchable location in a manner that is more useful for first responders.

58. In the interim, we revise Section 9.10(j)(4) to make explicit that when CMRS providers provide dispatchable location or floor level information in addition to z-axis information, they must provide confidence and uncertainty data for the z-axis location. In addition, we amend Section 9.10(k), which requires that ''CMRS providers must also record the confidence and uncertainty data that they provide.'' Currently Section 9.10(k) omits confidence and uncertainty requirements for vertical location provided pursuant to Section 9.10(j)(4). Accordingly, to eliminate a potential gap in the rule, we amend Section 9.10(k) to reference paragraph (j)(4) to ensure that CMRS providers supply confidence and uncertainty data for dispatchable location and floor level information upon request from a PSAP and that they retain this information for a period of two years.

C. Compliance Testing and Certification

59. Under our existing rules, all CMRS providers will be required to certify that the indoor location technology (or technologies) that they use to meet the compliance deadlines have been deployed consistently with the manner in which they have been tested in the test bed. APCO contends that this certification requirement is ''unclear'' and insufficient to ensure that z-axis technologies will deliver the same degree of accuracy in the live 911 environment that they deliver in the test bed. APCO argues that CMRS providers should be required to certify that their testing has accounted for multiple factors that could affect performance during live 911 calls, such as handset capabilities, handset behavior, morphology, and weather conditions.

60. We believe the current testing and certification process is sufficient to ensure that z-axis technologies will deliver the same level of accuracy for live 911 calls that they deliver in the test bed. For each of the upcoming z-axis deployment deadlines, beginning with April 2021, the rules require CMRS providers to ''certify that the indoor location technology (or technologies) used in their networks are deployed consistently with the manner in which they have been tested in the test bed.'' The rules further require this certification to be based on representative and robust compliance testing of each technology's performance in a variety of real world environments and conditions. Specifically, compliance testing must: (1) Include testing in representative indoor environments, including dense urban, urban, suburban, and rural morphologies; (2) test for location accuracy (ground truth), latency, and reliability (yield); and (3) evaluate each test call as independent from prior calls and as based on the first location delivered after the call is initiated.[8]

61. Because the current testing and certification requirements take a wide variety of real-world conditions into account, we decline to require CMRS providers to test for or certify to additional factors such as those proposed by APCO. We recognize that the performance of location technology

[8] APCO expresses concern that CMRS providers could deploy z-axis technology ''that only complies with the z-axis metric for a single device or cherry-picked subset of devices.'' We do not agree. Testing a single device or a small subset of devices that are not representative of the z-axis capable devices used on the CMRS provider's network would be inconsistent with the requirement that CMRS providers deploy location technology consistently with the manner in which it has been tested. Moreover, if live call data or other objective evidence indicates that a CMRS provider is delivering inaccurate z-axis information for live 911 calls, PSAPs have recourse under Section 9.10(i)(2)(iv) to seek enforcement, so long as the PSAP has implemented policies that are designed to obtain all location information made available by the provider when initiating and delivering 911 calls to the PSAP.

during individual 911 calls may be affected by specific characteristics of the handset being used or the local environment when and where the call is made. However, incorporating all of these additional variables into our testing and certification requirements would be neither practical nor cost-effective.

62. Although we decline to modify our testing and certification requirements for the upcoming vertical location deployment deadlines, we encourage CMRS providers to conduct additional periodic testing of z-axis technologies once they have been deployed. In addition, we note that our rules, testing and certification create only a presumption of compliance with location accuracy requirements standards, and this presumption ''can be rebutted with live call data or other objective measurements showing lack of compliance.'' [9]

D. Continuing To Improve the Z-Axis Metric

63. In the *Fifth Further Notice,* we sought comment on possible measures to improve the quality and usefulness of vertical location information over time. Specifically, we sought comment on whether and over what time period it would be technologically feasible to achieve a 2-meter metric, whether to enhance the vertical location accuracy testing process, and the long-term feasibility of providing floor level information to PSAPs, either by converting Height Above Ellipsoid data to a precise floor level or determining floor level independently of Height Above Ellipsoid. Commenters responding to these issues generally agree on the importance of continuing to seek improvements in the quality and usefulness of vertical location information, but there is considerable disagreement on when and how such improvements should be implemented.

64. Some commenters support adopting a sub-3-meter metric, based primarily on NextNav's Stage Z test results and previous field trials. However, others contend that the current state of technology does not support tightening the metric. iCERT states that ''establishment of a more stringent requirement, without the benefit of technical data to support it, would be arbitrary both in terms of the level of accuracy achievable and the timeframe in which it could be achieved.'' In addition, in terms of prioritizing resources, CTIA argues that CMRS providers and their vendors should be allowed to focus on implementing the 3-meter metric in the near term before a stricter metric is considered.

65. The record reflects similar disagreement over whether to enhance the testing process. Some commenters call for expanding testing by CMRS providers to include specific scenarios that may be faced by first responders, such as locating 911 callers in buildings when the power is out. However, CTIA submits that simulating a power outage or similar emergency scenario in the test bed poses significant practical and cost challenges because the test bed relies on testing in buildings that are occupied and in use. CTIA argues that testing of various first responder scenarios would be better addressed by the public safety community. NENA agrees that there are significant challenges associated with testing of first responder scenarios and suggests that stakeholders work with ATIS to develop standards for the test bed.

66. Commenters also disagree about the feasibility, costs, and timeframes associated with converting Height Above Ellipsoid to floor level. ATIS ESIF states that there are ''significant'' challenges with converting altitude to floor level.[10] CTIA, NextNav, and Polaris express skepticism that Height Above Ellipsoid can be converted to floor level in the near future. ESRI proposes development of a national 3D basemap, which it contends could support a standardized, cost-effective conversion of Height Above Ellipsoid to floor level. However, such a basemap does not currently exist, and it is uncertain how quickly one could be developed or how much it would cost.

67. Given the continuing lack of consensus in the record, we believe it is premature at this time to adopt new requirements or deadlines with respect to tightening the 3-meter metric, expanded testing, or floor level identification. We also agree with CTIA that at least between now and the April 2021 deadline for initial implementation of the 3-meter standard, CMRS providers and their vendors should be allowed to focus their efforts on that implementation. Nonetheless, we encourage and expect industry to continue to work with public safety on developing standards and solutions for improving indoor location. IAFC, IAFF, IACP, NSA, and NASEMSO ask the Commission to biannually evaluate the state of vertical location technology and consider narrowing the metric when it is technically feasible to do so. We direct the Public Safety and Homeland Security Bureau to evaluate the state of vertical location technology in July 2022 and to report to the Commission the results of that evaluation.[11] We also direct the Public Safety and Homeland Security Bureau to consider whether to refer these technical issues to an appropriate federal advisory committee, such as CSRIC, and the appropriate timetables for an advisory committee to submit recommendations.

E. Summary of Costs and Benefits

68. We believe our previous cost benefit assessment remains valid although we find that, with increased flexibility on options to supply vertical location and the amount of time between now and when these benchmarks must be met, some carriers might be able to meet the requirements at a lower cost than if we did not adopt the revisions herein. As we affirmed in the *Fourth Further Notice,* the new vertical information—together with the refinement of existing horizontal information—has the potential of saving ''approximately 10,120 lives annually at a value of $9.1 million per statistical life, for an annual benefit of approximately $92 billion or $291 per wireless subscriber.'' Due to U.S. Department of Transportation updates for value of a statistical life, we presently estimate this annual benefit floor at $97 billion. In the *Fifth Report and Order,* we observed that adding vertical location information plays a major role in achieving the $97 billion benefit.[12] We also stressed the

[9] APCO asks the Commission to clarify when may PSAPs seek enforcement of the rules and what steps device manufacturers, operating system providers, and others must take to ensure z-axis technologies perform as expected. In addition, APCO asks whether device manufacturers and operating system providers will be subject to enforcement action if they refuse to permit z-axis technologies from engaging in battery-intensive processes that interfere with a consumer's user experience ''or for any other reason?'' We will address any enforcement issues on a case-by-case basis as they arise, and we find that it would be premature to provide guidance on possible enforcement actions under hypothetical facts at this time. Finally, the rules address when PSAPs can seek enforcement of the location accuracy rules.

[10] APCO requests clarification that under the existing rules, floor level information can be derived by means other than first obtaining an estimated Height Above Ellipsoid and then converting the Height Above Ellipsoid to a floor level. We clarify that in complying with the requirement that floor level information be provided when available, CMRS providers are not limited to translating floor level from Height Above Ellipsoid but may derive floor level information from any source, including carrier-provisioned WiFi and in-home products, new 5G technologies, or other sources.

[11] The Bureau should also recommend whether further evaluation would likely be helpful in 2024.

[12] In the *Fifth Report and Order,* we determined that the benefit floor would be $97 billion which is a nationwide figure. Here, we determine that the

Continued

unquantifiable benefits of reductions in human suffering and property loss. In the *Fifth Further Notice,* we sought comment on costs and benefits associated with top 50 CMAs and a possible nationwide deployment of z-axis technology, which would effectively result in a nationwide x, y and z location accuracy standard. We also sought comment on our proposal to broaden the focus of our dispatchable location requirements to encourage emerging technologies that do not rely on the National Emergency Address Database. We received no explicit input on the costs or benefits associated with our proposals in the *Fifth Further Notice.* Because we are not changing the April 3, 2021, and April 3, 2023, deployment benchmarks established in the *Fourth Report and Order* and reaffirmed in the *Fifth Report and Order,* we do not anticipate any changes in our previous cost/benefit analysis with respect to those benchmarks. We did, however, receive comment on the need for increasing flexible options for z-axis and dispatchable location technologies, and mandating vertical location information and the feasibility of doing so nationwide.

69. *Flexible Options.* We adopt our proposal to provide CMRS providers additional flexibility by allowing CMRS providers the option of deploying z-axis technology to cover 80% of the buildings that exceed three stories in a given CMA or leveraging handset-based solutions. The added flexibility associated with these options will reduce costs on CMRS providers without reducing the benefits of improved vertical location accuracy. Comments reflect a correlation between population density and concentration of buildings taller than three stories and that providing the flexibility to cover 80% of tall buildings in the top 50 CMAs would achieve significant public benefits. We anticipate that network-based deployment would at least initially start from areas that have the highest concentration of buildings taller than three stories. NextNav indicates that it will deploy its solution in 105 CMAs. Most, if not all the infrastructure needed for z-axis deployment will be used for deploying the multi-story option. Some of the costs will involve the deployment of infrastructure, and additional weather stations, used to calibrate handset barometric sensors, and may involve incurring the cost of 3D mapping to determine multi-story building locations. Thus, this option will enable CMRS providers to focus resources in those areas where 911 calls from multi-story buildings are most likely to occur and improved vertical location accuracy will benefit wireless 911 callers in indoor environments. Second, affording nationwide CMRS providers the option of meeting vertical location accuracy requirements by deploying handset-based solutions implies that z-axis technology would be available to 80% of the population of a CMA and thus meet our deployment metrics. This option would not reduce the benefits of improved vertical location accuracy so long as handset-solutions meet the 3-meter accuracy standard for 80% of calls made from z-axis capable devices as demonstrated in the test bed. In addition, proponents of a nationwide handset deployment stress that device-based, commercial solutions can calculate z-axis location on the device without the deployment or maintenance of new infrastructure.

70. *Nationwide Z-Axis Technology Deployment.* Mandating a nationwide z-axis deployment will benefit Americans outside of the top 50 CMAs without significantly increasing costs for CMRS providers. The *Fifth Report and Order* estimated an approximate annual cost ceiling of $36 million, based on a $0.12 yearly cost per handset, at 300 million handsets presently in use. These 2019 figures are nationwide figures, not extrapolated for the top 25 or 50 CMAs, and thus also stand for the nationwide handset deployment requirement in 2025. We also defined z-axis capability in the *Fifth Report and Order* to exclude handsets that require a hardware upgrade. Because the 2025 nationwide z-axis deployment is six years from that 2019 analysis, we can reasonably infer that software update costs will be lower by that April 2025 benchmark, albeit at an unquantifiable amount. Most of the upgradable handsets are located in the top 50 CMAs, and will thus have been updated at that time (in 2023), and providers will have refined the necessary software at scale. Hence, we can reasonably infer that costs to update handset software will be the same for subscribers both inside and outside the top 25 and 50 CMAs. Further, because CMRS providers seek to leverage commercial, device-based location solutions for meeting their E911 vertical location accuracy obligations, we expect the costs associated with a nationwide handset deployment to be minimal. For example, Google states that it ''makes [Emergency Location Service] available for *free* to emergency services dispatchers, carriers, and other partners in the emergency services space.'' Accordingly, we do not anticipate any changes in our cost/benefit analysis for nationwide CMRS providers opting for handset-based deployment.

71. Assuming the figures above, we can infer that costs will be lower for non-nationwide providers. The brunt of implementation and deployment costs will be borne by the nationwide CMRS providers. CTIA notes that non-nationwide providers ''will likely follow the nationwide wireless providers' assessment of a scalable solution resulting from the Test Bed.'' As CCA puts it, ''[m]any non-nationwide carriers are . . . at the mercy of what is discovered in the test bed.'' CCA states that ''upgrading equipment to meet heightened standards is a costly endeavor,'' and that ''[u]nlike nationwide carriers, many CCA members are dependent on vendors to update network capabilities that support location accuracy services.'' In terms of handset-based deployment, however, we anticipate most of the upgrades will have been developed by the nationwide CMRS providers, although some independent interoperability testing and handset procurement may be necessary ''depending on the nature of the solution.'' For the multi-story deployment option, as IAFF notes, tall structures are present in environments inside and outside the top CMAs. However, tall structures are presumably not as prevalent in environments outside the top population centers. As a result, this may help defray some, if not all, 3D mapping costs, as we believe non-nationwide CMRS providers are most likely to know where tall structures are located inside their service areas without the need for mapping. Accordingly, we can reasonably infer that the implementation costs in areas outside the top 50 CMAs are not as high as inside those areas. In addition, non-nationwide CMRS providers outside the top 50 CMAs have approximately six years as of the adoption of this *Sixth Report and Order* to prepare for deployment, which will mean the costs of deploying either the handset or multi-story based options will likely be less. We stress that the $97 billion nationwide benefit floor in lives saved will far eclipse any cost incurred by non-nationwide providers.

IV. Order on Reconsideration

72. In this Order on Reconsideration, the Commission denies a petition for reconsideration requested by BRETSA. BRETSA seeks reconsideration of certain aspects of the *Fifth Report and Order,* contending that the order (1) was arbitrary and capricious and an abuse of discretion because the Commission

benefit floor estimate is unaffected by the flexible options adopted in this Order.

declined to adopt proof-of-performance testing and (2) did not address BRETSA's proposal that wireless carriers develop procedures for public safety agencies and others to correlate Height Above Mean Sea Level to floor level.

V. Procedural Matters

73. *Final Regulatory Flexibility Act Analysis.* The Regulatory Flexibility Act of 1980, as amended (RFA), requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' Accordingly, the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) concerning the potential impact of rule and policy changes adopted in the *Sixth Report and Order* on small entities. As required by the RFA, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Fifth Further Notice of Proposed Rulemaking* released in November 2019 in this proceeding (85 FR 2683, January 16, 2020). The Commission sought written public comment on the proposals in the *Fifth FNPRM,* including comments on the IRFA. No comments were filed addressing the IRFA. This FRFA conforms to the RFA. The Commission will send a copy of the *Sixth Report and Order and Order on Reconsideration,* including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

74. *Paperwork Reduction Act Analysis.* The requirements in sections 9.10(i)(4)(iv), 9.10(i)(4)(v), 9.10(j)(4) and 9.10(k), constitute modified information collections. They will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the Paperwork Reduction Act of 1995 (PRA). OMB, the general public, and other Federal agencies will be invited to comment on the new or modified information collection requirements contained in this proceeding. This document will be submitted to OMB for review under section 3507(d) of the PRA. In addition, we note that, pursuant to the Small Business Paperwork Relief Act of 2002, we previously sought, but did not receive, specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees. The Commission does not believe that the new or modified information collection requirements in sections 9.10(i)(4)(iv), 9.10(i)(4)(v), 9.10(j)(4) and 9.10(k), will be unduly burdensome on small businesses. Applying these new or modified information collections will promote 911 service and emergency response, to the benefit of all size governmental jurisdictions, businesses, equipment manufacturers, and business associations by providing greater confidence in 911 location accuracy and greater consistency between the Commission's horizontal and vertical location rules. We describe impacts that might affect small businesses, which includes most businesses with fewer than 25 employees, in the FRFA in Appendix B of the *Sixth Report and Order and Order on Reconsideration.*

75. *Congressional Review Act.* The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs, that this rule is ''non-major'' under the Congressional Review Act, 5 U.S.C. 804(2). The Commission will send a copy of this *Sixth Report and Order and Order on Reconsideration* to Congress and the Government Accountability Office pursuant to 5 U.S.C. 801(a)(1)(A).

VI. Ordering Clauses

76. Accordingly, *it is ordered*, pursuant to Sections 1, 2, 4(i), 7, 10, 201, 214, 222, 251(e), 301, 302, 303, 307, 309, 316, and 332, of the Communications Act of 1934, 47 U.S.C. 151, 152(a), 154(i), 157, 160, 201, 214, 222, 251(e), 301, 302, 303, 307, 309, 316, 332; the Wireless Communications and Public Safety Act of 1999, Public Law 106–81, 47 U.S.C. 615, 615a, 615b; Section 506 of the Repack Airwaves Yielding Better Access for Users of Modern Services Act of 2018, 47 U.S.C. 615 note; and Section 106 of the Twenty-First Century Communications and Video Accessibility Act of 2010, Public Law 111–260, 47 U.S.C. 615c, that this *Sixth Report and Order and Order on Reconsideration,* is hereby *Adopted*.

77. *It is further ordered* that the amendments of the Commission's rules as set forth in Appendix A *are adopted*, effective thirty days from the date of publication in the **Federal Register**. Sections 9.10(i)(4)(iv), 9.10(i)(4)(v), 9.10(j)(4) and 9.10(k) contain new or modified information collection requirements that require OMB review under the PRA. The Commission directs the Public Safety and Homeland Security Bureau (Bureau) to announce the effective date of those information collections in a document published in the **Federal Register** after the Commission receives OMB approval, and directs the Bureau to cause section 9.10(s) to be revised accordingly.

78. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this *Sixth Report and Order and Order on Reconsideration,* including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

79. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this *Sixth Report and Order and Order on Reconsideration,* including the Final Regulatory Flexibility Analysis, to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

80. *It is further ordered* that the Association of Public-Safety Communications Officials-International, Inc. Petition for Clarification is *granted* to the extent described herein.

81. *It is furthered ordered* that, pursuant to Sections 4(i), and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 405, and Section 1.429 of the Commission's Rules, 47 CFR 1.429, the Boulder Regional Emergency Telephone Service Authority Petition for Reconsideration is *denied*.

82. *It is further ordered* that, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), the Petition for Emergency Declaratory Ruling filed by Polaris Wireless, Inc., on May 27, 2020, is *Granted* to the extent described herein.

List of Subjects in 47 CFR Part 9

Communications common carriers, Communications equipment, Radio Federal Communications Commission.

Federal Communications Commission.

Marlene Dortch,

Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends chapter I of title 47 of the Code of Federal Regulations as follows:

PART 9—911 REQUIREMENTS

■ 1. The authority citation for part 9 continues to read as follows:

Authority: 47 U.S.C. 151–154, 152(a), 155(c), 157, 160, 201, 202, 208, 210, 214, 218, 219, 222, 225, 251(e), 255, 301, 302, 303, 307, 308, 309, 310, 316, 319, 332, 403, 405, 605, 610, 615, 615 note, 615a, 615b, 615c, 615a–1, 616, 620, 621, 623, 623 note, 721, and 1471, unless otherwise noted.

■ 2. Section 9.10 is amended by revising paragraphs (i)(2)(ii)(C), (D), and (E), adding paragraphs (i)(2)(ii)(F) through (M), and revising paragraphs (i)(4)(iv) and (v), (j)(4), (k), and (s) to read as follows:

§ 9.10 911 Service.

* * * * *

(i) * * *

(2) * * *

(ii) * * *

(C) By April 3, 2021: In each of the top 25 cellular market areas (CMAs), nationwide CMRS providers shall deploy either dispatchable location or z-axis technology.

(D) By April 3, 2023: In each of the top 50 CMAs, nationwide CMRS providers shall deploy either dispatchable location or z-axis technology.

(E) By April 3, 2025: Nationwide CMRS providers shall deploy on a nationwide basis either dispatchable location or z-axis technology.

(F) Non-nationwide CMRS providers that serve any of the top 25 or 50 CMAs will have an additional year to meet each of the benchmarks in paragraphs (i)(2)(ii)(C) and (D) of this section. All non-nationwide providers will have an additional year to meet the benchmark in paragraph (i)(2)(ii)(E) of this section by deploying either dispatchable location or z-axis technology throughout their network footprint.

(G) By January 6, 2022: All CMRS providers shall provide dispatchable location with wireless E911 calls if it is technically feasible for them to do so.

(H) CMRS providers that deploy z-axis technology must do so consistent with the following z-axis accuracy metric: Within 3 meters above or below (plus or minus 3 meters) the handset for 80% of wireless E911 calls made from the z-axis capable device. CMRS providers must deliver z-axis information in Height Above Ellipsoid. Where available to the CMRS provider, floor level information must be provided in addition to z-axis location information.

(I) CMRS providers that deploy z-axis technology must do so according to the following options:

(*1*) In each area where z-axis technology is used, deploy the technology to cover 80 percent of the population or 80 percent of the buildings that exceed three stories; or

(*2*) Deploy z-axis capable handsets enabled with z-axis technology on a nationwide basis (or throughout the CMRS provider's network footprint, as applicable).

(J) CMRS providers that deploy z-axis technology must comply with the following:

(*1*) CMRS providers must activate all network infrastructure necessary to support z-axis location by z-axis capable devices throughout the deployment area.

(*2*) CMRS providers may deploy z-axis technology upgrades by means of over-the-top applications as well as operating system or firmware upgrades. CMRS providers deploying z-axis technology must affirmatively push the z-axis technology to all existing z-axis capable device models on the provider's network that can receive it, and CMRS providers must continue to support the z-axis technology on these devices thereafter.

(*3*) A CMRS provider using the handset-based deployment option must make the technology available to existing z-axis capable devices nationwide; a CMRS provider using a CMA-based deployment option must make the technology available to all z-axis capable devices in the CMA. For all new z-axis capable devices marketed to consumers, the z-axis technology must be pre-installed.

(*4*) A CMRS provider will be deemed to have met its z-axis technology deployment obligation so long as it either pre-installs or affirmatively pushes the location technology to end users so that they receive a prompt or other notice informing them that the application or service is available and what they need to do to download and enable the technology on their phone. A CMRS provider will be deemed in compliance with its z-axis deployment obligation if it makes the technology available to the end user in this manner even if the end user declines to use the technology or subsequently disables it.

(K) CMRS providers must validate dispatchable location technologies intended for indoor location in accordance with the provisions of paragraph (i)(3)(i) of this section.

(L) In each CMA where dispatchable location is used, nationwide CMRS providers must ensure that dispatchable location is supported by a sufficient number of total dispatchable location reference points to equal 25 percent of the CMA population.

(M) A z-axis capable device is one that can measure and report vertical location without a hardware upgrade. For z-axis location solutions that rely on barometric pressure sensor information, only devices that have such sensors installed shall be considered z-axis capable. In the case of location solutions that do not require barometric pressure sensor information, both devices with and without barometric sensors shall be considered z-axis capable, provided that they are software-upgradable.

* * * * *

(4) * * *

(iv) *Dispatchable location use certification.* Prior to use of dispatchable location information to meet the Commission's 911 horizontal and indoor location accuracy requirements in paragraphs (i)(2)(i) and (ii) of this section, CMRS providers must certify that neither they nor any third party they rely on to obtain dispatchable location information will use dispatchable location information or associated data for any non-911 purpose, except with prior express consent or as otherwise required by law. The certification must state that CMRS providers and any third party they rely on to obtain dispatchable location information will implement measures sufficient to safeguard the privacy and security of dispatchable location information.

(v) *Z-axis use certification.* Prior to use of z-axis information to meet the Commission's 911 vertical location accuracy requirements in paragraph (i)(2)(ii) of this section, CMRS providers must certify that neither they nor any third party they rely on to obtain z-axis information will use z-axis information or associated data for any non-911 purpose, except with prior express consent or as otherwise required by law. The certification must state that CMRS providers and any third party they rely on to obtain z-axis information will implement measures sufficient to safeguard the privacy and security of z-axis location information.

(j) * * *

(4) Upon meeting the timeframes pursuant to paragraph (i)(2)(ii) of this section, CMRS providers shall provide with wireless 911 calls that have a dispatchable location the confidence and uncertainty data for z-axis (vertical) information required under paragraph (j)(1) of this section. Where available to the CMRS provider, CMRS providers shall provide with wireless 911 calls that have floor level information the confidence and uncertainty data for z-axis (vertical) information required under paragraph (j)(1) of this section.

(k) *Provision of live 911 call data for PSAPs.* Notwithstanding other 911 call data collection and reporting requirements in paragraph (i) of this section, CMRS providers must record information on all live 911 calls, including, but not limited to, the positioning source method used to provide a location fix associated with the call. CMRS providers must also record the confidence and uncertainty

data that they provide pursuant to paragraphs (j)(1)–(4) of this section. This information must be made available to PSAPs upon request, and shall be retained for a period of two years.

* * * * *

(s) *Compliance date(s).* Paragraphs (i)(2)(ii)(C) and (D), (i)(4)(iv) and (v), (j)(4), (k), and (q)(10)(v) of this section contain information-collection and recordkeeping requirements. Compliance with paragraphs (i)(2)(ii)(C) and (D), (i)(4)(iv) and (v), (j)(4), (k) and (q)(10)(v) will not be required until after approval by the Office of Management and Budget. The Commission will publish a document in the **Federal Register** announcing compliance dates with those paragraphs and revising this paragraph (s) accordingly.

[FR Doc. 2020–18795 Filed 8–26–20; 4:15 pm]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 52

[FAC 2020–07; FAR Case 2018–005; Item IV; Docket No. FAR–2018–0006, Sequence No. 1]

RIN 9000–AN69

Federal Acquisition Regulation: Modifications to Cost or Pricing Data Requirements; Corrections

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule; corrections.

SUMMARY: DoD, GSA, and NASA are issuing a correction to FAC 2020–07; FAR Case 2018–005; Modifications to Cost or Pricing Data Requirements; Item IV; which published in the **Federal Register** on July 2, 2020. This correction makes editorial changes to correct erroneous dates to the affected FAR sections.

DATES: *Effective:* August 28, 2020.

FOR FURTHER INFORMATION CONTACT: Ms. Zenaida Delgado, Procurement Analyst, at 202–969–7207 or *zenaida.delgado@gsa.gov* for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755 or *GSARegSec@gsa.gov.* Please cite FAC 2020–07, FAR Case 2018–005; Corrections.

SUPPLEMENTARY INFORMATION:

Corrections

In rule FR Doc. 2020–12765, published in the **Federal Register** at 85 FR 40071, on July 2, 2020, make the following corrections:

52.214–28 [Corrected]

■ 1. On page 40074, in the first column, in amendatory instruction number 6, make the following corrections:

■ a. In the heading ''Subcontractor Certified Cost or Pricing Data—Modifications—Sealed Bidding'', remove ''(May 2020)'' and add ''(Jun 2020)'' in its place; and

■ b. After the words ''Alternate I'', remove ''(AUG 20)'' and add ''(AUG 2020)'' in its place.

52.215–12 [Corrected]

■ 2. On page 40074, in the second column, in amendatory instruction number 7, make the following corrections:

■ a. In the heading ''Subcontractor Certified Cost or Pricing Data'', remove ''(May 2020)'' and add ''(Jun 2020)'' in its place; and

■ b. After the words ''Alternate I'', remove ''(AUG 20)'' and add ''(AUG 2020)'' in its place.

52.215–13 [Corrected]

■ 3. On page 40074, in the second column, in amendatory instruction number 8, make the following corrections:

■ a. In the heading ''Subcontractor Certified Cost or Pricing Data—Modifications'', remove ''(May 2020)'' and adding ''(Jun 2020)'' in its place; and

■ b. After the words ''Alternate I'', remove ''(AUG 20)'' and add ''(AUG 2020)'' in its place.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

[FR Doc. 2020–16975 Filed 8–27–20; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

[Docket No. FWS–HQ–MB–2019–0004; FF09M21200–201–FXMB1231099BPP0]

RIN 1018–BD89

Migratory Bird Hunting; Migratory Bird Hunting Regulations on Certain Federal Indian Reservations and Ceded Lands for the 2020–21 Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule prescribes special migratory bird hunting regulations for certain Tribes on Federal Indian reservations, off-reservation trust lands, and ceded lands. This rule responds to tribal requests for U.S. Fish and Wildlife Service (hereinafter ''Service'' or ''we'') recognition of their authority to regulate hunting under established guidelines. This rule allows the establishment of season bag limits and, thus, harvest at levels compatible with populations and habitat conditions.

DATES: This rule takes effect on August 28, 2020.

ADDRESSES: You may inspect comments received on the migratory bird hunting regulations at *http://www.regulations.gov* at Docket No. FWS–HQ–MB–2019–0004. You may obtain copies of referenced reports from the Division of Migratory Bird Management's website at *http://www.fws.gov/migratorybirds/,* or at *http://www.regulations.gov* at Docket No. FWS–HQ–MB–2019–0004.

FOR FURTHER INFORMATION CONTACT: Jerome Ford, U.S. Fish and Wildlife Service, Department of the Interior, (202) 208–1050.

SUPPLEMENTARY INFORMATION:

Background

The Migratory Bird Treaty Act (MBTA) of July 3, 1918 (16 U.S.C. 703 *et seq.*), authorizes and directs the Secretary of the Department of the Interior, having due regard for the zones of temperature and for the distribution, abundance, economic value, breeding habits, and times and lines of flight of migratory game birds, to determine when, to what extent, and by what means such birds or any part, nest, or egg thereof may be taken, hunted, captured, killed, possessed, sold, purchased, shipped, carried, exported, or transported.

In the April 2, 2020, **Federal Register** (85 FR 18532), we proposed special

migratory bird hunting regulations for the 2020–21 hunting season for certain Indian tribes, under the guidelines described in the June 4, 1985, **Federal Register** (50 FR 23467). The guidelines respond to tribal requests for Service recognition of their reserved hunting rights, and for some tribes, recognition of their authority to regulate hunting by both tribal members and nonmembers on their reservations. The guidelines include possibilities for:

(1) On-reservation hunting by both tribal members and nonmembers, with hunting by nontribal members on some reservations to take place within Federal frameworks but on dates different from those selected by the surrounding State(s);

(2) On-reservation hunting by tribal members only, outside of usual Federal frameworks for season dates and length, and for daily bag and possession limits; and

(3) Off-reservation hunting by tribal members on ceded lands, outside of usual framework dates and season length, with some added flexibility in daily bag and possession limits.

In all cases, the regulations established under the guidelines must be consistent with the March 10–September 1 closed season mandated by the 1916 Migratory Bird Treaty with Canada.

In the October 15, 2019, **Federal Register** (84 FR 55120), we requested that tribes desiring special hunting regulations in the 2020–21 hunting season submit a proposal including details on:

(1) Harvest anticipated under the requested regulations;

(2) Methods that would be employed to measure or monitor harvest (such as bag checks, mail questionnaires, etc.);

(3) Steps that would be taken to limit level of harvest, where it could be shown that failure to limit such harvest would adversely impact the migratory bird resource; and

(4) Tribal capabilities to establish and enforce migratory bird hunting regulations.

No action is required if a tribe wishes to observe the hunting regulations established by the State(s) in which an Indian reservation is located. We have successfully used the guidelines since the 1985–86 hunting season. We finalized the guidelines beginning with the 1988–89 hunting season (August 18, 1988, **Federal Register** [53 FR 31612]).

The final rule described here is the final in the series of proposed and final rulemaking documents for migratory bird hunting regulations on certain Federal Indian reservations and ceded lands for the 2020–21 season. This rule sets hunting seasons, hours, areas, and limits for migratory game bird species on reservations and ceded territories. This final rule is the culmination of the rulemaking process for the Tribal migratory game bird hunting seasons, which started with the October 15, 2019, proposed rule. This final rule sets the migratory bird hunting regulations on certain Federal Indian reservations and ceded lands for the 2020–21 season.

Population Status and Harvest

Each year we publish various species status reports that provide detailed information on the status and harvest of migratory game birds, including information on the methodologies and results. These reports are available from our website at *https://www.fws.gov/birds/surveys-and-data/reports-and-publications/population-status.php.*

We used the following annual reports published in August 2019 in the development of proposed frameworks for the migratory bird hunting regulations: Adaptive Harvest Management, 2020 Hunting Season; American Woodcock Population Status, 2019; Band-tailed Pigeon Population Status, 2019; Migratory Bird Hunting Activity and Harvest During the 2017–18 and 2018–19 Hunting Seasons; Mourning Dove Population Status, 2019; Status and Harvests of Sandhill Cranes, Mid-continent, Rocky Mountain, Lower Colorado River Valley and Eastern Populations, 2019; and Waterfowl Population Status, 2019.

Comments and Issues Concerning Tribal Proposals

For the 2020–21 migratory bird hunting season, we proposed regulations for 32 Tribes or Indian groups that followed the 1985 guidelines and were considered appropriate for final rulemaking. However, at that time, we noted in the April 2, 2020, proposed rule that we were proposing seasons for six Tribes who submitted proposals in past years but from whom we had not yet received proposals this year. We did not receive final proposals from four of those Tribes and, therefore, have not included them in this final rule.

The comment period for the April 2 proposed rule closed on May 4, 2020. We received 57 comments on our April 2 proposed rule, which announced proposed seasons for migratory bird hunting by American Indian Tribes.

Written Comments: Most comments we received opposed allowing any harvest of trumpeter swans or swans in general, because of low swan numbers, the considerable effort already spent to recover swan populations, a lack of Service consultation with the Tribes on harvesting swans, too brief a comment period to adequately address this issue, and probable harvest of trumpeter swans adding to the risk factors for these populations.

Service Response: Regarding written comments opposed to swan hunting on a few tribal reservations and ceded territories in the eastern three flyways, the position of the Service is to provide hunting opportunities on game birds where such hunting is compatible with sustainability of the game bird resource and consistent with management objectives. Trumpeter swans are classified as game birds under the Migratory Birds Convention (Treaty) between the United States and Great Britain (for Canada) that was enacted by the MBTA in the United States. The Interior Population (IP) of trumpeter swans, the subject group, has been increasing at an average rate of about 14 percent per year since 1968, as a result of reintroduction efforts and natural reproduction; in 2015, the population numbered about 27,000 white birds (excludes cygnets). The geographic range of these birds also is expanding within the eastern three flyways as birds pioneer new areas and re-establish migration routes. Because some of those areas include locations where tundra swan hunting has been allowed, the likelihood of hunters encountering trumpeter swans during those hunts is increasing, which also increases the possibility that hunters may shoot a trumpeter swan. Similar to circumstances in the Pacific Flyway, where the take of trumpeter and tundra swans is allowed in some areas, the Service believes allowing a limited take of trumpeter swans, primarily to eliminate the liability of hunters who mistakenly shoot a trumpeter swan, is appropriate. The Service believes this decision will continue to allow trumpeter swans to increase their abundance and range while not imposing an unnecessary burden on hunters to unerringly identify the species of swan while hunting. The harvest of IP trumpeter swans is expected to be low and would not jeopardize the sustainability of the population based on the research we have conducted. Further, the harvest information and other aspects of a general swan season framework are reviewed by the Service annually. If the information suggests harvest is higher than deemed appropriate and could jeopardize the status of the population, the Service could revise the framework or close the season in any year.

The Service manages migratory birds at the population level when

information is sufficient to do so. The range of IP trumpeter swans spans portions of the Central, Mississippi, and Atlantic Flyways; thus, that is the geographic scale appropriate for their management. Therefore, the allowable take described in our April 2, 2020, proposed rule (85 FR 18532) spans all three flyways, and we believe any alternative proposed by the Service should include all three flyways. However, the establishment of this framework by the Service does not mean that a general swan season must be implemented in any reservation or ceded territory. The framework provides only that our research indicates such seasons could be supported in those flyways without negatively impacting the sustainability of IP trumpeter swans. Each Tribe has their own process to determine whether they would allow a general swan season and specifically requested the seasons presented. The Service believes the 30-day comment period on the April 2, 2020, proposed rule (85 FR 18532) was sufficient to review and comment on these tribal proposals.

Required Determinations

Executive Order 13771—Reducing Regulation and Controlling Regulatory Costs

This action is not subject to the requirements of Executive Order (E.O.) 13771 (82 FR 9339, February 3, 2017) because it establishes annual harvest limits related to routine hunting or fishing.

National Environmental Policy Act (NEPA) Consideration

The programmatic document, ''Second Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (EIS 20130139),'' filed with the Environmental Protection Agency (EPA) on May 24, 2013, addresses NEPA compliance by the Service for issuance of the annual framework regulations for hunting of migratory game bird species. We published a notice of availability in the **Federal Register** on May 31, 2013 (78 FR 32686), and our Record of Decision on July 26, 2013 (78 FR 45376). We also address NEPA compliance for waterfowl hunting frameworks through the annual preparation of separate environmental assessments, the most recent being ''Duck Hunting Regulations for 2020–21,'' with its corresponding June 2020 finding of no significant impact. The programmatic document, as well as the separate environmental assessment, is available on our website at *https://www.fws.gov/birds/index.php.*

Endangered Species Act Consideration

Section 7 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), provides that the Secretary shall insure that any action authorized, funded, or carried out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of critical habitat. Consequently, we conducted formal consultations to ensure that actions resulting from these regulations would not likely jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitat. Findings from these consultations are included in a biological opinion, which concluded that the regulations are not likely to jeopardize the continued existence of any endangered or threatened species. Our biological opinions resulting from this section 7 consultation are public documents available for public inspection at *http://www.regulations.gov* at Docket No. FWS–HQ–MB–2019–0004.

Regulatory Planning and Review (Executive Orders 12866 and 13563)

E.O. 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. OIRA has reviewed this rule and has determined that this rule is significant because it will have an annual effect of $100 million or more on the economy.

E.O. 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

An economic analysis was prepared for the 2020–21 season. This analysis was based on data from the 2016 National Survey of Fishing, Hunting, and Wildlife-Associated Recreation (National Survey), the most recent year for which data are available (see discussion under *Regulatory Flexibility Act,* below). This analysis estimated consumer surplus for three alternatives for duck hunting (estimates for other species are not quantified due to lack of data). The alternatives are (1) issue restrictive regulations allowing fewer days than those issued during the 2019–20 season, (2) issue moderate regulations allowing more days than those in alternative 1, and (3) issue liberal regulations identical to the regulations in the 2019–20 season. For the 2020–21 season, we chose Alternative 3, with an estimated consumer surplus across all flyways of $334–$440 million with a mid-point estimate of $387 million. We also chose alternative 3 for the 2009–10 through 2019–20 seasons. The 2020–21 analysis is part of the record for this rule and is available at *http://www.regulations.gov* at Docket No. FWS–HQ–MB–2019–0004.

Regulatory Flexibility Act

The annual migratory bird hunting regulations have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). We analyzed the economic impacts of the annual hunting regulations on small business entities in detail as part of the 1981 cost-benefit analysis. This analysis was revised annually from 1990 through 1995. In 1995, the Service issued a Small Entity Flexibility Analysis (Analysis), which was subsequently updated in 1996, 1998, 2004, 2008, 2013, 2018, and 2019. The primary source of information about hunter expenditures for migratory game bird hunting is the National Survey, which is generally conducted at 5-year intervals. The 2020 Analysis is based on the 2016 National Survey and the U.S. Department of Commerce's County Business Patterns, from which it was estimated that migratory bird hunters would spend approximately $1.5 billion at small businesses in 2020. Copies of the analysis are available from *http://www.regulations.gov* at Docket No. FWS–HQ–MB–2019–0004.

Small Business Regulatory Enforcement Fairness Act

This final rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. For the reasons outlined above, this rule will have an annual effect on the economy of $100 million or more. However, because this rule establishes frameworks for hunting seasons, we do not plan to defer the effective date

under the exemption contained in 5 U.S.C. 808(1).

Paperwork Reduction Act

This rule does not contain any new collection of information that requires approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). OMB has previously approved the information collection requirements associated with migratory bird surveys and the procedures for establishing annual migratory bird hunting seasons under the following OMB control numbers:

- 1018–0019, ''North American Woodcock Singing Ground Survey'' (expires 6/30/2021).
- 1018–0023, ''Migratory Bird Surveys, 50 CFR 20.20'' (expires 4/30/2023). Includes Migratory Bird Harvest Information Program, Migratory Bird Hunter Surveys, Sandhill Crane Survey, and Parts Collection Survey.
- 1018–0171, ''Establishment of Annual Migratory Bird Hunting Seasons, 50 CFR part 20'' (expires 6/30/2021).

You may view the information collection request(s) at *http://www.reginfo.gov/public/do/PRAMain.* 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.

Unfunded Mandates Reform Act

We have determined and certify, in compliance with the requirements of the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.,* that this rulemaking will not impose a cost of $100 million or more in any given year on local or State government or private entities. Therefore, this rule is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

Civil Justice Reform—Executive Order 12988

The Department, in promulgating this rule, has determined that this rule will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of E.O. 12988.

Takings Implication Assessment

In accordance with E.O. 12630, this rule, authorized by the Migratory Bird Treaty Act, does not have significant takings implications and does not affect any constitutionally protected property rights. This rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, this rule will allow hunters to exercise otherwise unavailable privileges and, therefore, reduce restrictions on the use of private and public property.

Energy Effects—Executive Order 13211

E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. While this rule is a significant regulatory action under E.O. 12866, it is not expected to adversely affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), E.O. 13175, and 512 DM 2, we have evaluated possible effects on federally recognized Indian tribes and have determined that there are no effects on Indian trust resources. We have consulted with tribes affected by this rule.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. We annually prescribe frameworks from which the States make selections regarding the hunting of migratory birds, and we employ guidelines to establish special regulations on Federal Indian reservations and ceded lands. This process preserves the ability of the States and tribes to determine which seasons meet their individual needs. Any State or Indian tribe may be more restrictive than the Federal frameworks at any time. The frameworks are developed in a cooperative process with the States and the Flyway Councils. This process allows States to participate in the development of frameworks from which they will make selections, thereby having an influence on their own regulations. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with E.O. 13132, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Regulations Promulgation

The rulemaking process for migratory game bird hunting, by its nature, operates under a time constraint as seasons must be established each year or hunting seasons remain closed. However, we intend that the public be provided extensive opportunity for public input and involvement in compliance with Administrative Procedure Act (5 U.S.C. 551 *et seq.*) requirements. Thus, when the preliminary proposed rulemaking was published, we established what we concluded were the longest periods possible for public comment and the most opportunities for public involvement. We also provided notification of our participation in multiple Flyway Council meetings, opportunities for additional public review and comment on all Flyway Council proposals for regulatory change, and opportunities for additional public review during the Service Regulations Committee meeting. Therefore, sufficient public notice and opportunity for involvement have been given to affected persons regarding the migratory bird hunting frameworks for the 2020–21 hunting seasons. Further, after establishment of the final frameworks, States and Tribes need sufficient time to conduct their own public processes to select season dates and limits; to communicate those selections to us; and to establish and publicize the necessary regulations and procedures to implement their decisions. Thus, if there were a delay in the effective date of these regulations after this final rulemaking, States and Tribes might not be able to meet their own administrative needs and requirements.

For the reasons cited above, we find that ''good cause'' exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act, and this rule will take effect immediately upon publication.

Accordingly, with each participating Tribe having had an opportunity to participate in selecting the hunting seasons desired for its reservation or ceded territory on those species of migratory birds for which open seasons are now prescribed, and consideration having been given to all other relevant matters presented, certain sections of title 50, chapter I, subchapter B, part 20, subpart K, are hereby amended as set forth below.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Accordingly, part 20, subchapter B, chapter I of title 50 of the Code of Federal Regulations is amended as follows:

PART 20—MIGRATORY BIRD HUNTING

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

Authority: 16 U.S.C. 703 *et seq.,* and 16 U.S.C. 742a–j.

Note: The following hunting regulations provided for by 50 CFR 20.110 will not appear in the Code of Federal Regulations because of their seasonal nature.

■ 2. Section 20.110 is revised to read as follows:

§ 20.110 Seasons, limits, and other regulations for certain Federal Indian reservations, Indian Territory, and ceded lands.

Unless specifically provided for below, all of the regulations contained in 50 CFR part 20 apply to the seasons listed herein.

(a) *Confederated Salish and Kootenai Tribes, Flathead Indian Reservation, Pablo, Montana (Tribal Members and Nontribal Hunters).*

Tribal Members Only

Ducks (including mergansers)

Season Dates: Open September 1, 2020, through March 9, 2021.

Daily Bag and Possession Limits: The Tribe does not have specific bag and possession restrictions for Tribal members. The season on harlequin duck is closed.

Coots

Season Dates: Same as ducks.

Daily Bag and Possession Limits: Same as ducks.

Geese

Season Dates: Same as ducks.

Daily Bag and Possession Limits: Same as ducks.

Nontribal Hunters

Ducks (including mergansers)

Season Dates: Open September 26, 2020, through January 10, 2021.

Scaup

Season Dates: Open September 26 through December 20, 2020.

Daily Bag and Possession Limits: Seven ducks, including no more than two hen mallards, one pintail, two scaup (when open), two canvasback, and two redheads. The possession limit is three times the daily bag limit.

Coots

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 25 and 25, respectively.

Geese

Dark Geese

Season Dates: Open September 26, 2020, through January 10, 2021.

Daily Bag and Possession Limits: Four Canada geese and brant in the aggregate, and 10 white-fronted geese. The possession limit is three times the daily bag limit.

Light Geese

Season Dates: Same as for dark geese.

Daily Bag and Possession Limits: 20 and 60, respectively.

General Conditions: Tribal and nontribal hunters must comply with all basic Federal migratory bird hunting regulations contained in 50 CFR part 20 regarding manner of taking. In addition, shooting hours are one-half hour before sunrise to one-half hour after sunset, and each waterfowl hunter 16 years of age or older must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the stamp face. Special regulations established by the Confederated Salish and Kootenai Tribes also apply on the reservation.

(b) *Fond du Lac Band of Lake Superior Chippewa Indians, Cloquet, Minnesota (Tribal Members Only).*

Ducks

1854 and 1837 Ceded Territories:

Season Dates: Begin September 1 and end November 30, 2020.

Daily Bag Limit: 18 ducks, including no more than 12 mallards (only three of which may be hens), nine black ducks, nine scaup, nine wood ducks, nine redheads, nine pintails, and nine canvasbacks.

Reservation:

Season Dates: Begin September 1 and end November 30, 2020.

Daily Bag Limit: 12 ducks, including no more than eight mallards (only two of which may be hens), six black ducks, six scaup, six redheads, six pintails, six wood ducks, and six canvasbacks.

Mergansers

1854 and 1837 Ceded Territories:

Season Dates: Begin September 1 and end November 30, 2020.

Daily Bag Limit: 15 mergansers, including no more than six hooded mergansers.

Reservation:

Season Dates: Begin September 1 and end November 30, 2020.

Daily Bag Limit: 10 mergansers, including no more than four hooded mergansers.

Canada Geese

All Areas:

Season Dates: Begin September 1 and end November 30, 2020.

Daily Bag Limit: 20 geese.

Coots and Common Moorhens (Common Gallinules)

All Areas:

Season Dates: Begin September 1 and end November 30, 2020.

Daily Bag Limit: 20 coots and common moorhens, singly or in the aggregate.

Sandhill Cranes

1854 and 1837 Ceded Territories:

Season Dates: Begin September 1 and end November 30, 2020.

Daily Bag Limit: Two sandhill cranes. Crane carcass tags are required prior to hunting.

Sora and Virginia Rails

All Areas:

Season Dates: Begin September 1 and end November 30, 2020.

Daily Bag Limit: 25 sora and Virginia rails, singly or in the aggregate.

Common Snipe

All Areas:

Season Dates: Begin September 1 and end November 30, 2020.

Daily Bag Limit: Eight common snipe.

Woodcock

All Areas:

Season Dates: Begin September 1 and end November 30, 2020.

Daily Bag Limit: Three woodcock.

Mourning Doves

All Areas:

Season Dates: Begin September 1 and end November 30, 2020.

Daily Bag Limit: 30 mourning doves.

Tundra and Trumpeter Swans

Reservation Only:

Season Dates: Begin September 1 and end November 30, 2020.

Daily Bag Limit: Two swans. A swan carcass tag is required prior to hunting.

General Conditions:

1. While hunting waterfowl, a tribal member must carry on his/her person a valid Ceded Territory License.

2. Shooting hours for migratory birds are one-half hour before sunrise to one-half hour after sunset.

3. Except as otherwise noted, tribal members will be required to comply with tribal codes that will be no less restrictive than the provisions of Chapter 10 of the Model Off-Reservation Code. Except as modified by Service rules, these amended regulations parallel Federal requirements in 50 CFR

part 20 as to hunting methods, transportation, sale, exportation, and other conditions generally applicable to migratory bird hunting.

4. Band members in each zone will comply with State regulations providing for closed and restricted waterfowl hunting areas.

5. There are no possession limits for migratory birds. For purposes of enforcing bag limits, all migratory birds in the possession or custody of band members on ceded lands will be considered to have been taken on those lands unless tagged by a tribal or State conservation warden as having been taken on-reservation. All migratory birds that fall on reservation lands will not count as part of any off-reservation bag or possession limit.

(c) *Grand Traverse Band of Ottawa and Chippewa Indians, Suttons Bay, Michigan (Tribal Members Only).*

Ducks

Season Dates: Open September 1, 2020, through January 20, 2021.

Daily Bag Limit: 35 ducks, which may include no more than eight pintail, four canvasback, eight black ducks, five hooded merganser, 10 wood ducks, eight redheads, and 20 mallards (only 10 of which may be hens).

Canada and Snow Geese

Season Dates: Open September 1, 2020, through February 15, 2021.

Daily Bag Limit: 15 geese.

Other Geese (White-Fronted Geese and Brant)

Season Dates: Open September 20 through December 30, 2020.

Daily Bag Limit: Five geese.

Sora Rails, Common Snipe, and Woodcock

Season Dates: Open September 1 through November 14, 2020.

Daily Bag Limit: 10 rails, 10 snipe, and five woodcock.

Mourning Doves

Season Dates: Open September 1 through November 14, 2020.

Daily Bag Limit: 25 mourning doves.

Sandhill Cranes

Season Dates: Open September 1 through November 14, 2020.

Daily Bag Limit: Two sandhill cranes, with a season limit of 10.

General Conditions: A valid Grand Traverse Band Tribal license is required and must be in possession before taking any wildlife. Shooting hours for migratory birds are one-half hour before sunrise to one-half hour after sunset. All other basic regulations contained in 50 CFR part 20 are valid. Other tribal regulations apply, and may be obtained at the tribal office in Suttons Bay, Michigan.

(d) *Great Lakes Indian Fish and Wildlife Commission, Odanah, Wisconsin (Tribal Members Only).*

The 2020–21 waterfowl hunting season regulations apply to all treaty areas (except where noted):

Ducks

Season Dates: Begin September 1 and end December 31, 2020.

Daily Bag Limit: 50 ducks in the 1837 and 1842 Treaty Area; 30 ducks in the 1836 Treaty Area.

Mergansers

Season Dates: Begin September 1 and end December 31, 2020.

Daily Bag Limit: 10 mergansers.

Geese

Season Dates: Begin September 1 and end December 31, 2020. In addition, any portion of the ceded territory that is open to State-licensed hunters for goose hunting outside of these dates will also be open concurrently for tribal members.

Daily Bag Limit: 20 geese in aggregate.

Other Migratory Birds

Coots and Common Moorhens (Common Gallinules)

Season Dates: Begin September 1 and end December 31, 2020.

Daily Bag Limit: 20 coots and common moorhens (common gallinules), singly or in the aggregate.

Sora and Virginia Rails

Season Dates: Begin September 1 and end December 31, 2020.

Daily Bag and Possession Limits: 20, singly, or in the aggregate, 25.

Common Snipe

Season Dates: Begin September 1 and end December 31, 2020.

Daily Bag Limit: 16 common snipe.

Woodcock

Season Dates: Begin September 1 and end December 31, 2020.

Daily Bag Limit: 10 woodcock.

Mourning Doves: 1837 and 1842 Ceded Territories Only

Season Dates: Begin September 1 and end November 29, 2020.

Daily Bag Limit: 15 mourning doves.

Sandhill Cranes

Season Dates: Begin September 1 and end December 31, 2020.

Daily Bag Limit: Five cranes in the 1837 and 1842 Treaty Area and no season bag limit; three cranes and no season bag limit in the 1836 Treaty Area.

Swans: 1837 and 1842 Ceded Territories Only

Season Dates: Begin September 1 and end December 31, 2020.

Daily Bag/Season Limit: Five swans. All harvested swans must be registered by presenting the fully-feathered carcass to a tribal registration station or GLIFWC warden, to be identified to species. If the total number of trumpeter swans harvested reaches 20, the swan season will be closed by emergency tribal rule.

General Conditions

A. All tribal members are required to obtain a valid tribal waterfowl hunting permit.

B. Except as otherwise noted, tribal members are required to comply with tribal codes that are no less restrictive than the model ceded territory conservation codes approved by Federal courts in the *Lac Courte Oreilles* v. *State of Wisconsin (Voigt)* and *Mille Lacs Band* v. *State of Minnesota* cases. Chapter 10 in each of these model codes regulates ceded territory migratory bird hunting. Both versions of Chapter 10 parallel Federal requirements as to hunting methods, transportation, sale, exportation, and other conditions generally applicable to migratory bird hunting. They also automatically incorporate by reference the Federal migratory bird regulations.

C. Particular regulations of note include:

1. Nontoxic shot is required for all waterfowl hunting by tribal members.

2. Tribal members in each zone must comply with tribal regulations providing for closed and restricted waterfowl hunting areas. These regulations generally incorporate the same restrictions contained in parallel State regulations.

3. There are no possession limits, with the exception of 25 rails (in the aggregate). For purposes of enforcing bag limits, all migratory birds in the possession and custody of tribal members on ceded lands are considered to have been taken on those lands unless tagged by a tribal or State conservation warden as taken on reservation lands. All migratory birds that fall on reservation lands do not count as part of any off-reservation bag or possession limit.

4. There are no shell limit restrictions.

5. Hunting hours are from 30 minutes before sunrise to 30 minutes after sunset, except that, within the 1837 and 1842 ceded territories, hunters may use

non-mechanical nets or snares that are operated by hand to take those birds subject to an open hunting season at any time. Hunters shall be permitted to capture, without the aid of other devices (*i.e.,* by hand) and immediately kill birds subject to an open season, regardless of time of day. See 7., below, for further explanation.

6. An experimental application of electronic calls (e-calls) will be continued in the 1837 and 1842 ceded territories. Up to 50 tribal hunters will be allowed to use e-calls. Individuals using e-calls will be required to obtain a special permit; they will be required to complete a hunt diary for each hunt where e-calls are used; and they will be required to submit the hunt diary to the Commission within two (2) weeks of the end of the season in order to be eligible to obtain an e-call permit for the following year. Required information will include the date, time, and location of the hunt; number of hunters; the number of each species harvested per hunting event; if other hunters were in the area, any interactions with other hunters; and other information deemed appropriate. Diary results will be summarized and documented in a Commission report, which will be submitted to the Service. Barring unforeseen results, this experimental application would be replicated for three (3) years, after which a full evaluation would be completed.

7. Within the 1837 and 1842 ceded territories, tribal members will be allowed to use non-mechanical, hand-operated nets (*i.e.,* throw/cast nets or hand-held nets typically used to land fish) and/or hand-operated snares, and may chase and capture migratory birds without the aid of hunting devices (*i.e.,* by hand). At this time, unattended nets or snares shall not be authorized under this regulation. Tribal members using nets or snares to take migratory birds, or taking birds by hand, will be required to obtain a special permit; they will be required to complete a hunt diary for each hunt where these methods are used; and they will be required to submit the hunt diary to the Commission within two (2) weeks of the end of the season in order to be eligible to obtain a permit to net migratory birds for the following year. Required information will include the date, time, and location of the hunt; number of hunters; the number of each species harvested per hunting event; and other information deemed appropriate. Diary results will be summarized and documented in a Commission report, which will be submitted to the Service. Barring unforeseen results, this experimental application would be replicated for three (3) years, after which a full evaluation would be completed.

(e) *Jicarilla Apache Tribe, Jicarilla Indian Reservation, Dulce, New Mexico (Tribal Members and Nontribal Hunters).*

Ducks (Including Mergansers)

Season Dates: Open October 3 through November 30, 2020.

Daily Bag and Possession Limits: The daily bag limit is seven, including no more than two hen mallards, one pintail, two redheads, two canvasback, and two scaup. The possession limit is three times the daily bag limit.

Canada Geese

Season Dates: Open October 3 through November 30, 2020.

Daily Bag and Possession Limits: Two and four, respectively.

General Conditions: Tribal and nontribal hunters must comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20 regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or older must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the stamp face. Special regulations established by the Jicarilla Tribe also apply on the reservation.

(f) *Kalispel Tribe, Kalispel Reservation, Usk, Washington (Tribal Members and Nontribal Hunters).*

Nontribal Hunters on Reservation and Ceded Lands

Geese

Season Dates: Open September 19 through September 20, 2020; open September 26 through September 27, 2020; and open October 1, 2020, through January 8, 2021 (through December 15, 2020, for brant). During these periods, days to be hunted are specified by the Kalispel Tribe. Nontribal hunters should contact the Tribe for more detail on hunting days.

Daily Bag and Possession Limits: Five Canada geese for the early season, and 20 light geese, 10 white-fronted geese, and four Canada geese, for the late season. The daily bag limit is two brant (when the State's season is open) and is in addition to dark goose limits for the late season. The possession limit is twice the daily bag limit.

Ducks

Season Dates: Open September 19 through September 20, 2020; open September 26 through September 27, 2020; and open October 1, 2020, through January 8, 2021.

Daily Bag and Possession Limits: Seven ducks, including no more than two female mallards, one pintail, two canvasback, two scaup (when open; see ''Scaup'' entry), and two redheads. The possession limit is twice the daily bag limit.

Scaup

Season Dates: Open October 1 through December 25, 2020.

Daily Bag and Possession Limits: Two scaup. Scaup count towards the daily bag limit for ducks; see entry ''Ducks.'' The possession limit is twice the daily bag limit.

Tribal Members on Reservation and Ceded Lands

Geese

Season Dates: Open October 1, 2020, through January 31, 2021.

Daily Bag and Possession Limits: Six light geese and four dark geese. The daily bag limit is two brant and is in addition to dark goose limits for the late season. The possession limit is twice the daily bag limit.

Ducks

Season Dates: Open October 1, 2020, through January 31, 2021.

Daily Bag and Possession Limits: Seven ducks, including no more than two female mallards, two pintail, two canvasback, three scaup, and two redheads. The possession limit is twice the daily bag limit.

General: Tribal members must possess a validated Migratory Bird Hunting and Conservation Stamp and a tribal ceded lands permit.

(g) *Klamath Tribe, Chiloquin, Oregon (Tribal Members Only).*

Ducks and Coots

Season Dates: Open October 5, 2020, through January 31, 2021.

Daily Bag and Possession Limits: Nine and 18, respectively.

Geese

Season Dates: Open October 5, 2020, through January 31, 2021.

Daily Bag and Possession Limits: Nine and 18, respectively.

General: Nontoxic shot is required. Use of live decoys, bait, and commercial use of migratory birds are prohibited. Waterfowl may not be pursued or taken while using motorized craft. Shooting hours are one-half hour before sunrise to one-half hour after sunset.

(h) *Leech Lake Band of Ojibwe, Cass Lake, Minnesota (Tribal Members Only).*

Ducks

Season Dates: Open September 12 through December 31, 2020.

Daily Bag Limits: 10 ducks, including no more than five pintail, five canvasback, and five black ducks.

Geese

Season Dates: Open September 12 through December 31, 2020.

Daily Bag Limits: 10 geese.

General: Possession limits are twice the daily bag limits. Shooting hours are one-half hour before sunrise to one-half hour after sunset. Nontoxic shot is required. Use of live decoys, bait, and commercial use of migratory birds are prohibited. Waterfowl may not be pursued or taken while using motorized craft.

(i) *Little River Band of Ottawa Indians, Manistee, Michigan (Tribal Members Only).* 1836 Ceded Territory and Tribal Reservation:

Ducks

Season Dates: Open September 1, 2020, through January 31, 2021.

Daily Bag Limits: 12 ducks, including no more than six mallards (two of which may be hens), three black ducks, three redheads, three wood ducks, two pintail, one bufflehead, one hooded merganser, and two canvasback.

Coots and Gallinules

Season Dates: Open September 14, 2020, through January 31, 2021.

Daily Bag Limits: Five coots and five gallinules.

Canada Geese

Season Dates: Open September 1, 2020, through January 31, 2021.

Daily Bag Limit: Five.

White-Fronted Geese, Brant, and Snow Geese

Season Dates: Open September 7 through December 9, 2020.

Daily Bag Limit: Five.

Woodcock, Mourning Doves, Snipe, and Sora and Virginia Rails

Season Dates: Open September 1 through November 11, 2020.

Daily Bag Limit: Five woodcock and 10 each of the other species.

Sandhill Cranes

Season Dates: Open September 1 through December 31, 2020.

Daily Bag Limit: Two.

General conditions are as follows:

A. All tribal members will be required to obtain a valid tribal resource card and 2020–21 hunting license.

B. Except as modified by Service rules, these regulations parallel all Federal regulations contained in 50 CFR part 20. Shooting hours will be from one-half hour before sunrise to sunset.

C. Particular regulations of note include:

(1) Nontoxic shot will be required for all waterfowl hunting by tribal members.

(2) Tribal members in each zone will comply with tribal regulations providing for closed and restricted waterfowl hunting areas. These regulations generally incorporate the same restrictions contained in parallel State regulations.

D. Tribal members hunting in Michigan will comply with tribal codes that contain provisions parallel to Michigan law regarding duck blinds and decoys.

E. Possession limits are twice the daily bag limits.

(j) *The Little Traverse Bay Bands of Odawa Indians, Petoskey, Michigan (Tribal Members Only).*

Ducks

Season Dates: Open September 1, 2020, through January 31, 2021.

Daily Bag Limits: 20 ducks, including no more than five hen mallards, five black ducks, five redheads, five wood ducks, five pintail, five scaup, and five canvasback.

Mergansers

Season Dates: Open September 1, 2020, through January 31, 2021.

Daily Bag Limits: 10 mergansers, including no more than five hooded mergansers.

Coots and Gallinules

Season Dates: Open September 15 through December 31, 2020.

Daily Bag Limit: 20.

Canada Geese

Season Dates: Open September 1, 2020, through February 8, 2021.

Daily Bag Limit: 20 in the aggregate.

Sora and Virginia Rails

Season Dates: Open September 1 through December 31, 2020.

Daily Bag Limit: 20.

Snipe

Season Dates: Open September 1 through December 31, 2020.

Daily Bag Limit: 15.

Mourning Doves

Season Dates: Open September 1 through November 14, 2020.

Daily Bag Limit: 15.

Woodcock

Season Dates: Open September 1 through December 1, 2020.

Daily Bag Limit: 10.

Sandhill Cranes

Season Dates: Open September 1 through December 1, 2020.

Daily Bag Limit: Two.

General: Possession limits are twice the daily bag limits.

(k) *Lower Brule Sioux Tribe, Lower Brule Reservation, Lower Brule, South Dakota (Tribal Members and Nontribal Hunters).*

Tribal Members

Ducks, Mergansers, and Coots

Season Dates: Open September 1, 2020, through March 10, 2021.

Daily Bag and Possession Limits: Six ducks, including no more than two hen mallard and five mallards total, one pintail, two redheads, two canvasback, three wood ducks, three scaup, two bonus teal during September 1 through 16, 2020, and one mottled duck. Coot daily bag limit is 15. Merganser daily bag limit is five, including no more than two hooded mergansers. The possession limit is three times the daily bag limit.

Canada Geese

Season Dates: Open September 1, 2020, through March 10, 2021.

Daily Bag and Possession Limits: Six and 18, respectively.

White-Fronted Geese

Season Dates: Open September 1, 2020, through March 10, 2021.

Daily Bag and Possession Limits: Two and six, respectively.

Light Geese

Season Dates: Open September 1, 2020, through March 10, 2021.

Daily Bag Limit: 20.

Doves

Season Dates: Open September 1, 2020, through January 31, 2021.

Daily Bag Limit: 15.

Nontribal Hunters

Ducks (Including Mergansers and Coots)

Season Dates: Open October 3, 2020, through January 7, 2021.

Daily Bag and Possession Limits: Six ducks, including five mallards (no more of which can be two hen mallards), one scaup, two canvasback, two redheads, three wood ducks, one mottled duck, one pintail, and two bonus blue-winged teal during October 3 through October 18, 2020. Coot daily bag limit is 15. Merganser daily bag limit is five, including no more than two hooded mergansers. The possession limit is three times the daily bag limit.

Canada Geese

Season Dates: Open October 26, 2020, through February 9, 2021.

Daily Bag and Possession Limits: Six and 18, respectively.

White-Fronted Geese

Season Dates: Open October 26, 2020, through January 21, 2021.

Daily Bag and Possession Limits: Two and six, respectively.

Light Geese

Season Dates: Open October 26, 2020, through February 9, 2021; and open February 11 through March 10, 2021.

Daily Bag and Possession Limits: 50 and no possession limit.

Doves

Season Dates: Open September 1 through November 29, 2020.

Daily Bag Limit: 15.

General Conditions: All hunters must comply with the basic Federal migratory bird hunting regulations in 50 CFR part 20, including the use of steel shot and shooting hours. Nontribal hunters must possess a validated Migratory Bird Hunting and Conservation Stamp. The Lower Brule Sioux Tribe has an official Conservation Code that hunters must adhere to when hunting in areas subject to control by the Tribe.

(l) [Reserved]

(m) [Reserved]

(n) *Makah Indian Tribe, Neah Bay, Washington (Tribal Members).*

Band-Tailed Pigeons

Season Dates: Open September 15 through December 31, 2020.

Daily Bag Limit: Two band-tailed pigeons.

Ducks and Coots

Season Dates: Open September 26, 2020, through January 31, 2021.

Daily Bag Limit: Seven ducks including no more than five mallards (only two of which can be a hen), one redhead, one pintail, three scaup, and one canvasback. The seasons on wood duck and harlequin are closed. The coot daily bag limit is 25.

Geese

Season Dates: Open September 26, 2020, through January 31, 2021.

Daily Bag Limit: Four. The season on dusky Canada geese is closed.

Brant

Season Dates: Open September 26, 2020, through January 24, 2021.

Daily Bag Limit: Two per day.

General Conditions:

All other Federal regulations contained in 50 CFR part 20 apply. The following restrictions also apply:

1. As per Makah Ordinance 44, only shotguns may be used to hunt any species of waterfowl. Additionally, shotguns must not be discharged within 300 feet of an occupied area.

2. Hunters must be eligible, enrolled Makah tribal members and must carry their Indian Treaty Fishing and Hunting Identification Card while hunting. No tags or permits are required to hunt waterfowl.

3. The use of live decoys and/or baiting to pursue any species of waterfowl is prohibited.

4. Only Service-approved nontoxic shot is allowed; the use of lead shot is prohibited.

5. The use of dogs is permitted to hunt waterfowl.

6. Shooting hours for all species of waterfowl are one-half hour before sunrise to sunset.

7. Open hunting areas are: Makah Reservation except for designated wilderness areas and within one mile of the Cape Flattery and Shi-shi Trails. Off-Reservation Hunting Areas are specified in the General Hunting Regulations.

(o) *Muckleshoot Indian Tribe, Auburn, Washington (Tribal Members Only).*

Band-Tailed Pigeons, Mourning Doves, and Snipe

Season Dates: Open September 1 through December 31, 2020.

Daily Bag Limits: Two, 15, and eight, respectively.

Ducks (Including Coots)

Season Dates: Open September 1, 2020, through March 10, 2021.

Daily Bag Limits: Seven ducks, including no more than two hen mallards, one mottled duck, two canvasback, three scaup, two redheads, two scoter, two long-tailed ducks, two goldeneye, and two pintail. Coot daily bag limit is 25. The Tribe has a limit on harlequin ducks of one per season.

Geese

Season Dates: Open September 1, 2020, through March 10, 2021.

Daily Bag Limits: Four Canada geese, six light geese, 10 white-fronted geese, and two brant. There is a year-round closure on dusky Canada geese.

All other Federal regulations contained in 50 CFR part 20 apply. The following restrictions also apply:

1. Hunting can occur on reservation and off reservation on lands where the Tribe has treaty-reserved hunting rights, or has documented traditional use.

2. Shooting hours for all species of waterfowl are one-half hour before sunrise to one-half after sunset.

3. Hunters must be eligible, enrolled Muckleshoot Tribal members and must carry their Tribal identification while hunting.

4. Tribal members hunting migratory birds must also have a combined Migratory Bird Hunting Permit and Harvest Report Card.

5. The use of live decoys and/or baiting to pursue any species of waterfowl is prohibited.

6. Hunting for migratory birds is with shotgun only. Only steel, tungsten-iron, tungsten-polymer, tungsten-matrix, and tin shot are allowed for hunting waterfowl. It is unlawful to use or possess lead shot while hunting waterfowl.

(p) *Navajo Nation, Navajo Indian Reservation, Window Rock, Arizona (Tribal Members and Nontribal Hunters).*

Band-Tailed Pigeons

Season Dates: Open September 1 through September 30, 2020.

Daily Bag and Possession Limits: Five and 10 pigeons, respectively.

Mourning Doves

Season Dates: Open September 1 through September 30, 2020.

Daily Bag and Possession Limits: 10 and 20 doves, respectively.

Ducks (Including Mergansers and Coots)

Season Dates: Open September 26, 2020, through January 31, 2021, for 107 days total.

Daily Bag and Possession Limits: Seven ducks, including no more than two hen mallards, one mottled duck, two canvasback, two scaup (when open; see ''Scaup'' entry), two redheads, and one pintail. Coot daily bag limit is 25. Merganser daily bag limit is seven. The possession limit is three times the daily bag limit.

Scaup

Season Dates: Open September 26, 2020, through January 31, 2021, for 86 days total.

Daily Bag and Possession Limits: Two scaup. Scaup count towards the daily bag limit for ducks and mergansers; see entry ''Ducks (Including Mergansers and Coots).'' The possession limit is three times the daily bag limit.

Canada Geese

Season Dates: Open September 26, 2020, through January 31, 2021, for 107 days total.

Daily Bag and Possession Limits: Four and 12, respectively.

General Conditions: Tribal and nontribal hunters will comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20, regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or older must carry on his/

her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the face. Special regulations established by the Navajo Nation also apply on the reservation.

(q) *Oneida Tribe of Indians of Wisconsin, Oneida, Wisconsin (Tribal Members Only).*

Ducks (Including Mergansers)

Season Dates: Open September 12 through December 6, 2020.

Daily Bag and Possession Limits: Six, including no more than six mallards (three hen mallards), two redhead, two pintail, and one hooded merganser. The possession limit is twice the daily bag limit.

Geese

Season Dates: Open September 1 through December 31, 2020.

Daily Bag and Possession Limits: Five Canada geese and five white geese, with a possession limit of 10. A seasonal quota of 500 birds is adopted. If the quota is reached before the season concludes, the season will be closed at that time.

Brant

Season Dates: Open September 1 through December 31, 2020.

Daily Bag and Possession Limits: Five brant, with a possession limit of 10.

Woodcock

Season Dates: Open September 1 through November 1, 2020.

Daily Bag and Possession Limits: Two and four woodcock, respectively.

Doves

Season Dates: Open September 1 through November 1, 2020.

Daily Bag and Possession Limits: 10 and 20 doves, respectively.

General Conditions: Tribal member shooting hours are one-half hour before sunrise to one-half hour after sunset. Nontribal members hunting on the Reservation or on lands under the jurisdiction of the Tribe must comply with all State of Wisconsin regulations, including season dates, shooting hours, and bag limits, which differ from tribal member seasons. Tribal members and nontribal members hunting on the Reservation or on lands under the jurisdiction of the Tribe will observe all basic Federal migratory bird hunting regulations found in 50 CFR part 20, with the following exceptions: Tribal members are exempt from the purchase of the Migratory Waterfowl Hunting and Conservation Stamp (Duck Stamp); and shotgun capacity is not limited to three shells.

(r) *Point No Point Treaty Council, Kingston, Washington (Tribal Members Only).*

Jamestown S'Klallam Tribe

Ducks

Season Dates: Open September 1, 2020, through March 10, 2021.

Daily Bag and Possession Limits: Seven ducks, including no more than one harlequin duck per season.

Geese

Season Dates: Open September 7, 2020, through March 10, 2021.

Daily Bag and Possession Limits: The daily bag limits for Canada geese, light geese, and white-fronted geese are five, three, and 10, respectively. There is a year-round closure on dusky Canada geese. Possession limit is twice the daily bag limit.

Brant

Season Dates: Open January 11 through January 26, 2021.

Daily Bag and Possession Limits: Two and four, respectively.

Coots

Season Dates: Open September 7, 2020, through February 2, 2021.

Daily Bag and Possession Limits: 25 and 50 coots, respectively.

Mourning Doves

Season Dates: Open September 7, 2020, through January 20, 2021.

Daily Bag and Possession Limits: 10 and 20 doves, respectively.

Snipe

Season Dates: Open September 7, 2020, through March 10, 2021.

Daily Bag and Possession Limits: Eight and 16 snipe, respectively.

Band-Tailed Pigeons

Season Dates: Open September 7, 2020, through January 20, 2021.

Daily Bag and Possession Limits: Two and four pigeons, respectively.

Port Gamble S'Klallam Tribe

Ducks

Season Dates: Open September 1, 2020, through March 10, 2021.

Daily Bag and Possession Limits: Seven ducks, including no more than two hen mallards, one canvasback, one pintail, two redhead, four scoters, and no more than one harlequin duck per season.

Geese

Season Dates: Open September 1, 2020, through March 10, 2021.

Daily Bag and Possession Limits: The daily bag limits for Canada geese, light geese, and white-fronted geese are Five, three, and 10, respectively. There is a year-round closure on dusky Canada geese. Possession limit is twice the daily bag limit.

Brant

Season Dates: Open November 9, 2020, through January 31, 2021.

Daily Bag and Possession Limits: Two and four, respectively.

Coots

Season Dates: Open September 1, 2020, through March 10, 2021.

Daily Bag and Possession Limits: Seven and 14 coots, respectively.

Mourning Doves

Season Dates: Open September 1, 2020, through January 31, 2021.

Daily Bag and Possession Limits: 10 and 20 doves, respectively.

Snipe

Season Dates: Open September 1, 2020, through March 10, 2021.

Daily Bag and Possession Limits: Eight and 16 snipe, respectively.

Band-Tailed Pigeons

Season Dates: Open September 1, 2020, through March 10, 2021.

Daily Bag and Possession Limits: Two and four pigeons, respectively.

General: Tribal members must possess a tribal hunting permit from the Point No Point Tribal Council pursuant to tribal law. Hunting hours are from one-half hour before sunrise to sunset. Hunters must observe all other basic Federal migratory bird hunting regulations in 50 CFR part 20.

(s) *The Saginaw Chippewa Indian Tribe of Michigan, Isabella Reservation, Mt. Pleasant, Michigan (Tribal Members Only)*

Mourning Doves

Season Dates: Open September 1, 2020, through January 31, 2021.

Daily Bag Limit: 25 doves.

Ducks

Season Dates: Open September 1, 2020, through January 31, 2021.

Daily Bag Limits: 20, including no more than five hen mallards, five wood ducks, five black ducks, five pintails, five redheads, five scaup, and five canvasbacks.

Mergansers

Season Dates: Open September 1, 2020, through January 31, 2021.

Daily Bag Limit: 10, including no more than five hooded mergansers.

Canada Geese

Season Dates: Open September 1, 2020, through January 31, 2021.

Daily Bag Limit: 20 in the aggregate.

Coots and Gallinule

Season Dates: Open September 1, 2020, through January 31, 2021.
Daily Bag Limit: 20 in the aggregate.

Woodcock and Mourning Doves

Season Dates: Open September 1, 2020, through January 31, 2021.
Daily Bag Limits: 10 woodcock and 25 doves.

Common Snipe

Season Dates: Open September 1, 2020, through January 31, 2021.
Daily Bag Limits: 16.

Sora and Virginia Rails

Season Dates: Open September 1, 2020, through January 31, 2021.
Daily Bag Limits: 20 in the aggregate.

Sandhill Cranes

Season Dates: Open September 1, 2020, through January 31, 2021.
Daily Bag Limit: One.
General: Possession limits are twice the daily bag limits except for rails, of which the possession limit equals the daily bag limit (20). Tribal members must possess a tribal hunting permit from the Saginaw Tribe pursuant to tribal law. Shooting hours are one-half hour before sunrise until one-half hour after sunset. Hunters must observe all other basic Federal migratory bird hunting regulations in 50 CFR part 20.

(t) *Sauk-Suiattle Indian Tribe, Darrington, Washington (Tribal Members Only)*

Mourning Doves

Season Dates: Open September 1, 2020, through March 10, 2021.
Daily Bag Limits: 10 doves.

Band-Tailed Pigeons

Season Dates: Open September 1, 2020, through March 10, 2021.
Daily Bag Limits: 10 pigeons.

Ducks

Season Dates: Open September 1, 2020, through March 10, 2021.
Daily Bag Limits: 20.

Geese

Season Dates: Open September 1, 2020, through March 10, 2021.
Daily Bag Limit: 10 geese.

Coots

Season Dates: Open September 1, 2020, through March 10, 2021.
Daily Bag Limit: 25 coots.

Brant

Season Dates: Open September 1, 2020, through March 10, 2021.
Daily Bag Limits: Five brant.
General: Shooting hours are one-half hour before sunrise until one-half hour after sunset. Hunters must observe all other basic Federal migratory bird hunting regulations in 50 CFR part 20.

(u) *Sault Ste. Marie Tribe of Chippewa Indians, Sault Ste. Marie, Michigan (Tribal Members Only).*

Mourning Doves

Season Dates: Open September 1 through November 14, 2020.
Daily Bag Limit: 10 doves.

Teal

Season Dates: Open September 1 through December 31, 2020.
Daily Bag Limits: 20 in the aggregate.

Ducks

Season Dates: Open September 15 through December 31, 2020.
Daily Bag Limits: 20, including no more than 10 mallards (only five of which may be hens), five canvasback, five black ducks, and five wood ducks.

Mergansers

Season Dates: Open September 15 through December 31, 2020.
Daily Bag Limit: 10 in the aggregate.

Geese

Season Dates: Open September 1 through December 31, 2020.
Daily Bag Limit: 20 in the aggregate.

Coots and Gallinule

Season Dates: Open September 1 through December 31, 2020.
Daily Bag Limit: 20 in the aggregate.

Woodcock

Season Dates: Open September 2 through December 1, 2020.
Daily Bag Limits: 10.

Common Snipe

Season Dates: Open September 15 through December 31, 2020.
Daily Bag Limits: 16.

Sora and Virginia Rails

Season Dates: Open September 1 through December 31, 2020.
Daily Bag Limits: 20 in the aggregate.
General: Possession limits are twice the daily bag limits except for rails, of which the possession limit equals the daily bag limit (20). Tribal members must possess a tribal hunting permit from the Sault Ste. Marie Tribe pursuant to tribal law. Shooting hours are one-half hour before sunrise until one-half hour after sunset. Hunters must observe all other basic Federal migratory bird hunting regulations in 50 CFR part 20.

(v) *Shoshone-Bannock Tribes, Fort Hall Indian Reservation, Fort Hall, Idaho (Nontribal Hunters).*

Ducks, Including Mergansers

Duck Season Dates: Open October 3, 2020, through January 19, 2021.
Scaup Season Dates: Open October 3 through December 28, 2020.
Daily Bag and Possession Limits: Seven ducks and mergansers, including no more than two hen mallards, one pintail, two scaup (when open), two canvasback, and two redheads. The possession limit is three times the daily bag limit.

Coots

Season Dates: Same as ducks.
Daily Bag and Possession Limits: 25 coots. The possession limit is three times the daily bag limit.

Common Snipe

Season Dates: Same as ducks.
Daily Bag and Possession Limits: Eight and 24 snipe, respectively.

Canada Geese

Season Dates: Open October 3, 2020, through January 19, 2021.
Daily Bag and Possession Limits: Four and 12, respectively.

White-Fronted Geese

Season Dates: Open October 3, 2020, through January 19, 2021.
Daily Bag and Possession Limits: 10 and 30, respectively.

Light Geese

Season Dates: Open October 3, 2020, through January 19, 2021.
Daily Bag and Possession Limits: 20 and 60, respectively.
General Conditions: Nontribal hunters must comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20 regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or older must possess a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the stamp face. Other regulations established by the Shoshone-Bannock Tribes also apply on the reservation.

(w) *Skokomish Tribe, Shelton, Washington (Tribal Members Only).*

Ducks

Season Dates: Open September 16, 2020, through February 28, 2021.
Daily Bag and Possession Limits: Seven ducks, including no more than two hen mallards, one pintail, one canvasback, and two redheads. The daily bag limit on harlequin duck is one per season. The possession limit is twice the daily bag limit.

Geese

Season Dates: Open September 16, 2020, through February 28, 2021.

Daily Bag and Possession Limits: Four, including no more than three light geese. The season on Aleutian Canada geese is closed. The possession limit is twice the daily bag limit.

Brant

Season Dates: Open November 1, 2020, through February 15, 2021.

Daily Bag and Possession Limits: Two and four brant, respectively.

Coots

Season Dates: Open September 16, 2020, through February 28, 2021.

Daily Bag and Possession Limits: 25 and 50 coots, respectively.

Mourning Doves

Season Dates: Open September 16, 2020, through February 28, 2021.

Daily Bag and Possession Limits: 10 and 20 mourning doves, respectively.

Band-Tailed Pigeons

Season Dates: Open September 16, 2020, through February 28, 2021.

Daily Bag and Possession Limits: Two and four band-tailed pigeons, respectively.

Snipe

Season Dates: Open September 16, 2020, through February 28, 2021.

Daily Bag and Possession Limits: Eight and 16 snipe, respectively.

General Conditions: Tribal members must possess a tribal hunting permit from the Skokomish Indian Tribe pursuant to tribal law. Shooting hours are one-half hour before sunrise until sunset. Hunters must observe all other basic Federal migratory bird hunting regulations in 50 CFR part 20.

(x) *Spokane Tribe of Indians, Wellpinit, Washington (Tribal Members Only).*

Ducks

Season Dates: Open September 2, 2020, through January 31, 2021.

Daily Bag and Possession Limits: Seven ducks, including no more than two hen mallards, one pintail, two scaup, two canvasback, and two redheads. The daily bag limit on harlequin duck is one per season. The possession limit is twice the daily bag limit.

Geese

Season Dates: Open September 2, 2020, through January 31, 2021.

Daily Bag and Possession Limits: Four Canada geese, 10 white-fronted geese, and 20 light geese. The possession limit is twice the daily bag limit.

General Conditions: Tribal members must possess a tribal hunting permit from the Spokane Indian Tribe pursuant to tribal law. Shooting hours are one-half hour before sunrise until sunset. Hunters must observe all other basic Federal migratory bird hunting regulations in 50 CFR part 20.

(y) [Reserved]

(z) *Stillaguamish Tribe of Indians, Arlington, Washington (Tribal Members Only).*

Common Snipe

Season Dates: Open October 1, 2020, through January 31, 2021.

Daily Bag and Possession Limits: 10 and 20, respectively.

Ducks

Season Dates: Open October 1, 2020, through March 10, 2021.

Daily Bag and Possession Limits: 10 ducks, including no more than seven mallards (only three of which may be hens), three pintails, three redheads, three scaup, and three canvasback. The possession limit is twice the daily bag limit.

Coots

Season Dates: Open October 1, 2020, through January 31, 2021.

Daily Bag and Possession Limits: 25 coots. The possession limit is twice the daily bag limit.

Geese

Season Dates: Open October 1, 2020, through March 10, 2021.

Daily Bag and Possession Limits: Six Canada geese, 12 white-fronted geese, and eight snow geese. The possession limit is three times the daily bag limit. The season on brant is closed.

Swans

Season Dates: Open October 1, 2020, through January 31, 2021.

Bag Limit: Two per year.

General Conditions: Tribal members hunting on lands will observe all basic Federal migratory bird hunting regulations found in 50 CFR part 20, which will be enforced by the Stillaguamish Tribal Law Enforcement. Tribal members are required to use steel shot or a nontoxic shot as required by Federal regulations. The swan season is by special draw permit only.

(aa) *Swinomish Indian Tribal Community, LaConner, Washington (Tribal Members Only).*

Ceded Territory and Swinomish Reservation

Ducks and Mergansers

Season Dates: Open September 1, 2020, through March 9, 2021.

Daily Bag and Possession Limits: 20 and 40, respectively.

Canada Geese

Season Dates: Open September 1, 2020, through March 9, 2021.

Daily Bag and Possession Limits: 10 and 20 geese, respectively.

Brant

Season Dates: Open September 1, 2020, through March 9, 2021.

Daily Bag and Possession Limits: Five and 10 brant, respectively.

Coots

Season Dates: Open September 1, 2020, through March 9, 2021.

Daily Bag and Possession Limits: 25 and 75 coots, respectively.

Mourning Doves

Season Dates: Open September 1, 2020, through March 9, 2021.

Daily Bag and Possession Limits: 15 and 30 mourning doves, respectively.

Band-Tailed Pigeons

Season Dates: Open September 1, 2020, through March 9, 2021.

Daily Bag and Possession Limits: Three and six band-tailed pigeons, respectively.

Snipe

Season Dates: Open September 1, 2020, through March 9, 2021.

Daily Bag and Possession Limits: 15 and 30 snipe, respectively.

General Conditions: Shooting hours are from 30 minutes before sunrise until 30 minutes after sunset. Tribal members are required to use steel shot or a nontoxic shot as required by Federal regulations.

(bb) *The Tulalip Tribes of Washington, Tulalip Indian Reservation, Marysville, Washington (Tribal Members Only).*

Ducks and Mergansers

Season Dates: Open September 1, 2020, through February 28, 2021.

Daily Bag and Possession Limits: 15 ducks, including no more than one pintail and two canvasback. Possession limit is twice the daily bag limit.

Sea Ducks

Season Dates: Open September 1, 2020, through February 28, 2021.

Daily Bag and Possession Limits: 15 sea ducks, including no more than four harlequin. Possession limit is twice the daily bag limit.

Geese

Season Dates: Open September 1, 2020, through February 28, 2021.

Daily Bag and Possession Limits: 15 geese, including no more than 10 cackling Canada geese or 10 dusky

Canada geese. Possession limit is twice the daily bag limit.

Brant

Season Dates: Open September 1, 2020, through February 28, 2021.

Daily Bag and Possession Limits: Five and 10 brant, respectively.

Coots

Season Dates: Open September 1, 2020, through February 28, 2021.

Daily Bag and Possession Limits: 25 and 25 coots, respectively.

Snipe

Season Dates: Open September 1, 2020, through February 28, 2021.

Daily Bag and Possession Limits: Eight and 16 snipe, respectively.

General Conditions: All tribal hunters must have a valid Tribal identification card on his or her person while hunting. All nontribal hunters must obtain and possess while hunting a valid Tulalip Tribe hunting permit and be accompanied by a Tulalip Tribal member. Shooting hours are one-half hour before sunrise to sunset, and steel or federally approved nontoxic shot is required for all migratory bird hunting. Hunters must observe all other basic Federal migratory bird hunting regulations in 50 CFR part 20.

(cc) *Upper Skagit Indian Tribe, Sedro Woolley, Washington (Tribal Members Only).*

Mourning Doves

Season Dates: Open September 1 through December 31, 2020.

Daily Bag and Possession Limits: 12 and 15 mourning doves, respectively.

Ducks

Season Dates: Open October 1, 2020, through February 28, 2021.

Daily Bag and Possession Limits: 15 and 20, respectively.

Coots

Season Dates: Open October 1, 2020, through February 15, 2021.

Daily Bag and Possession Limits: 20 and 30, respectively.

Geese

Season Dates: Open October 1, 2020, through February 28, 2021.

Daily Bag and Possession Limits: Seven and 10 geese, respectively.

Brant

Season Dates: Open November 1 through 10, 2020.

Daily Bag and Possession Limits: Two and two, respectively.

General Conditions: Tribal members must have the tribal identification and harvest report card on their person to hunt. Tribal members hunting on the Reservation will observe all basic Federal migratory bird hunting regulations found in 50 CFR part 20, except shooting hours would be 15 minutes before official sunrise to 15 minutes after official sunset.

(dd) [Reserved]

(ee) *White Earth Band of Ojibwe, White Earth, Minnesota (Tribal Members Only).*

Ducks

Season Dates: Open September 12 through December 13, 2020.

Daily Bag Limit: 10 ducks, including no more than two female mallards, two pintails, and two canvasback.

Mergansers

Season Dates: Open September 12 through December 13, 2020.

Daily Bag Limit: Five mergansers, including no more than two hooded mergansers.

Geese

Season Dates: Open September 1 through December 13, 2020.

Daily Bag Limit: 10 geese through September 20, and five thereafter.

Coots

Season Dates: Open September 1 through November 30, 2020.

Daily Bag Limit: 20 coots.

Snipe

Season Dates: Open September 1 through November 30, 2020.

Daily Bag Limit: 10 snipe.

Mourning Doves

Season Dates: Open September 1 through November 30, 2020.

Daily Bag Limit: 25 mourning doves.

Woodcock

Season Dates: Open September 1 through November 30, 2020.

Daily Bag Limit: 10 woodcock.

Rail

Season Dates: Open September 1 through November 30, 2020.

Daily Bag Limit: 25 rail.

General Conditions: Shooting hours are one-half hour before sunrise to one-half hour after sunset. Nontoxic shot is required. All other basic Federal migratory bird hunting regulations contained in 50 CFR part 20 will be observed.

(ff) *White Mountain Apache Tribe, Fort Apache Indian Reservation, Whiteriver, Arizona (Tribal Members and Nontribal Hunters)*

Band-Tailed Pigeons (Wildlife Management Unit 10 and Areas South of Y-70 and Y-10 in Wildlife Management Unit 7, Only)

Season Dates: Open September 1 through 15, 2020.

Daily Bag and Possession Limits: Three and six pigeons, respectively.

Mourning Doves (Wildlife Management Unit 10 and Areas South of Y-70 and Y-10 in Wildlife Management Unit 7, Only)

Season Dates: Open September 1 through 15, 2020.

Daily Bag and Possession Limits: 10 and 20 doves, respectively.

Ducks and Mergansers

Season Dates: Open October 17, 2020, through January 24, 2021.

Daily Bag Limits: Seven, including no more than two redheads, one pintail, two scaup (when open; see entry ''Scaup''), seven mallards (including no more than two hen mallards), and two canvasback.

Possession Limits: Twice the daily bag limit.

Scaup

Season Dates: Open November 7, 2020, through January 24, 2021.

Daily Bag Limits: Two scaup. Scaup count towards the daily bag limit for ducks and mergansers; see entry ''Ducks and Mergansers.''

Possession Limits: Twice the daily bag limit.

Coots

Season Dates: Open October 17, 2020, through January 24, 2021.

Daily Bag and Possession Limits: 25 and 50, respectively.

Canada Geese

Season Dates: Open October 17, 2020, through January 24, 2021.

Daily Bag and Possession Limits: Three and six Canada geese, respectively.

General Conditions: All nontribal hunters hunting band-tailed pigeons and mourning doves on Reservation lands shall have in their possession a valid White Mountain Apache Daily or Yearly Small Game Permit. In addition to a small game permit, all nontribal hunters hunting band-tailed pigeons must have in their possession a White Mountain Special Band-tailed Pigeon Permit. Other special regulations established by the White Mountain Apache Tribe apply on the reservation. Tribal and nontribal hunters will comply with all basic Federal migratory bird hunting regulations in 50 CFR part

20 regarding shooting hours and manner of taking.

George Wallace,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2020–17692 Filed 8–27–20; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

[Docket No. FWS–HQ–MB–2019–0004; FF09M21200–201–FXMB1231099BPP0]

RIN 1018–BD89

Migratory Bird Hunting; Seasons and Bag and Possession Limits for Certain Migratory Game Birds

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule prescribes the seasons, hours, areas, and daily bag and possession limits for hunting migratory birds. Taking of migratory birds is prohibited unless specifically provided for by annual regulations. This rule permits the taking of designated species during the 2020–21 season.

DATES: This rule takes effect on August 28, 2020.

ADDRESSES: You may inspect comments received on the migratory bird hunting regulations at *http://www.regulations.gov* at Docket No. FWS–HQ–MB–2019–0004. You may obtain copies of referenced reports from the Division of Migratory Bird Management's website at *http://www.fws.gov/migratorybirds/,* or at *http://www.regulations.gov* at Docket No. FWS–HQ–MB–2019–0004.

FOR FURTHER INFORMATION CONTACT: Jerome Ford, U.S. Fish and Wildlife Service, Department of the Interior, (202) 208–1050.

SUPPLEMENTARY INFORMATION:

Regulations Schedule for 2020

On October 15, 2019, we published in the **Federal Register** (84 FR 55120) a proposal to amend title 50 of the Code of Federal Regulations (CFR) at part 20. The proposal provided a background and overview of the migratory bird hunting regulations process, and addressed the establishment of seasons, limits, and other regulations for hunting migratory game birds under §§ 20.101 through 20.107, 20.109, and 20.110 of subpart K. Major steps in the 2020–21 regulatory cycle relating to open public meetings and **Federal Register** notifications were illustrated in the diagram at the end of the October 15, 2019, proposed rule. For this regulatory cycle, we combined the elements described in that diagram as ''Supplemental Proposals'' with the one described as ''Proposed Season Frameworks.''

We provided the meeting dates and locations for the Service Regulations Committee (SRC) and Flyway Council meetings on Flyway calendars posted on our website at *https://www.fws.gov/birds/management/flyways.php.* On October 8–9, 2019, we held open meetings with the Flyway Council Consultants, at which the participants reviewed information on the current status of migratory game birds and developed recommendations for the 2020–21 regulations for these species. The October 15, 2019, proposed rule provided detailed information on the proposed 2020–21 regulatory schedule and announced the SRC meetings.

On March 19, 2020, we published in the **Federal Register** (85 FR 15870) the proposed frameworks for the 2020–21 season migratory bird hunting regulations. On August 21, 2020, we published in the **Federal Register** (85 FR 51854) the final frameworks for migratory game bird hunting regulations, from which State wildlife conservation agency officials selected seasons, hours, areas, and limits for hunting migratory birds during the 2020–21 season.

The final rule described here is the final in the series of proposed, supplemental, and final rulemaking documents for migratory game bird hunting regulations for the 2020–21 season, and deals specifically with amending subpart K of 50 CFR part 20. It sets hunting seasons, hours, areas, and limits for migratory game bird species. This final rule is the culmination of the annual rulemaking process allowing migratory game bird hunting, which started with the October 15, 2019, proposed rule. As discussed elsewhere in this document, we supplemented that proposal on March 19, 2020, and published final season frameworks on August 21, 2020, that provided the season selection criteria from which the States selected these seasons. This final rule sets the migratory game bird hunting seasons based on that input from the States. We previously addressed all comments in the August 21, 2020, **Federal Register** (85 FR 51854).

Required Determinations

Executive Order 13771—Reducing Regulation and Controlling Regulatory Costs

This action is not subject to Executive Order (E.O.) 13771 (82 FR 9339, February 3, 2017) because it establishes annual harvest limits related to routine hunting or fishing.

National Environmental Policy Act (NEPA) Consideration

The programmatic document, ''Second Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (EIS 20130139),'' filed with the Environmental Protection Agency (EPA) on May 24, 2013, addresses NEPA compliance by the Service for issuance of the annual framework regulations for hunting of migratory game bird species. We published a notice of availability in the **Federal Register** on May 31, 2013 (78 FR 32686), and our Record of Decision on July 26, 2013 (78 FR 45376). We also address NEPA compliance for waterfowl hunting frameworks through the annual preparation of separate environmental assessments, the most recent being ''Duck Hunting Regulations for 2020–21,'' with its corresponding June 2020, finding of no significant impact. The programmatic document, as well as the separate environmental assessment, is available on our website at *https://www.fws.gov/birds/index.php.*

Endangered Species Act Consideration

Section 7 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), provides that the Secretary shall insure that any action authorized, funded, or carried out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of critical habitat. Consequently, we conducted formal consultations to ensure that actions resulting from these regulations would not likely jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitat. Findings from these consultations are included in a biological opinion, which concluded that the regulations are not likely to jeopardize the continued existence of any endangered or threatened species. Additionally, these findings may have caused modification of some regulatory measures previously proposed, and the final frameworks (85 FR 51854; August 21, 2020) reflect any such modifications.

The biological opinion is available from *http://www.regulations.gov* at Docket No. FWS–HQ–MB–2019–0004.

Regulatory Planning and Review (Executive Orders 12866 and 13563)

E.O. 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. OIRA has reviewed this rule and has determined that this rule is significant because it will have an annual effect of $100 million or more on the economy.

E.O. 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The Executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

An economic analysis was prepared for the 2020–21 season. This analysis was based on data from the 2016 National Survey of Fishing, Hunting, and Wildlife-Associated Recreation (National Survey), the most recent year for which data are available (see discussion under *Regulatory Flexibility Act,* below). This analysis estimated consumer surplus for three alternatives for duck hunting (estimates for other species are not quantified due to lack of data). The alternatives are (1) issue restrictive regulations allowing fewer days than those issued during the 2019–20 season, (2) issue moderate regulations allowing more days than those in alternative 1, and (3) issue liberal regulations similar to the regulations in the 2019–20 season. For the 2020–21 season, we chose Alternative 3, with an estimated consumer surplus across all flyways of $334–$440 million with a mid-point estimate of $387 million. We also chose alternative 3 for the 2009–10 through 2019–20 seasons. The 2020–21 analysis is part of the record for this rule and is available at *http://www.regulations.gov* at Docket No. FWS–HQ–MB–2019–0004.

Regulatory Flexibility Act

The annual migratory bird hunting regulations have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). We analyzed the economic impacts of the annual hunting regulations on small business entities in detail as part of the 1981 cost-benefit analysis. This analysis was revised annually from 1990 through 1995. In 1995, the Service issued a Small Entity Flexibility Analysis (Analysis), which was subsequently updated in 1996, 1998, 2004, 2008, 2013, 2018, and 2019. The primary source of information about hunter expenditures for migratory game bird hunting is the National Survey, which is generally conducted at 5-year intervals. The 2020 Analysis is based on the 2016 National Survey and the U.S. Department of Commerce's County Business Patterns, from which it was estimated that migratory bird hunters would spend approximately $1.5 billion at small businesses in 2020. The analysis is available from *http://www.regulations.gov* at Docket No. FWS–HQ–MB–2019–0004.

Small Business Regulatory Enforcement Fairness Act

This final rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. For the reasons outlined above, this rule will have an annual effect on the economy of $100 million or more. However, because this rule establishes regulations for hunting seasons, we do not plan to defer the effective date under the exemption contained in 5 U.S.C. 808(1).

Paperwork Reduction Act

This rule does not contain any new collection of information that requires approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). OMB has previously approved the information collection requirements associated with migratory bird surveys and the procedures for establishing annual migratory bird hunting seasons under the following OMB control numbers:

- 1018–0019, ''North American Woodcock Singing Ground Survey'' (expires 06/30/2021).
- 1018–0023, ''Migratory Bird Surveys, 50 CFR 20.20'' (expires 04/30/2023). Includes Migratory Bird Harvest Information Program, Migratory Bird Hunter Surveys, Sandhill Crane Survey, and Parts Collection Survey.
- 1018–0171, ''Establishment of Annual Migratory Bird Hunting Seasons, 50 CFR part 20'' (expires 06/30/2021).

You may view the information collection request(s) at *http://www.reginfo.gov/public/do/PRAMain.* 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.

Unfunded Mandates Reform Act

We have determined and certify, in compliance with the requirements of the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.,* that this rulemaking will not impose a cost of $100 million or more in any given year on local or State government or private entities. Therefore, this rule is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

Civil Justice Reform—Executive Order 12988

The Department, in promulgating this rule, has determined that this rule will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of E.O. 12988.

Takings Implication Assessment

In accordance with E.O. 12630, this rule, authorized by the Migratory Bird Treaty Act, does not have significant takings implications and does not affect any constitutionally protected property rights. This rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, this rule will allow hunters to exercise otherwise unavailable privileges and, therefore, reduce restrictions on the use of private and public property.

Energy Effects—Executive Order 13211

E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. While this rule is a significant regulatory action under E.O. 12866, it is not expected to adversely affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), E.O. 13175, and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects on Indian trust resources. We solicited

proposals for special migratory bird hunting regulations for certain tribes on Federal Indian reservations, off-reservation trust lands, and ceded lands for the 2020–21 migratory bird hunting season in the October 15, 2019, proposed rule (84 FR 55120). The resulting proposals were contained in a separate April 2, 2020, proposed rule (85 FR 18532). By virtue of these actions, we have consulted with tribes affected by this rule.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. We annually prescribe frameworks from which the States make selections regarding the hunting of migratory birds, and we employ guidelines to establish special regulations on Federal Indian reservations and ceded lands. This process preserves the ability of the States and tribes to determine which seasons meet their individual needs. Any State or Indian tribe may be more restrictive than the Federal frameworks at any time. The frameworks are developed in a cooperative process with the States and the Flyway Councils. This process allows States to participate in the development of frameworks from which they will make selections, thereby having an influence on their own regulations. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with E.O. 13132, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Review of Public Comments

The preliminary proposed rulemaking (October 15, 2019; 84 FR 55120) opened the public comment period for 2020–21 migratory game bird hunting regulations. We previously addressed all comments in an August 21, 2020, **Federal Register** publication (85 FR 51854).

Regulations Promulgation

The rulemaking process for migratory game bird hunting, by its nature, operates under a time constraint as seasons must be established each year or hunting seasons remain closed. However, we intend that the public be provided extensive opportunity for public input and involvement in compliance with Administrative Procedure Act (5 U.S.C. subchapter II) requirements. Thus, when the preliminary proposed rulemaking was published, we established what we concluded were the longest periods possible for public comment and the most opportunities for public involvement. We also provided notification of our participation in multiple Flyway Council meetings, opportunities for additional public review and comment on all Flyway Council proposals for regulatory change, and opportunities for additional public review during the SRC meeting. Therefore, we conclude that sufficient public notice and opportunity for involvement have been given to affected persons.

Further, States need sufficient time to communicate these season selections to their affected publics, and to establish and publicize the necessary regulations and procedures to implement these seasons. Thus, we find that ''good cause'' exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act, and therefore, under authority of the Migratory Bird Treaty Act (July 3, 1918), as amended (16 U.S.C. 703–711), these regulations will take effect less than 30 days after publication. Accordingly, with each conservation agency having had an opportunity to participate in selecting the hunting seasons desired for its State or Territory on those species of migratory birds for which open seasons are now prescribed, and consideration having been given to all other relevant matters presented, certain sections of title 50, chapter I, subchapter B, part 20, subpart K, are hereby amended as set forth below.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

John Tanner,

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

For the reasons set out in the preamble, title 50, chapter I, subchapter B, part 20, subpart K of the Code of Federal Regulations is amended as follows:

PART 20—MIGRATORY BIRD HUNTING

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

Authority: 16 U.S.C. 703 *et seq.,* and 16 U.S.C. 742a–j.

Note: The following annual hunting regulations provided for by §§ 20.101 through 20.107 and 20.109 of 50 CFR part 20 will not appear in the Code of Federal Regulations because of their seasonal nature.

■ 2. Section 20.101 is revised to read as follows:

§ 20.101 Seasons, limits, and shooting hours for Puerto Rico and the Virgin Islands.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Shooting and hawking hours are one-half hour before sunrise until sunset.

CHECK COMMONWEALTH REGULATIONS FOR AREA DESCRIPTIONS AND ANY ADDITIONAL RESTRICTIONS.

(a) *Puerto Rico.*

Restrictions: In Puerto Rico, the season is closed on the ruddy duck, white-cheeked pintail, West Indian whistling duck, fulvous whistling duck, masked duck, purple gallinule, American coot, Caribbean coot, white-crowned pigeon, and plain pigeon.

Closed Areas: Closed areas are described in the August 21, 2020, **Federal Register** (85 FR 51854).

Species	Season dates	Limits	
		Bag	Possession
Doves and Pigeons:			
Zenaida, white-winged, and mourning doves (1) ..	Sept. 5–Oct. 26	30	90
Scaly-naped pigeons	Sept. 5–Oct. 26	5	15
Ducks	Nov. 14–Dec. 21 &	6	12
	Jan. 9–Jan. 25	6	12
Common Moorhens	Nov. 14–Dec. 21 &	6	12
	Jan. 9–Jan. 25	6	12

Species	Season dates	Limits	
		Bag	Possession
Common Snipe	Nov. 14–Dec. 21 &	8	16
	Jan. 9–Jan. 25	8	16

(1) The daily bag limit for Zenaida, white-winged, and mourning doves is in the aggregate and may include not more than 10 Zenaida and 3 mourning doves. The possession limit is three times the daily bag limit.

(b) *Virgin Islands.*

Restrictions: In the Virgin Islands, the seasons are closed for ground or quail doves, pigeons, ruddy duck, white-cheeked pintail, West Indian whistling duck, fulvous whistling duck, masked duck, and all other ducks, and purple gallinule.

Closed Areas: Ruth Cay, just south of St. Croix, is closed to the hunting of migratory game birds. All Offshore Cays under jurisdiction of the Virgin Islands Government are closed to the hunting of migratory game birds.

Species	Season dates	Limits	
		Bag	Possession
Zenaida doves	Sept. 1–Sept. 30	10	10
Ducks	Closed.		

■ 3. Section 20.102 is revised to read as follows:

§ 20.102 Seasons, limits, and shooting hours for Alaska.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Shooting and hawking hours are one-half hour before sunrise until sunset. Area descriptions were published in the August 21, 2020, **Federal Register** (85 FR 51854).

Note: Canada geese include Canada geese and cackling geese, and light geese include lesser snow (including blue) geese, greater snow geese, and Ross's geese.

Falconry: The total combined bag and possession limit for migratory game birds taken with the use of a raptor under a falconry permit is 3 per day, 9 in possession, and may not exceed a more restrictive limit for any species listed in this subsection.

Special Tundra Swan Season: In Units 17, 18, 22, and 23, there will be a tundra swan season from September 1 through October 31 with a season limit of 3 tundra swans per hunter. This season is by State permit only; hunters will be issued 1 permit allowing the take of up to 3 tundra swans. Hunters will be required to file a harvest report with the State after the season is completed. Up to 500 permits may be issued in Unit 18; 300 permits each in Units 22 and 23; and 200 permits in Unit 17.

CHECK STATE REGULATIONS FOR AREA DESCRIPTIONS AND ANY ADDITIONAL RESTRICTIONS.

Area	Season dates
North Zone	Sept. 1–Dec. 16.
Gulf Coast Zone	Sept. 1–Dec. 16.
Southeast Zone	Sept. 16–Dec. 31.
Pribilof and Aleutian Islands Zone.	Oct. 8–Jan. 22.
Kodiak Zone	Oct. 8–Jan. 22.

Area	Daily bag and possession limits							
	Ducks (1)	Canada geese (2)(3)	White fronted geese (4)(5)	Light geese	Brant	Emperor geese (6)(7)	Snipe	Sandhill cranes (8)
North Zone	10–30	4–12	4–12	6–18	2–6	1–1	8–24	3–9
Gulf Coast Zone	8–24	4–12	4–12	6–18	2–6	1–1	8–24	2–6
Southeast Zone	7–21	4–12	4–12	6–18	2–6	1–1	8–24	2–6
Pribilof and Aleutian Islands Zone	7–21	4–12	4–12	6–18	2–6	1–1	8–24	2–6
Kodiak Zone	7–21	4–12	4–12	6–18	2–6	1–1	8–24	2–6

(1) The basic duck bag limits may include no more than 2 canvasbacks daily, and may not include sea ducks. In addition to the basic duck limits, the sea duck limit is 10 daily, including no more than 6 each of either harlequin or long-tailed ducks. Sea ducks include scoters, common and king eiders, harlequin ducks, long-tailed ducks, and common, hooded, and red-breasted mergansers. The season for Steller's and spectacled eiders is closed.

(2) In Units 5 and 6, the taking of Canada geese is only permitted from September 28 through December 16. In the Middleton Island portion of Unit 6, the taking of Canada geese is by special permit only. The maximum number of Canada goose permits is 10 for the season. A mandatory goose-identification class is required. Hunters must check in and out. The daily bag and possession limit is 1. The season will close if harvest includes 5 dusky Canada geese. A dusky Canada goose is any dark-breasted Canada goose (Munsell 10 YR color value five or less) with a bill length between 40 and 50 millimeters.

(3) In Units 9, 10, 17, and 18, for Canada geese, the daily bag limit is 6 and the possession limit is 18.

(4) In Units 9, 10, and 17, for white-fronted geese, the daily bag limit is 6 and the possession limit is 18.

(5) In Unit 18, for white-fronted geese, the daily bag limit is 10 and the possession limit is 30.

(6) In Unit 8, the Kodiak Island Roaded Area is closed to emperor goose hunting. The Kodiak Island Roaded Area consists of all lands and water (including exposed tidelands) east of a line extending from Crag Point in the north to the west end of Saltery Cove in the south and all lands and water south of a line extending from Termination Point along the north side of Cascade Lake extending to Anton Larsen Bay. Marine waters adjacent to the closed area are closed to harvest within 500 feet from the water's edge. The offshore islands are open to harvest, for example: Woody, Long, Gull and Puffin Islands.

(7) Emperor goose hunting is by State permit only; no more than 1 emperor goose may be harvested per hunter per season. Hunters will be required to file a harvest report with the State after harvesting an emperor goose. Total emperor goose harvest may not exceed 500 birds. See State regulations for specific dates, times, and conditions of permit hunts and closures.

(8) In Unit 17 of the North Zone, for sandhill cranes, the daily bag limit is 2 and the possession limit is 6.

■ 4. Section 20.103 is revised to read as follows:

§ 20.103 Seasons, limits, and shooting hours for doves and pigeons.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Shooting and hawking hours are one-half hour before sunrise until sunset except as otherwise noted. Area descriptions were published in the August 21, 2020, **Federal Register** (85 FR 51854).

CHECK STATE REGULATIONS FOR AREA DESCRIPTIONS AND ANY ADDITIONAL RESTRICTIONS.

(a) *Doves.*

Note: Unless otherwise specified, the seasons listed below are for mourning and white-winged doves. The daily bag and possession limits are in the aggregate for the two species.

Area	Season dates	Limits	
		Bag	Poss.
EASTERN MANAGEMENT UNIT			
Alabama:			
North Zone:			
12 noon to sunset	Sept. 5 only	15	15
1/2 hour before sunrise to sunset	Sept. 6–Oct. 25 &	15	45
	Nov. 21–Nov. 29 &	15	45
	Dec. 12–Jan. 10	15	45
South Zone:			
12 noon to sunset	Sept. 12 only	15	15
1/2 hour before sunrise to sunset	Sept. 13–Nov. 1 &	15	45
	Nov. 21–Nov. 29 &	15	45
	Dec. 12–Jan. 10	15	45
Delaware	Sept. 1–Oct. 5 &	15	45
	Nov. 23–Jan. 30	15	45
Florida:			
1/2 hour before sunrise to sunset	Sept. 26–Oct. 18	15	45
	Nov. 14–Dec. 6 &	15	45
	Dec. 19–Jan. 31	15	45
Georgia:			
12 noon to sunset	Sept. 5 only	15	15
1/2 hour before sunrise to sunset	Sept. 6–Sept. 30 &	15	45
	Nov. 21–Nov. 29 &	15	45
	Dec. 8–Jan. 31	15	45
Illinois (1)	Sept. 1–Nov. 14 &	15	45
	Dec. 26–Jan. 9	15	45
Indiana	Sept. 1–Oct. 18 &	15	45
	Nov. 1–Nov. 15 &	15	45
	Dec. 12–Jan. 7	15	45
Kentucky:			
11 a.m. to sunset	Sept. 1 only	15	15
1/2 hour before sunrise to sunset	Sept. 2–Oct. 26 &	15	45
	Nov. 26–Dec. 6 &	15	45
	Dec. 19–Jan. 10	15	45
Louisiana:			
North Zone:			
1/2 hour before sunrise to sunset	Sept. 5–Sept. 27 &	15	45
	Oct. 10–Nov. 15 &	15	45
	Dec. 26–Jan. 24	15	45
South Zone:			
1/2 hour before sunrise to sunset	Sept. 5–Sept. 16 &	15	45
	Oct. 17–Nov. 29 &	15	45
	Dec. 19–Jan. 21	15	45
Maryland:			
12 noon to sunset	Sept. 1–Oct. 17	15	45
1/2 hour before sunrise to sunset	Oct. 24–Nov. 27 &	15	45
	Dec. 19–Jan. 9	15	45
Mississippi:			
North Zone	Sept. 5–Oct. 18 &	15	45
	Oct. 24–Nov. 21 &	15	45
	Dec. 23–Jan. 8	15	45
South Zone	Sept. 5–Sept. 20 &	15	45
	Oct. 10–Nov. 8 &	15	45
	Dec. 19–Jan. 31	15	45

Area	Season dates	Limits	
		Bag	Poss.
North Carolina	Sept. 5–Oct. 10 &	15	45
	Nov. 14–Nov. 28 &	15	45
	Dec. 12–Jan. 30	15	45
Ohio	Sept. 1–Nov. 8 &	15	45
	Dec. 12–Jan. 1	15	45
Pennsylvania:			
1/2 hour before sunrise to sunset	Sept. 1–Nov. 27	15	45
	Dec. 18–Jan. 2	15	45
Rhode Island:			
12 noon to sunset	Sept. 12–Oct. 11	15	45
1/2 hour before sunrise to sunset	Oct. 17–Nov. 29 &	15	45
	Dec. 12–Dec. 27	15	45
South Carolina:			
12 noon to sunset	Sept. 5–Sept. 7	15	45
1/2 hour before sunrise to sunset	Sept. 8–Oct. 11 &	15	45
	Nov. 14–Nov. 28 &	15	45
	Dec. 25–Jan. 31	15	45
Tennessee:			
12 noon to sunset	Sept. 1 only	15	15
1/2 hour before sunrise to sunset	Sept. 2–Sept. 28 &	15	45
	Oct. 10–Nov. 1 &	15	45
	Dec. 8–Jan. 15	15	45
Virginia:			
12 noon to sunset	Sept. 5 only	15	15
1/2 hour before sunrise to sunset	Sept. 6–Oct. 28 &	15	45
	Nov. 21–Nov. 29 &	15	45
	Dec. 24–Jan. 19	15	45
West Virginia:			
12 noon to sunset	Sept. 1 only	15	15
1/2 hour before sunrise to sunset	Sept. 2–Oct. 11 &	15	45
	Nov. 2–Nov. 15 &	15	45
	Dec. 21–Jan. 24	15	45
Wisconsin	Sept. 1–Nov. 29	15	45
CENTRAL MANAGEMENT UNIT			
Arkansas	Sept. 5–Oct. 25 &	15	45
	Dec. 8–Jan. 15	15	45
Colorado	Sept. 1–Nov. 29	15	45
Iowa	Sept. 1–Nov. 29	15	45
Kansas	Sept. 1–Nov. 29	15	45
Minnesota	Sept. 1–Nov. 29	15	45
Missouri	Sept. 1–Nov. 29	15	45
Montana	Sept. 1–Oct. 30	15	45
Nebraska	Sept. 1–Oct. 30	15	45
New Mexico:			
North Zone	Sept. 1–Nov. 29	15	45
South Zone	Sept. 1–Oct. 28 &	15	45
	Dec. 1–Jan. 1	15	45
North Dakota	Sept. 1–Nov. 29	15	45
Oklahoma	Sept. 1–Oct. 31 &	15	45
	Dec. 1–Dec. 29	15	45
South Dakota	Sept. 1–Nov. 9	15	45
Texas (2):			
North Zone	Sept. 1–Nov. 12 &	15	45
	Dec. 18–Jan. 3	15	45
Central Zone	Sept. 1–Nov. 1 &	15	45
	Dec. 18–Jan. 14	15	45
South Zone	Sept. 14–Nov. 1 &	15	45
	Dec. 18–Jan. 23	15	45
(Special Season)	Sept. 5–Sept. 6 &	15	45
12 noon to sunset	Sept. 12–Sept. 13	15	45
Wyoming	Sept. 1–Nov. 29	15	45
WESTERN MANAGEMENT UNIT			
Arizona (3)	Sept. 1–Sept. 15 &	15	45
	Nov. 20–Jan. 3	15	45
California (4)	Sept. 1–Sept. 15 &	15	45
	Nov. 9–Dec. 23	15	45
Idaho	Sept. 1–Oct. 30	15	45
Nevada	Sept. 1–Oct. 30	15	45
Oregon	Sept. 1–Oct. 30	15	45
Utah	Sept. 1–Oct. 30	15	45
Washington	Sept. 1–Sept. 30	15	45
OTHER POPULATIONS			

Area	Season dates	Limits	
		Bag	Poss.
Hawaii (5)	Nov. 7–Jan. 10	10	30

(1) In *Illinois,* shooting hours are sunrise to sunset.
(2) In *Texas,* the daily bag limit is 15 mourning, white-winged, and white-tipped doves in the aggregate, of which no more than 2 may be white-tipped doves with a maximum 90-day season. Possession limits are three times the daily bag limit. During the special season in the Special White-winged Dove Area of the South Zone, the daily bag limit is 15 mourning, white-winged, and white-tipped doves in the aggregate, of which no more than 2 may be mourning doves and 2 may be white-tipped doves. Possession limits are three times the daily bag limit.
(3) In *Arizona,* during September 1 through 15, the daily bag limit is 15 mourning and white-winged doves in the aggregate, of which no more than 10 may be white-winged doves. During November 20 through January 3, the daily bag limit is 15 mourning doves.
(4) In *California,* the daily bag limit is 15 mourning and white-winged doves in the aggregate, of which no more than 10 may be white-wing doves.
(5) In *Hawaii,* the season is only open on the islands of Hawaii and Maui. On the island of Hawaii, the daily bag limit is 10 mourning doves, spotted doves, and chestnut-bellied sandgrouse in the aggregate. On the island of Maui, the daily bag limit is 10 mourning doves. Shooting hours are from one-half hour before sunrise through one-half hour after sunset. See State regulations for additional restrictions on hunting dates and areas.

(b) *Band-tailed Pigeons.*

Area	Season dates	Limits	
		Bag	Possession
Arizona	Oct. 2–Oct. 15	2	6
California:			
North Zone	Sept. 19–Sept. 27	2	6
South Zone	Dec. 19–Dec. 27	2	6
Colorado (1)	Sept. 1–Sept. 14	2	6
New Mexico (1):			
North Zone	Sept. 1–Sept. 14	2	6
South Zone	Oct. 1–Oct. 14	2	6
Oregon	Sept. 15–Sept. 23	2	6
Utah (1)	Sept. 1–Sept. 14	2	6
Washington	Sept. 15–Sept. 23	2	6

(1) Each band-tailed pigeon hunter must have a band-tailed pigeon hunting permit issued by the State.

■ 5. Section 20.104 is revised to read as follows:

§ 20.104 Seasons, limits, and shooting hours for rails, woodcock, and snipe.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Shooting and hawking hours are one-half hour before sunrise until sunset except as otherwise noted. Area descriptions were published in the August 21, 2020, **Federal Register** (85 FR 51854).

Note: Unless otherwise specified, the daily bag and possession limits for sora and Virginia rails are in the aggregate, and the daily bag and possession limits for clapper and king rails are in the aggregate.

CHECK STATE REGULATIONS FOR AREA DESCRIPTIONS AND ANY ADDITIONAL RESTRICTIONS.

Area	Sora and Virginia rails	Clapper and king rails	American woodcock	Snipe
Daily bag limit	25	15	3	8
Possession limit	75	45	9	24
ATLANTIC FLYWAY				
Connecticut (1)	Sept. 1–Sept. 30 & Oct. 15–Nov. 28.	Sept. 1–Sept. 30 & Oct. 15–Nov. 28.	Oct. 21–Nov. 14 & Nov. 17–Dec. 12.	Sept. 1–Sept. 30 & Oct. 15–Nov. 28.
Delaware (2)	Sept. 5–Nov. 25	Sept. 5–Nov. 25	Nov. 23–Nov. 28 & Dec. 5–Jan. 19..	Sept. 11–Nov. 28 & Dec. 5–Jan. 19
Florida	Sept. 1–Nov. 9	Sept. 1–Nov. 9	Dec. 18–Jan. 31	Nov. 1–Feb. 15.
Georgia	Sept. 17–Oct. 21 & Nov. 13–Dec. 17.	Sept. 17–Oct. 21 & Nov. 13–Dec. 17.	Dec. 5–Jan. 18	Nov. 15–Feb. 28.
Maine (3)	Sept. 1–Nov. 9	Closed	Oct. 1–Nov. 21	Sept. 1–Dec. 16.
Maryland (1)	Sept. 1–Nov. 20	Sept. 1–Nov. 20	Oct. 21–Nov. 27 & Jan. 11–Jan. 23.	Sept. 29–Jan. 30.
Massachusetts (4)	Sept. 1–Nov. 7	Closed	Oct. 1–Nov. 21	Sept. 1–Dec. 16.
New Hampshire	Closed	Closed	Oct. 1–Nov. 14	Sept. 15–Nov. 14.
New Jersey (2)(5):				
North Zone	Sept. 1–Nov. 20	Sept. 1–Nov. 20	Oct. 17–Oct. 31 & Nov. 3–Nov. 28.	Sept. 12–Jan. 14.
South Zone	Sept. 1–Nov. 20	Sept. 1–Nov. 20	Nov. 7–Dec. 1 & Dec. 17–Jan. 2.	Sept. 12–Jan. 14.
New York (6)	Sept. 1–Nov. 9	Closed	Oct. 1–Nov. 14	Sept. 1–Nov. 9.

Area	Sora and Virginia rails	Clapper and king rails	American woodcock	Snipe
North Carolina	Sept. 1–Nov. 20	Sept. 1–Nov. 20	Dec. 10–Jan. 30	Oct. 27–Feb. 27.
Pennsylvania (7)	Sept. 1–Nov. 20	Closed	Oct. 17–Nov. 27 & Dec. 14–Dec. 23..	Oct. 17–Nov. 27 & Dec. 14–Dec. 23
Rhode Island (8)	Sept. 1–Nov. 9	Sept. 1–Nov. 9	Oct. 17–Nov. 30	Sept. 1–Nov. 9.
South Carolina	Sept. 15–Sept. 20 & Oct. 1–Dec. 3.	Sept. 15–Sept. 20 & Oct. 1–Dec. 3.	Dec. 18–Jan. 31	Nov. 14–Feb. 28.
Vermont	Closed	Closed	Oct. 1–Nov. 14.	Oct. 1–Nov. 14
Virginia	Sept. 9–Nov. 17	Sept. 9–Nov. 17	Nov. 7–Nov. 30 & Dec. 24–Jan. 13.	Oct. 9–Oct. 12 & Oct. 21–Jan. 31.
West Virginia	Sept. 1–Nov. 9	Closed	Oct. 17–Nov. 21 & Nov. 30–Dec. 8.	Sept. 1–Dec. 16.
MISSISSIPPI FLYWAY				
Alabama (9)	Sept. 12–Sept. 27 & Nov. 27–Jan. 19.	Sept. 12–Sept. 27 & Nov. 27–Jan. 19.	Dec. 18–Jan. 31	Nov. 14–Feb. 28.
Arkansas	Sept. 12–Nov. 20	Closed	Nov. 7–Dec. 21	Nov. 1–Feb. 15.
Illinois (10)	Sept. 5–Nov. 13	Closed	Oct. 17–Nov. 30	Sept. 5–Dec. 20.
Indiana (11)	Sept. 1–Nov. 9	Closed	Oct. 15–Nov. 28	Sept. 1–Dec. 16.
Iowa (12)	Sept. 5–Nov. 13	Closed	Oct. 3–Nov. 16	Sept. 5–Nov. 30.
Kentucky	Sept. 1–Nov. 9	Closed	Oct. 24–Nov. 13 & Nov. 16–Dec. 9.	Sept. 16–Oct. 25 & Nov. 26–Jan. 30.
Louisiana	Sept. 12–Sept. 27 & Nov. 14–Jan. 6.	Sept. 12–Sept. 27 & Nov. 14–Jan. 6.	Dec. 18–Jan. 31	Nov. 2–Dec. 6 & Dec. 19–Feb. 28.
Michigan	Sept. 1–Nov. 9	Closed	Sept. 19–Nov. 2	Sept. 1–Nov. 9.
Minnesota	Sept. 1–Nov. 2	Closed	Sept. 19–Nov. 2	Sept. 1–Nov. 2.
Mississippi	Sept. 1–Oct. 4 & Nov. 26–Dec. 31.	Sept. 1–Oct. 4 & Nov. 26–Dec. 31.	Dec. 18–Jan. 31	Nov. 14–Feb. 28.
Missouri	Sept. 1–Nov. 9	Closed	Oct. 15–Nov. 28	Sept. 1–Dec. 16.
Ohio	Sept. 1–Nov. 9	Closed	Oct. 10–Nov. 23	Sept. 1–Nov. 24 & Dec. 12–Dec. 31.
Tennessee	Sept. 1–Nov. 9	Closed	Nov. 14–Dec. 6 & Jan. 10–Jan. 31.	Nov. 14–Feb. 28.
Wisconsin	Sept. 1–Nov. 9.	Closed	Sept. 19–Nov. 2	Sept. 1–Nov. 9.
CENTRAL FLYWAY				
Colorado	Sept. 1–Nov. 9	Closed	Closed	Sept. 1–Dec. 16.
Kansas	Sept. 1–Nov. 9	Closed	Oct. 17–Nov. 30	Sept. 1–Dec. 16.
Montana	Closed	Closed	Closed	Sept. 1–Dec. 16.
Nebraska (13)	Sept. 1–Nov. 9	Closed	Oct. 3–Nov. 16	Sept. 1–Dec. 16.
New Mexico (14)	Sept. 12–Nov. 20	Closed	Closed	Oct. 10–Jan. 24.
North Dakota	Closed	Closed	Sept. 26–Nov. 9	Sept. 12–Dec. 6.
Oklahoma	Sept. 1–Nov. 9	Closed	Nov. 1–Dec. 15	Oct. 1–Jan. 15.
South Dakota (15)	Closed	Closed	Closed	Sept. 1–Oct. 31.
Texas	Sept. 12–Sept. 27 & Nov. 7–Dec. 30.	Sept. 12–Sept. 27 & Nov. 7–Dec. 30.	Dec. 18–Jan. 31	Nov. 7–Feb. 21.
Wyoming	Sept. 1–Nov. 9	Closed	Closed	Sept. 1–Dec. 16.
PACIFIC FLYWAY				
Arizona (16):				
North Zone	Closed	Closed	Closed	Oct. 2–Jan. 10.
South Zone	Closed	Closed	Closed	Oct. 23–Jan. 31.
California	Closed	Closed	Closed	Oct. 24–Feb. 7.
Colorado	Sept. 1–Nov. 9	Closed	Closed	Sept. 1–Dec. 16.
Idaho:				
Zone 1	Closed	Closed	Closed	Oct. 3–Jan. 15.
Zone 2	Closed	Closed	Closed	Oct. 3–Jan. 15.
Zone 3	Closed	Closed	Closed	Oct. 19–Jan. 31.
Zone 4	Closed	Closed	Closed	Oct. 3–Jan. 15.
Montana	Closed	Closed	Closed	Sept. 1–Dec. 16.
Nevada:				
Northeast Zone	Closed	Closed	Closed	Sept. 26–Oct. 20 & Oct. 30–Jan. 17.
Northwest Zone	Closed	Closed	Closed	Oct. 10–Jan. 3 & Jan. 13–Jan. 31.
South Zone (17)	Closed	Closed	Closed	Oct. 17–Oct. 25 & Oct. 28–Jan. 31.
New Mexico	Sept. 12–Nov. 20	Closed	Closed	Oct. 17–Jan. 31.
Oregon:				
Zone 1	Closed	Closed	Closed	Nov. 7–Feb. 21.
Zone 2	Closed	Closed	Closed	Oct. 10–Jan. 24.
Utah:				
Zone 1	Closed	Closed	Closed	Oct. 3–Jan. 16.
Zone 2	Closed	Closed	Closed	Oct. 17–Jan. 30.
Washington:				
East Zone	Closed	Closed	Closed	Oct. 17–Oct. 25 & Oct. 28–Jan. 31.

Area	Sora and Virginia rails	Clapper and king rails	American woodcock	Snipe
West Zone	Closed	Closed	Closed	Oct. 17–Oct. 25 & Oct. 28–Jan. 31.
Wyoming	Sept. 1–Nov. 9	Closed	Closed	Sept. 1–Dec. 16.

(1) In *Connecticut* and *Maryland,* the daily bag limit for clapper and king rails is 10 and may include no more than 1 king rail. The possession limit is three times the daily bag limit.
(2) In *Delaware* and *New Jersey,* the limits for clapper and king rails are 10 daily and 30 in possession.
(3) In *Maine,* the daily bag and possession limit for sora and Virginia rails is 25.
(4) In *Massachusetts,* the limits for sora are 5 daily and 15 in possession; the limits for Virginia rails are 10 daily and 30 in possession.
(5) In *New Jersey,* the season for king rail is closed by State regulation.
(6) In *New York,* the limits for sora and Virginia rails are 8 daily and 24 in possession. Seasons for sora and Virginia rails and snipe are closed on Long Island.
(7) In *Pennsylvania,* the limits for sora and Virginia rails are 3 daily and 9 in possession.
(8) In *Rhode Island,* the limits for sora and Virginia rails are 3 daily and 9 in possession, the limits for clapper and king rails are 1 daily and 3 in possession, and the limits for snipe are 5 daily and 15 in possession.
(9) In *Alabama,* the limits for sora and Virginia rails are 15 daily and 45 in possession.
(10) In *Illinois,* shooting hours are from sunrise to sunset.
(11) In *Indiana,* the season on Virginia rails is closed.
(12) In *Iowa,* the limits for sora and Virginia rails are 12 daily and 36 in possession.
(13) In *Nebraska,* the limits for sora and Virginia rails are 10 daily and 30 in possession.
(14) In *New Mexico,* in the Central Flyway portion of the State, the limits for sora and Virginia rails are 10 daily and 20 in possession.
(15) In *South Dakota,* the snipe limits are 5 daily and 15 in possession.
(16) In *Arizona,* Ashurst Lake in Unit 5B is closed to snipe hunting.
(17) In *Nevada,* the snipe season in that portion of the South Zone including the Moapa Valley to the confluence of the Muddy and Virgin rivers is only open October 31 through January 31.

■ 6. Section 20.105 is revised to read as follows:

§ 20.105 Seasons, limits, and shooting hours for waterfowl, coots, moorhens and gallinules.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Shooting and hawking hours are one-half hour before sunrise until sunset, except as otherwise noted. Area descriptions were published in the August 21, 2020, **Federal Register** (85 FR 51854).

CHECK STATE REGULATIONS FOR AREA DESCRIPTIONS AND ANY ADDITIONAL RESTRICTIONS.

(a) *Common Moorhens (including Common Gallinules) and Purple Gallinules.*

Note: Unless otherwise specified, the daily bag and possession limits for common moorhens and purple gallinules are in the aggregate.

Area	Season dates	Limits	
		Bag	Possession
ATLANTIC FLYWAY			
Delaware	Sept. 5–Nov. 25	15	45
Florida (1)	Sept. 1–Nov. 9	15	45
Georgia	Nov. 21–Nov. 1 &	15	45
	Dec. 12–Jan. 31	15	45
New Jersey	Sept. 1–Nov. 20	1	3
New York:			
Long Island	Closed.		
Remainder of State	Sept. 1–Nov. 9	8	24
North Carolina	Sept. 1–Nov. 20	15	45
Pennsylvania	Sept. 1–Nov. 20	3	9
South Carolina	Sept. 15–Sept. 20	15	45
	& Oct. 1–Dec. 3	15	45
Virginia	Sept. 9–Nov. 17	15	45
West Virginia	Oct. 1–Oct. 14 &	15	30
	Dec. 7–Jan. 31	15	30
MISSISSIPPI FLYWAY			
Alabama	Sept. 12–Sept. 27	15	45
	& Nov. 27–Jan. 19	15	45
Arkansas	Sept. 1–Nov. 9	15	45
Kentucky	Sept. 1–Nov. 9	3	9
Louisiana	Sept. 12–Sept. 27	15	45
	& Nov. 14–Jan. 6	15	45
Michigan	Sept. 1–Nov. 9	1	3
Minnesota (2):			
North Zone	Sept. 26–Nov. 24	15	45
Central Zone	Sept. 26–Oct. 4 &	15	45
	Oct. 10–Nov. 29	15	45
South Zone	Sept. 26–Oct. 4 &	15	45
	Oct. 17–Dec. 6	15	45
Mississippi	Sept. 1–Oct. 4 &	15	45
	Nov. 26–Dec. 31	15	45
Ohio	Sept. 1–Nov. 9	15	45

Area	Season dates	Limits	
		Bag	Possession
Tennessee	Sept. 1–Nov. 9	15	45
Wisconsin	Sept. 1–Nov. 9	15	45
CENTRAL FLYWAY			
New Mexico:			
Zone 1	Sept. 12–Nov. 20	1	3
Zone 2	Sept. 12–Nov. 20	1	3
Oklahoma	Sept. 1–Nov. 9	15	45
Texas	Sept. 12–Sept. 27	15	45
	& Nov. 7–Dec. 30	15	45
PACIFIC FLYWAY			
All States	Seasons are in the aggregate with coots and listed in paragraph (e).		

(1) The season applies to common moorhens only.
(2) In *Minnesota,* the daily bag limit is 15 and the possession limit is 45 coots and moorhens in the aggregate.

(b) *Special Sea Duck Seasons (Scoters, Eiders, and Long-Tailed Ducks in Atlantic Flyway).*

Within the special sea duck areas, the daily bag limit is 5 scoters, eiders, and long-tailed ducks in the aggregate, including no more than 4 scoters, 4 eiders, and 4 long-tailed ducks. Possession limits are three times the daily bag limit. These limits may be in addition to regular duck bag limits only during the regular duck season in the special sea duck hunting areas.

Note: Notwithstanding the provisions of this part, the shooting of crippled waterfowl from a motorboat under power will be permitted in *Connecticut, Delaware, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Rhode Island, South Carolina,* and *Virginia* in those areas described, delineated, and designated in their respective hunting regulations as special sea duck hunting areas.

Area	Season dates	Limits	
		Bag	Possession
Connecticut	Nov. 12–Jan. 20	5	15
Delaware	Nov. 23–Jan. 30	5	15
Georgia	Nov. 21–Nov. 29 &	5	15
	Dec. 12–Jan. 31	5	15
Maine	Nov. 9–Jan. 16	5	15
Maryland	Oct. 31–Jan. 8	5	15
Massachusetts (1)	Nov. 17–Jan. 25	5	15
New Hampshire	Nov. 18–Jan. 16	5	15
New Jersey	Nov. 7–Jan. 15	5	15
North Carolina	Nov. 23–Jan. 30	5	15
Rhode Island	Nov. 26–Jan. 24	5	15
South Carolina	Nov. 21–Nov. 28 &	5	15
	Dec. 12–Jan. 31	5	15
Virginia	Nov. 11–Jan. 9	5	15

(1) In *Massachusetts,* the daily bag limit may not include more than 1 hen eider. The possession limit is three times the daily bag limit.

(c) *Early (September) Duck Seasons.*

Note: Unless otherwise specified, the seasons listed below are for teal only.

Area	Season dates	Limits	
		Bag	Possession
ATLANTIC FLYWAY			
Delaware (1)	Sept. 12–Sept. 30	6	18
Florida (2)	Sept. 19–Sept. 27	6	18
Georgia	Sept. 12–Sept. 27	6	18
Maryland (1)	Sept. 16–Sept. 30	6	18
North Carolina (1)	Sept. 12–Sept. 30	6	18
South Carolina (3)	Sept. 11–Sept. 26	6	18
Virginia (1)	Sept. 17–Sept. 30	6	18
MISSISSIPPI FLYWAY			
Alabama	Sept. 12–Sept. 27	6	18
Arkansas (3)	Sept. 15–Sept. 30	6	18
Illinois (3)	Sept. 5–Sept. 20	6	18
Indiana (3)	Sept. 12–Sept. 27	6	18
Iowa (3)	Sept. 1–Sept. 16	6	18
Kentucky (2)	Sept. 19–Sept. 27	6	18
Louisiana	Sept. 12–Sept. 27	6	18
Michigan	Sept. 1–Sept. 16	6	18

Area	Season dates	Limits	
		Bag	Possession
Mississippi	Sept. 12–Sept. 27	6	18
Missouri (3)	Sept. 12–Sept. 27	6	18
Ohio (3)	Sept. 5–Sept. 20	6	18
Tennessee (2)	Sept. 12–Sept. 20	6	18
Wisconsin	Sept. 1–Sept. 9	6	18
CENTRAL FLYWAY			
Colorado (1)	Sept. 12–Sept. 20	6	18
Kansas:			
Low Plains	Sept. 12–Sept. 27	6	18
High Plains	Sept. 19–Sept. 27	6	18
Nebraska:			
Low Plains	Sept. 5–Sept. 20	6	18
High Plains	Sept. 5–Sept. 13	6	18
New Mexico	Sept. 12–Sept. 20	6	18
Oklahoma	Sept. 12–Sept. 27	6	18
Texas:			
High Plains	Sept. 12–Sept. 27	6	18
Rest of State	Sept. 12–Sept. 27	6	18

(1) Area restrictions. See State regulations.
(2) In *Florida, Kentucky,* and *Tennessee,* the daily bag limit for the first 5 days of the season is 6 wood ducks and teal in the aggregate, of which no more than 2 may be wood ducks. During the last 4 days of the season, the daily bag limit is 6 teal only. The possession limit is three times the daily bag limit.
(3) Shooting hours are from sunrise to sunset.

(d) *Special Early Canada Goose Seasons.*

Area	Season dates	Limits	
		Bag	Possession
ATLANTIC FLYWAY			
Connecticut (1):			
North Zone	Sept. 1–Sept. 30	15	45
South Zone	Sept. 15–Sept. 30	15	45
Delaware	Sept. 1–Sept. 25	15	45
Florida	Sept. 5–Sept. 27	5	15
Georgia	Sept. 5–Sept. 27	5	15
Maine:			
Northern Zone	Sept. 1–Sept. 25	6	18
Southern Zone	Sept. 1–Sept. 25	8	24
Coastal Zone	Sept. 1–Sept. 25	8	24
Maryland (1)(2):			
Eastern Unit	Sept. 1–Sept. 15	8	24
Western Unit	Sept. 1–Sept. 25	8	24
Massachusetts:			
Central Zone	Sept. 8–Sept. 25	15	45
Coastal Zone	Same as Central Zone	15	45
Western Zone	Same as Central Zone	15	45
New Hampshire	Sept. 1–Sept. 25	5	15
New Jersey (1)(2)(3)	Sept. 1–Sept. 30	15	45
New York (4):			
Lake Champlain Zone	Sept. 1–Sept. 25	8	24
Northeastern Zone	Sept. 1–Sept. 25	15	45
East Central Zone	Sept. 1–Sept. 25	15	45
Hudson Valley Zone	Sept. 1–Sept. 25	15	45
West Central Zone	Sept. 1–Sept. 25	15	45
South Zone	Sept. 1–Sept. 25	15	45
Western Long Island Zone	Closed.		
Central Long Island Zone	Sept. 8–Sept. 30	15	45
Eastern Long Island Zone	Sept. 8–Sept. 30	15	45
North Carolina (5)(6)	Sept. 1–Sept. 30	15	45
Pennsylvania (7):			
SJBP Zone (8)	Sept. 1–Sept. 25	5	15
Rest of State (9)	Sept. 1–Sept. 25	8	24
Rhode Island (1)	Sept. 1–Sept. 30	15	45
South Carolina	Sept. 1–Sept. 30	15	45
Vermont:			
Lake Champlain Zone	Sept. 1–Sept. 25	8	24
Interior Vermont Zone	Sept. 1–Sept. 25	8	24
Connecticut River Zone (10)	Sept. 1–Sept. 25	5	15

Area	Season dates	Limits	
		Bag	Possession
Virginia (11)	Sept. 1–Sept. 25	10	30
West Virginia	Sept. 1–Sept. 12	5	15
CENTRAL FLYWAY			
North Dakota:			
Missouri River Zone	Sept. 1–Sept. 7	15	45
Western ND Canada Goose Zone	Sept. 1–Sept. 15	15	45
Remainder of State	Sept. 1–Sept. 22	15	45
Oklahoma	Sept. 12–Sept. 21	8	24
South Dakota (12)	Sept. 5–Sept. 30	8	24
Texas			
East Zone	Sept. 12–Sept. 27	5	15
PACIFIC FLYWAY			
Colorado	Sept. 1–Sept. 9	4	12
Idaho			
Zone 4	Sept. 1–Sept. 15	5	15
Oregon:			
Northwest Permit Zone	Sept. 12–Sept. 20	5	15
Southwest Zone	Sept. 12–Sept. 16	5	15
Eastern Zone	Sept. 12–Sept. 16	5	15
Klamath County Zone	Sept. 12–Sept. 16	5	15
Harney and Lake County Zone	Sept. 12–Sept. 16	5	15
Malheur County Zone	Sept. 12–Sept. 16	5	15
Washington:			
Area 1	Sept. 5–Sept. 10	5	15
Area 2 Inland	Sept. 5–Sept. 13	5	15
Area 2 Coast (13)	Sept. 5–Sept. 10	5	15
Area 3	Sept. 5–Sept. 10	5	15
Area 4	Sept. 5–Sept. 6	5	10
Area 5	Sept. 5–Sept. 6	5	10
Wyoming:			
Teton County Zone	Sept. 1–Sept. 8	4	12
Balance of State Zone	Sept. 1–Sept. 8	4	12

(1) Shooting hours are one-half hour before sunrise to one-half hour after sunset.
(2) The use of shotguns capable of holding more than 3 shotshells is allowed.
(3) The use of electronic calls is allowed.
(4) In *New York,* shooting hours are one-half hour before sunrise to one-half hour after sunset, the use of shotguns capable of holding more than 3 shotshells is allowed, and the use of electronic calls is allowed, except during Youth Waterfowl Hunting Days in Lake Champlain, Northeastern, and Southeastern Goose Hunting Areas. During the designated Youth Waterfowl Hunting Days in these areas, shooting hours are one-half hour before sunrise to sunset, shotguns must be capable of holding no more than 3 shotshells, and electronic calls are not allowed. See State regulations for further details.
(5) In *North Carolina,* the use of unplugged guns and electronic calls is allowed in that area west of U.S. Highway 17 only.
(6) In *North Carolina,* shooting hours are one-half hour before sunrise to one-half hour after sunset in that area west of U.S. Highway 17 only.
(7) In *Pennsylvania,* shooting hours are one-half hour before sunrise to one-half hour after sunset from September 1 to September 18 and September 21 to September 25. On September 19, shooting hours are one-half hour before sunrise to sunset.
(8) In *Pennsylvania,* in the area south of SR 198 from the Ohio State line to intersection of SR 18, SR 18 south to SR 618, SR 618 south to U.S. Route 6, U.S. Route 6 east to U.S. Route 322/SR 18, U.S. Route 322/SR 18 west to intersection of SR 3013, SR 3013 south to the Crawford/Mercer County line, the season dates are September 1 to September 12. The daily bag limit is 1 goose with a possession limit of 3 geese. The season is closed on State Game Lands 214. However, during youth waterfowl hunting days, regular season regulations apply.
(9) In *Pennsylvania,* in the area of Lancaster and Lebanon Counties north of the Pennsylvania Turnpike, east of SR 501 to SR 419, south of SR 419 to the Lebanon-Berks County line, west of the Lebanon-Berks County line and the Lancaster-Berks County line to SR 1053, west of SR 1053 to the Pennsylvania Turnpike I–76, the daily bag limit is 1 goose with a possession limit of 3 geese. On State Game Lands No. 46 (Middle Creek Wildlife Management Area), the season is closed. However, during youth waterfowl hunting days, regular season regulations apply.
(10) In *Vermont,* the season in the Connecticut River Zone is the same as the New Hampshire Inland Zone season, set by New Hampshire.
(11) In *Virginia,* shooting hours are one-half hour before sunrise to one-half hour after sunset from September 1 to September 16 in the area east of I–95. Shooting hours are one-half hour before sunrise to one-half hour after sunset from September 1 to September 20 in the area west of I–95.
(12) See State regulations for additional information and restrictions.
(13) In *Washington,* in Pacific County, the daily bag and possession limits are 15 and 45 Canada geese, respectively.

(e) *Waterfowl, Coots, and Pacific-Flyway Seasons for Common Moorhens.*

Definitions

Atlantic Flyway: Includes Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.

Mississippi Flyway: Includes Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee, and Wisconsin.

Central Flyway: Includes Colorado (east of the Continental Divide), Kansas, Montana (Blaine, Carbon, Fergus, Judith Basin, Stillwater, Sweetgrass, Wheatland, and all counties east thereof), Nebraska, New Mexico (east of the Continental Divide except that the Jicarilla Apache Indian Reservation is in the Pacific Flyway), North Dakota, Oklahoma, South Dakota, Texas, and Wyoming (east of the Continental Divide).

Pacific Flyway: Includes the States of Arizona, California, Colorado (west of the Continental Divide), Idaho, Montana (including and to the west of Hill, Chouteau, Cascade, Meagher, and Park Counties), Nevada, New Mexico (the Jicarilla Apache Indian Reservation and

west of the Continental Divide), Oregon, Utah, Washington, and Wyoming (west of the Continental Divide including the Great Divide Basin).

Canada Geese: Includes Canada geese and cackling geese.

Light Geese: Includes lesser snow (including blue) geese, greater snow geese, and Ross's geese.

Dark Geese: Includes Canada geese, white-fronted geese, brant (except in California, Oregon, Washington, and the Atlantic Flyway), and all other goose species except light geese.

Atlantic Flyway

Flyway-Wide Restrictions

Duck Limits: The daily bag limit of 6 ducks may include no more than 2 mallards (1 female mallards), 1 scaup (except as footnoted below), 2 black ducks, 1 pintail, 1 mottled duck, 1 fulvous whistling duck, 3 wood ducks, 2 redheads, 2 canvasbacks, 4 scoters, 4 eiders, and 4 long-tailed ducks. The possession limit is three times the daily bag limit.

Harlequin Ducks: All areas of the Flyway are closed to harlequin duck hunting.

Merganser Limits: The daily bag limit is 5 mergansers and may include no more than 2 hooded mergansers. In States that include mergansers in the duck bag limit, the daily limit is the same as the duck bag limit, of which only 2 may be hooded mergansers. The possession limit is three times the daily bag limit.

Area	Season dates	Limits	
		Bag	Possession
Connecticut:			
Ducks and Mergansers (1):			
North Zone	Oct. 10–Oct. 17 &	6	18
	Nov. 7–Jan. 7	6	18
South Zone	Oct. 10–Oct. 14 &	6	18
	Nov. 17–Jan. 20	6	18
Coots	Same as for Ducks	15	45
Canada and White-fronted Geese (2):			
AFRP Unit North and Unit South	Oct. 10–Oct. 17 &	5	15
	Nov. 7–Dec. 2 &	5	15
	Dec. 19–Feb. 15	5	15
NAP H-Unit North and H-Unit South	Oct. 10–Oct. 17 &	2	6
	Nov. 7–Jan. 7	2	6
AP Unit	Nov. 26–Dec. 12 &	2	6
	Dec. 19–Jan. 5	2	6
Special Season	Jan. 15–Feb. 15	5	15
Light Geese:			
North Zone	Oct. 1–Jan. 14 &	25	.....
	Feb. 21–Mar. 10	25	
South Zone	Oct. 1–Dec. 2 &	25	.....
	Jan. 9–Mar. 10	25	
Brant:			
North Zone	Nov. 11–Jan. 7	2	6
South Zone	Nov. 24–Jan. 20	2	6
Delaware:			
Ducks	Oct. 23–Nov. 3 &	6	18
	Nov. 23–Nov. 28 &	6	18
	Dec. 11–Jan. 30	6	18
Mergansers	Same as for Ducks	5	15
Coots	Same as for Ducks	15	45
Canada and White-fronted Geese (2)	Nov. 25–Nov. 28 &	1	3
	Dec. 19–Jan. 18	1	3
Light Geese (3)	Oct. 1–Jan. 30 &	25	.....
	Feb. 6 only	25	
Brant	Nov. 23–Nov. 28 &	2	6
	Dec. 11–Jan. 30	2	6
Florida:			
Ducks (4)	Nov. 21–Nov. 29 &	6	18
	Dec. 12–Jan. 31	6	18
Mergansers	Same as for Ducks	5	15
Coots	Same as for Ducks	15	45
Canada Geese	Nov. 21–Nov. 29 &	5	15
	Dec. 1–Jan. 30	5	15
Light Geese	Same as for Ducks	15	
Georgia:			
Ducks	Nov. 21–Nov. 29 &	6	18
	Dec. 12–Jan. 31	6	18
Mergansers	Same as for Ducks	5	15
Coots	Same as for Ducks	15	45
Canada and White-fronted Geese (2)	Oct. 10–Oct. 25 &	5	15
	Nov. 21–Nov. 29 &	5	15
	Dec. 12–Jan. 31	5	15
Light Geese	Same as for Canada and White-fronted Geese.	5	15
Brant	Closed	.....	.....
Maine:			

Area	Season dates	Limits	
		Bag	Possession
Ducks (5):			
North Zone	Sept. 28–Dec. 5	6	18
South Zone	Oct. 1–Oct. 12 &	6	18
	Oct. 30–Dec. 26	6	18
Coastal Zone	Oct. 1–Oct. 12 &	6	18
	Nov. 6–Jan. 2	6	18
Mergansers	Same as for Ducks	5	15
Coots	Same as for Ducks	5	15
Canada and White-fronted Geese (2):			
North Zone	Oct. 1–Dec. 9	2	6
South Zone	Oct. 1–Oct. 12 &	2	6
	Oct. 30–Dec. 26	2	6
Coastal Zone	Oct. 1–Oct. 12 &	3	9
	Oct. 27–Jan. 2	3	9
Light Geese	Oct. 1–Jan. 30	25	
Brant:			
North Zone	Sept. 28–Nov. 24	2	6
South Zone	Oct. 1–Oct. 12 &	2	6
	Oct. 30–Dec. 15	2	6
Coastal Zone	Oct. 1–Oct. 12 &	2	6
	Nov. 18–Jan. 2	2	6
Maryland:			
Ducks and Mergansers (6)(7)	Oct. 10–Oct. 17 &	6	18
	Nov. 14–Nov. 27 &	6	18
	Dec. 15–Jan. 30	6	18
Coots	Same as for Ducks	15	45
Canada and White-fronted Geese (2):			
RP Zone	Nov. 21–Nov. 27 &	5	15
	Dec. 15–Mar. 10	5	15
AP Zone	Dec. 18–Jan. 2 &	1	3
	Jan. 13–Jan. 30	1	3
Light Geese	Oct. 1–Nov. 27 &	25	
	Dec. 14–Jan. 30 &	25	
	Feb. 6 only	25	
Brant	Nov. 18–Nov. 27 &	2	6
	Dec. 15–Jan. 30	2	6
Massachusetts:			
Ducks (8)(9):			
Western Zone	Oct. 12–Nov. 28 &	6	18
	Dec. 7–Dec. 26	6	18
Central Zone	Oct. 13–Nov. 28 &	6	18
	Dec. 14–Jan. 4	6	18
Coastal Zone	Oct. 16–Oct. 24 &	6	18
	Nov. 26–Jan. 25	6	18
Mergansers	Same as for Ducks	5	15
Coots	Same as for Ducks	15	45
Canada Geese:			
NAP Zone:			
Central Zone	Oct. 13–Nov. 28 &	2	6
	Dec. 14–Jan. 4	2	6
(Special season)	Jan. 15–Feb. 15	5	15
Coastal Zone	Oct. 16–Oct. 24 &	2	6
	Nov. 26–Jan. 25	2	6
(Special season) (10)	Jan. 26–Feb. 15	5	15
AP Zone	Oct. 12–Nov. 14	2	6
Light Geese:			
Western Zone	Oct. 12–Nov. 28 &	15	45
	Dec. 7–Dec. 26	15	45
Central Zone	Oct. 13–Nov. 28 &	15	45
	Dec. 14–Jan. 4 &	15	45
	Jan. 15–Feb. 15	15	45
Coastal Zone (10)	Oct. 16–Oct. 24 &	15	45
	Nov. 26–Feb. 15	15	45
Brant:			
Western and Central Zones	Closed		
Coastal Zone	Nov. 28–Jan. 25	2	6
New Hampshire:			
Ducks:			
Northern Zone	Oct. 2–Nov. 30	6	18
Inland Zone	Oct. 6–Nov. 8 &	6	18
	Nov. 17–Dec. 12	6	18

Area	Season dates	Limits	
		Bag	Possession
Coastal Zone	Oct. 7–Oct. 18 &	6	18
	Nov. 17–Jan. 3	6	18
Mergansers	Same as for Ducks	5	15
Coots	Same as for Ducks	15	45
Canada Geese:			
Northern Zone	Oct. 2–Nov. 30	2	6
Inland Zone	Oct. 6–Nov. 8 &	2	6
	Nov. 17–Dec. 12	2	6
Coastal Zone	Oct. 7–Oct. 18 &	2	6
	Nov. 17–Jan. 3	2	6
Light Geese:			
Northern Zone	Oct. 2–Nov. 30	25	
Inland Zone	Oct. 6–Dec. 12	25	
Coastal Zone	Oct. 7–Jan. 3	25	
Brant:			
Northern Zone	Oct. 2–Nov. 20	2	6
Inland Zone	Oct. 6–Nov. 8 &	2	6
	Nov. 17–Dec. 2	2	6
Coastal Zone	Oct. 7–Oct. 18 &	2	6
	Nov. 17–Dec. 24	2	6
New Jersey:			
Ducks (11):			
North Zone	Oct. 10–Oct. 17 &	6	18
	Nov. 7–Jan. 7	6	18
South Zone	Oct. 17–Oct. 24 &	6	18
	Nov. 14–Jan. 14	6	18
Coastal Zone	Nov. 14–Nov. 17 &	6	18
	Nov. 26–Jan. 30	6	18
Mergansers	Same as for Ducks	5	15
Coots	Same as for Ducks	15	45
Canada and White-fronted Geese (2):			
North and South Zones	Nov. 26–Nov. 28 &	2	6
	Dec. 26–Jan. 26	2	6
Coastal Zone	Nov. 14–Nov. 17 &	2	6
	Nov. 26–Jan. 30	2	6
Special Season Zone	Jan. 27–Feb. 15	5	15
Light Geese:			
North, South, and Coastal Zones	Oct. 16–Feb. 15	25	
Brant:			
North Zone	Oct. 10–Oct. 17 &	2	6
	Nov. 7–Dec. 26	2	6
South Zone	Oct. 17–Oct. 24 &	2	6
	Nov. 14–Jan. 2	2	6
Coastal Zone	Nov. 14–Nov. 17 &	2	6
	Nov. 26–Jan. 19	2	6
New York:			
Ducks and Mergansers (12):			
Long Island Zone	Nov. 21–Nov. 29 &	6	18
	Dec. 12–Jan. 31	6	18
Lake Champlain Zone	Oct. 10–Nov. 1 &	6	18
	Nov. 21–Dec. 27	6	18
Northeastern Zone	Oct. 3–Oct. 25 &	6	18
	Oct. 31–Dec. 6	6	18
Southeastern Zone	Oct. 17–Nov. 29 &	6	18
	Dec. 5–Dec. 20	6	18
Western Zone	Oct. 17–Nov. 8 &	6	18
	Nov. 28–Jan. 3	6	18
Coots	Same as for Ducks	15	45
Canada Geese:			
Western Long Island (AFRP)	Oct. 10–Oct. 25 &	8	24
	Nov. 21–Nov. 29 &	8	24
	Dec. 9–Feb. 24	8	24
Central Long Island (NAP–L)	Nov. 21–Nov. 29 &	2	6
	Dec. 12–Feb. 10	2	6
Eastern Long Island (NAP–H)	Nov. 21–Nov. 29 &	2	6
	Dec. 12–Jan. 31	2	6
Lake Champlain (AP) Zone	Oct. 10–Nov. 8	2	6
Northeast (AP) Zone	Oct. 24–Nov. 22	2	6
East Central (AP) Zone	Oct. 24–Nov. 20 &	2	6
	Nov. 28–Nov. 29	2	6
Hudson Valley (AP) Zone	Nov. 7–Nov. 20 &	2	6
	Dec. 12–Dec. 27	2	6

Area	Season dates	Limits	
		Bag	Possession
West Central (AP) Zone	Oct. 24–Nov. 8 &	2	6
	Dec. 21–Jan. 3	2	6
South (AFRP)	Oct. 24–Jan. 9	5	15
Light Geese (13):			
Long Island Zone	Nov. 21–Mar. 7	25	
Lake Champlain Zone	Oct. 1–Dec. 31	25	
Northeastern Zone	Oct. 1–Jan. 15	25	
Southeastern Zone	Oct. 1–Jan. 15	25	
Western Zone	Oct. 1–Jan. 15	25	
Brant:			
Long Island Zone	Nov. 21–Nov. 29 &	2	6
	Dec. 22–Jan. 31	2	6
Lake Champlain Zone	Oct. 10–Nov. 28	2	6
Northeastern Zone	Oct. 3–Nov. 21	2	6
Southeastern Zone	Oct. 3–Nov. 21	2	6
Western Zone	Oct. 3–Nov. 21	2	6
North Carolina:			
Ducks (14)(15)	Oct. 7–Oct. 10 &	6	18
	Nov. 7–Nov. 28 &	6	18
	Dec. 19–Jan. 30	6	18
Mergansers	Same as for Ducks	5	15
Coots	Same as for Ducks	15	45
Canada and White-fronted Geese (2):			
RP Hunt Zone	Oct. 7–Oct. 17 &	5	15
	Nov. 7–Nov. 28 &	5	15
	Dec. 19–Feb. 13	5	15
Northeast Hunt Zone (16)	Jan. 15–Jan. 30	1	3
Light Geese	Oct. 13–Feb. 13	25	
Brant	Dec. 19–Jan. 30	1	3
Pennsylvania:			
Ducks (17):			
North Zone	Oct. 10–Oct. 24 &	6	18
	Nov. 17–Jan. 9	6	18
South Zone	Oct. 17–Oct. 24 &	6	18
	Nov. 17–Jan. 16	6	18
Northwest Zone	Oct. 10–Dec. 12 & Dec. 29–Jan. 2	6	18
		6	18
Lake Erie Zone	Nov. 2–Jan. 9	6	18
Mergansers	Same as for Ducks	5	15
Coots	Same as for Ducks	15	45
Canada and White-fronted Geese (2):			
Eastern (AP) Zone	Nov. 21–Nov. 27 &	2	6
	Dec. 21–Jan. 16	2	6
SJBP Zone	Oct. 24–Nov. 27 &	3	9
	Dec. 21–Feb. 13	3	9
Resident (RP) Zone	Oct. 24–Nov. 27 &	5	15
	Dec. 14–Jan. 16 &	5	15
	Jan. 29–Feb. 20	5	15
Light Geese:			
Eastern (AP) Zone	Oct. 1–Jan. 23	25	
SJBP Zone	Oct. 13–Feb. 13	25	
Resident (RP) Zone	Oct. 20–Feb. 20	25	
Brant	Oct. 10–Dec. 7	2	6
Rhode Island:			
Ducks (18)	Oct. 9–Oct. 12 &	6	18
	Nov. 25–Nov. 29 &	6	18
	Dec. 5–Jan. 24	6	18
Mergansers	Same as for Ducks	5	15
Coots	Same as for Ducks	15	45
Canada Geese	Nov. 21–Nov. 29 &	2	6
	Dec. 5–Jan. 24	2	6
(Special season)	Jan. 30–Feb. 13	5	15
Light Geese	Oct. 10–Jan. 24	25	
Brant	Dec. 6–Jan. 24	2	6
South Carolina:			
Ducks (19)(20)(21)	Nov. 14 &	6	18
	Nov. 21–Nov. 28 &	6	18
	Dec. 12–Jan. 31	6	18
Mergansers (22)	Same as for Ducks	5	15
Coots	Same as for Ducks	15	45

Area	Season dates	Limits	
		Bag	Possession
Canada and White-fronted Geese (2)(23)(24)	Nov. 21–Nov. 28 &	5	15
	Dec. 12–Jan. 31	5	15
	Feb. 14–Mar. 1	5	15
Light Geese	Same as for Canada and White-fronted Geese.	25	
Brant	Dec. 13–Jan. 31	2	6
Vermont:			
Ducks (25):			
Lake Champlain Zone	Oct. 10–Nov 1 &	6	18
	Nov. 21–Dec. 27	6	18
Interior Zone	Oct. 10–Dec. 8	6	18
Connecticut River Zone	Oct. 6–Nov. 8 &	6	18
	Nov. 17–Dec. 12	6	18
Mergansers	Same as for Ducks	5	15
Coots	Same as for Ducks	15	45
Canada and White-fronted Geese (2):			
Lake Champlain Zone	Oct. 10–Nov. 8	2	6
Interior Zone	Oct. 10–Nov. 8	2	6
Connecticut River Zone	Oct. 6–Nov. 8 &	2	6
	Nov. 17–Dec. 12	2	6
Light Geese:			
Lake Champlain Zone	Oct. 1–Dec. 31 &	25	.....
	Feb. 26–Mar. 10	25	.....
Interior Zone	Oct. 1–Dec. 31 &	25	.....
	Feb. 26–Mar. 10	25	.....
Connecticut River Zone	Oct. 6–Dec. 12	25	.....
Brant:			
Lake Champlain Zone	Oct. 10–Nov. 28	2	6
Interior Zone	Oct. 10–Nov. 28	2	6
Connecticut River Zone	Oct. 6–Nov. 8 &	2	6
	Nov. 17–Dec. 2	2	6
Virginia:			
Ducks (26)(27)	Oct. 9–Oct. 12 &	6	18
	Nov. 18–Nov. 29 &	6	18
	Dec. 19–Jan. 31	6	18
Mergansers	Same as for Ducks	5	15
Coots	Same as for Ducks	15	45
Canada and White-fronted Geese (2):			
Eastern (AP) Zone	Dec. 19–Jan. 1 &	1	3
	Jan. 16–Jan. 31	1	3
Western (SJBP) Zone	Nov. 18–Nov. 29 &	3	9
	Dec. 19–Jan. 14 &	3	9
(Special season)	Jan. 15–Feb. 15	5	15
Western (RP) Zone	Nov. 18–Nov. 29 &	5	15
	Dec. 19–Feb. 24	5	15
Light Geese	Oct. 17–Jan. 31	25	.....
Brant	Nov. 24–Nov. 29 &	2	6
	Dec. 19–Jan. 31	2	6
West Virginia:			
Ducks (28)(29)	Oct. 1–Oct. 14 &	6	18
	Nov. 9–Nov. 14 &	6	18
	Dec. 23–Jan. 31	6	18
Mergansers	Same as for Ducks	5	15
Coots	Same as for Ducks	15	30
Canada and White-fronted Geese (2)	Oct. 1–Oct. 17 &	5	15
	Nov. 9–Nov. 14 &	5	15
	Dec. 6–Jan. 31	5	15
Light Geese	Same as for Canada and White-fronted Geese.	5	15
Brant	Dec. 13–Jan. 31	2	6

(1) In *Connecticut,* the daily bag limit for scaup is 2 from December 18 through January 7 in the North Zone and from December 29 through January 20 in the South Zone.

(2) The daily bag and possession limits for Canada geese and white-fronted geese are in the aggregate.

(3) In *Delaware,* the Bombay Hook National Wildlife Refuge (NWR) snow goose season is open Mondays, Wednesdays, and Fridays only.

(4) In *Florida,* the daily bag limit for scaup is 2 from January 12 through January 31.

(5) In *Maine,* the daily bag limit may include no more than 4 of any species, with no more than 12 of any one species in possession. The season for Barrow's goldeneye is closed.

(6) In *Maryland,* the black duck season is closed October 10 through October 17. Additionally, the daily bag limit of 6 ducks may include no more than 5 sea ducks, of which no more than 4 may be scoters, eiders, or long-tailed ducks.

(7) In *Maryland,* the daily bag limit for scaup is 2 from January 8 through January 30.

(8) In *Massachusetts,* the daily bag limit may include no more than 4 of any single species in addition to the flyway-wide bag restrictions.

(9) In *Massachusetts,* the daily bag limit for scaup is 2 from January 1 through January 23 in the Coastal Zone.

(10) In *Massachusetts,* the January 26 through February 15 portion of the season in the Coastal Zone is restricted to that portion of the Coastal Zone north of the Cape Cod Canal.
(11) In *New Jersey,* the daily bag limit for scaup is 2 from December 16 through January 7 in the North Zone, from December 23 through January 14 in the South Zone, and from January 8 through January 30 in the Coastal Zone.
(12) In *New York,* the daily bag limit for scaup is 2 from November 17 through December 6 in the Northeast Zone, from December 15 through January 3 in the Western Zone, from November 6 through November 25 in the Southeast Zone, from January 12 through January 31 in the Long Island Zone, and from October 10 through October 29 in the Lake Champlain Zone.
(13) In *New York,* the use of electronic calls and shotguns capable of holding more than 3 shotshells are allowed for hunting of light geese on any day when all other waterfowl hunting seasons are closed.
(14) In *North Carolina,* the season is closed for black ducks October 7 through October 10 and November 7 through November 20.
(15) In *North Carolina,* the daily bag limit for scaup is 2 from January 8 through January 30.
(16) In *North Carolina,* a permit is required to hunt Canada and white-fronted geese in the Northeast Hunt Zone.
(17) In *Pennsylvania,* the daily bag limit for scaup is 2 from December 18 through January 9 in the North Zone, from December 25 through January 16 in the South Zone, from November 16 through December 12 and December 29 through January 2 in the Northwest Zone, and from November 25 through December 17 in the Lake Erie Zone.
(18) In *Rhode Island,* the daily bag limit for scaup is 2 from January 5 through January 24.
(19) In *South Carolina,* the daily bag limit of 6 may not exceed 1 black-bellied whistling duck or hooded merganser. Further, the black duck/mottled duck limit is as follows: (1) For areas east and south of Interstate 95, either 1 black or 1 mottled duck in the daily bag in the aggregate; (2) for areas west and north of Interstate 95, either 2 black ducks, or 1 black duck and 1 mottled duck in the daily bag.
(20) In *South Carolina,* the daily bag limit for scaup is 2 from November 21 through November 28 and December 12 through December 23.
(21) In *South Carolina,* on November 14, only hunters 17 years of age or younger can hunt ducks, coots, and mergansers. The youth must be accompanied by a person 21 years of age or older who is properly licensed, including State and Federal waterfowl stamps. Youth who are 16 or 17 years of age who hunt on this day are not required to have a State license or State waterfowl stamp but must possess a Federal waterfowl stamp and migratory bird permit.
(22) In *South Carolina,* the daily bag limit for mergansers may include no more than 1 hooded merganser.
(23) In *South Carolina,* the daily bag limit may include no more than 2 white-fronted geese.
(24) In *South Carolina,* the hunting area for Canada geese excludes that portion of Clarendon County bounded to the north by S–14–25; to the east by Hwy 260; and to the south by the markers delineating the channel of the Santee River. It also excludes that portion of Clarendon County bounded on the north by S–14–26 and extending southward to that portion of Orangeburg County bordered by Hwy 6.
(25) In *Vermont,* the daily bag limit for scaup is 2 from October 10 through October 29 in the Lake Champlain Zone, and from October 10 through October 29 in the Interior Zone.
(26) In *Virginia,* the season is closed for black ducks October 9 through October 12.
(27) In *Virginia,* the daily bag limit for scaup is 2 from January 12 through January 31.
(28) In *West Virginia,* the season is closed for eiders, whistling ducks, and mottled ducks.
(29) In *West Virginia,* the daily bag limit for scaup is 2 from January 12 through January 31.

Mississippi Flyway

Flyway-Wide Restrictions

Duck Limits: The daily bag limit of 6 ducks may include no more than 4 mallards (no more than 2 of which may be females), 1 mottled duck, 2 black ducks, 1 pintail, 2 canvasbacks, 2 redheads, 1 scaup (except as footnoted below), and 3 wood ducks. The possession limit is three times the daily bag limit.

Merganser Limits: The daily bag limit is 5 mergansers and may include no more than 2 hooded mergansers. In States that include mergansers in the duck bag limit, the daily limit is the same as the duck bag limit, of which only 2 may be hooded mergansers. The possession limit is three times the daily bag limit.

Area	Season dates	Limits	
		Bag	Possession
Alabama:			
Ducks	Nov. 27–Nov. 28 &	6	18
	Dec. 5–Jan. 31	6	18
Mergansers	Same as for Ducks	5	15
Coots	Same as for Ducks	15	45
Dark Geese (1)	Sept. 1–Sept 30 &	5	15
	Oct. 10–Oct. 24 &	5	15
	Nov. 27–Nov. 28 &	5	15
	Dec. 5–Jan. 31	5	15
Light Geese	Same as for Dark Geese	5	15
Arkansas:			
Ducks	Nov. 21–Nov. 30 &	6	18
	Dec. 11–Dec. 23 &	6	18
	Dec. 26–Jan. 31	6	18
Mergansers	Same as for Ducks	5	10
Coots	Same as for Ducks	15	45
Canada Geese	Sept. 1–Sept. 30 &	5	15
	Oct. 31–Nov. 3 &	3	9
	Nov. 21–Dec. 4 &	3	9
	Dec. 6–Jan. 31	3	9
White-fronted Geese	Oct. 31–Nov. 16 &	2	6
	Nov. 21–Dec. 4 &	2	6
	Dec. 6–Jan. 31	2	6
Brant	Closed	.....	.....
Light Geese	Same as for White-fronted Geese	20	.....
Illinois:			
Ducks (2):			
North Zone	Oct. 17–Dec. 15	6	18
Central Zone	Oct. 24–Dec. 22	6	18
South Central Zone	Nov. 14–Jan. 12	6	18

Area	Season dates	Limits	
		Bag	Possession
South Zone	Nov. 26–Jan. 24	6	18
Mergansers	Same as for Ducks	5	15
Coots	Same as for Ducks	15	45
Canada Geese:			
North Zone	Sept. 1–Sept. 15 &	5	15
	Oct. 17–Jan. 14	3	9
Central Zone	Sept. 1–Sept. 15 &	5	15
	Oct. 24–Nov. 1 &	3	9
	Nov. 12–Jan. 31	3	9
South Central Zone	Sept. 1–Sept. 15 &	2	6
	Nov. 14–Jan. 31	3	9
South Zone	Sept. 1–Sept. 15 &	2	6
	Nov. 26–Jan. 31	3	9
White-fronted Geese:			
North Zone	Oct. 19–Jan. 14	2	6
Central Zone	Nov. 5–Jan. 31	2	6
South Central Zone	Nov. 14–Jan. 31	2	6
South Zone	Nov. 26–Jan. 31	2	6
Light Geese:			
North Zone	Oct. 17–Jan. 14	20	
Central Zone	Oct. 24–Jan. 31	20	
South Central Zone	Nov. 14–Jan. 31	20	
South Zone	Nov. 26–Jan. 31	20	
Brant	Same as for Light Geese	1	3
Indiana:			
Ducks (3):			
North Zone	Oct. 24–Dec. 13 &	6	18
	Dec. 26–Jan. 3	6	18
Central Zone	Oct. 31–Nov. 8 &	6	18
	Nov. 21–Jan. 10	6	18
South Zone	Nov. 7–Nov. 8 &	6	18
	Nov. 28–Jan. 24	6	18
Mergansers	Same as for Ducks	5	15
Coots	Same as for Ducks	15	45
Dark Geese (4):			
North Zone	Sept. 12–Sept. 20 &	5	15
	Oct. 24–Nov. 1 &	5	15
	Nov. 21–Feb. 14	5	15
Central Zone	Sept. 12–Sept. 20 &	5	15
	Oct. 31–Nov. 8 &	5	15
	Nov. 21–Feb. 14	5	15
South Zone	Sept. 12–Sept. 20 &	5	15
	Nov. 7–Nov. 22 &	5	15
	Nov. 28–Feb. 14	5	15
Light Geese:			
North Zone	Same as for Dark Geese	20	
Central Zone	Same as for Dark Geese	20	
South Zone	Same as for Dark Geese	20	
Iowa:			
Ducks (5):			
North Zone	Sept. 26–Oct. 2 &	6	18
	Oct. 10–Dec. 1	6	18
Missouri River Zone	Oct. 10–Oct. 16 &	6	18
	Oct. 24–Dec. 15	6	18
South Zone	Oct. 3–Oct. 9 &	6	18
	Oct. 17–Dec. 8	6	18
Mergansers	Same as for Ducks	5	15
Coots	Same as for Ducks	15	45
Dark Geese:			
Cedar Falls/Waterloo	Sept. 5–Sept. 13	5	15
Des Moines	Sept. 5–Sept. 13	5	15
Cedar Rapids/Iowa City	Sept. 5–Sept. 13	5	15
North Zone (6)	Sept. 19–Oct. 4 &	5	15
	Oct. 10–Dec. 1 &	5	15
	Dec. 12–Jan. 9	5	15
Missouri River Zone (6)	Oct. 3–Oct. 18 &	5	15
	Oct. 24–Dec. 15 &	5	15
	Dec. 26–Jan. 23	5	15
South Zone (6)	Sept. 26–Oct. 11 &	5	15
	Oct. 17–Dec. 8 &	5	15
	Dec. 19–Jan. 16	5	15
Light Geese:			

Area	Season dates	Limits	
		Bag	Possession
North Zone	Same as for Dark Geese	20	
Missouri River Zone	Same as for Dark Geese	20	
South Zone	Same as for Dark Geese	20	
Kentucky:			
Ducks (7):			
West Zone	Nov. 26–Nov. 29 &	6	18
	Dec. 7–Jan. 31	6	18
East Zone	Same as West Zone	6	18
Mergansers	Same as for Ducks	5	15
Coots	Same as for Ducks	15	45
Canada Geese	Sept. 16–Sept. 30 &	5	15
	Nov. 26–Feb. 15	3	9
White-fronted Geese	Nov. 26–Feb. 15	2	6
Brant	Nov. 26–Feb. 15	1	3
Light Geese	Nov. 26–Feb. 15	20	60
Louisiana:			
Ducks (8):			
West Zone	Nov. 14–Dec. 6 &	6	18
	Dec. 19–Jan. 24	6	18
East Zone (including Catahoula Lake)	Nov. 21–Dec. 6 &	6	18
	Dec. 19–Jan. 31	6	18
Coastal Zone	Nov. 14–Dec. 6 &	6	18
	Dec. 19–Jan. 24	6	18
Mergansers	Same as for Ducks	5	15
Coots	Same as for Ducks	15	45
Canada Geese:			
North Zone	Nov. 7–Dec. 6 &	1	3
	Dec. 19–Jan. 31	1	3
South Zone	Nov. 14–Dec. 6 &	1	3
	Dec. 19–Feb. 7	1	3
White-fronted Geese	Same as for Canada Geese	3	9
Brant	Closed		
Light Geese	Same as for Canada Geese	20	
Michigan:			
Ducks (9):			
North Zone	Sept. 26–Nov. 22 &	6	18
	Nov. 28–Nov. 29	6	18
Middle Zone	Oct. 3–Nov. 29 &	6	18
	Dec. 12–Dec. 13	6	18
South Zone	Oct. 10–Dec. 6 &	6	18
	Dec. 26–Dec. 27	6	18
Mergansers	Same as for Ducks	5	15
Coots	Same as for Ducks	15	45
Dark Geese (1):			
North Zone	Sept. 1–Dec. 16	5	15
Middle Zone	Sept. 1–Dec. 16	5	15
South Zone:			
Muskegon Wastewater GMU	Oct. 17–Dec. 22	5	15
Allegan County GMU	Sept. 1–Sept. 30 &	5	15
	Nov. 7–Nov. 14 &	5	15
	Nov. 26–Dec. 6 &	5	15
	Dec. 19–Feb. 14	5	15
Remainder of South Zone	Sept. 1–Sept. 30 &	5	15
	Oct. 10–Dec. 6 &	5	15
	Dec. 26–Dec. 27 &	5	15
	Jan. 23–Feb. 8	5	15
Light Geese:			
North Zone	Same as for Dark Geese	20	
Middle Zone	Same as for Dark Geese	20	
South Zone:			
Muskegon Wastewater GMU	Same as for Dark Geese	20	
Allegan County GMU	Same as for Dark Geese	20	
Remainder of South Zone	Same as for Dark Geese	20	
Minnesota:			
Ducks (10):			
North Zone	Sept. 26–Nov. 24	6	18
Central Zone	Sept. 26–Oct. 4 &	6	18
	Oct. 10–Nov. 29	6	18
South Zone	Sept. 26–Oct. 4 &	6	18
	Oct. 17–Dec. 6	6	18
Mergansers	Same as for Ducks	5	15
Coots (11)	Same as for Ducks	15	45

Area	Season dates	Limits	
		Bag	Possession
Dark Geese:			
North Zone	Sept. 5–Sept. 20 &	5	15
	Sept. 26–Dec. 25	3	9
Central Zone	Sept. 5–Sept. 20 &	5	15
	Sept. 26–Oct. 4 &	3	9
	Oct. 10–Dec. 30	3	9
South Zone	Sept. 5–Sept. 20 &	5	15
	Sept. 26–Oct. 4 &	3	9
	Oct. 17–Jan. 6	3	9
Light Geese:			
North Zone	Same as for Dark Geese	20	60
Central Zone	Same as for Dark Geese	20	60
South Zone	Same as for Dark Geese	20	60
Mississippi:			
Ducks	Nov. 27–Nov. 29 &	6	18
	Dec. 4–Dec. 6 &	6	18
	Dec. 9–Jan. 31	6	18
Mergansers	Same as for Ducks	5	15
Coots	Same as for Ducks	15	45
Canada Geese	Sept. 1–Sept 30 &	5	15
	Nov. 13–Nov. 29 &	3	9
	Dec. 4–Dec. 6 &	3	9
	Dec. 9–Jan. 31	3	9
White-fronted Geese	Nov. 13–Nov. 29 &	3	9
	Dec. 4–Dec. 6 &	3	9
	Dec. 9–Jan. 31	3	9
Brant	Same as for White-fronted Geese	1	3
Light Geese	Same as for White-fronted Geese	20	
Missouri:			
Ducks and Mergansers (12):			
North Zone	Nov. 7–Jan. 5	6	18
Middle Zone	Nov. 7–Nov. 13 &	6	18
	Nov. 19–Jan. 10	6	18
South Zone	Nov. 26–Nov. 29 &	6	18
	Dec. 7–Jan. 31	6	18
Coots	Same as for Ducks	15	45
Canada Geese and Brant (13):			
North Zone	Oct. 3–Oct. 11 &	3	9
	Nov. 11–Feb. 6	3	9
Middle Zone	Same as North Zone	3	9
South Zone	Same as North Zone	3	9
White-fronted Geese:			
North Zone	Nov. 11–Feb. 6	2	6
Middle Zone	Same as North Zone	2	6
South Zone	Same as North Zone	2	6
Light Geese:			
North Zone	Nov. 11–Feb. 6	20	
Middle Zone	Same as North Zone	20	
South Zone	Same as North Zone	20	
Ohio:			
Ducks (14):			
Lake Erie Marsh Zone	Oct. 10–Oct. 25 &	6	18
	Nov. 7–Dec. 20	6	18
North Zone	Oct. 24–Nov. 1 &	6	18
	Nov. 7–Dec. 27	6	18
South Zone	Oct. 24–Nov. 1 &	6	18
	Dec. 5–Jan. 24	6	18
Mergansers	Same as for Ducks	5	15
Coots	Same as for Ducks	15	45
Dark Geese (15)(16):			
Lake Erie Goose Zone	Sept. 5–Sept. 13 &	5	15
	Oct. 10–Oct. 25 &	3	9
	Nov. 7–Dec. 20	3	9
	Jan. 2–Feb. 6	3	9
North Zone	Sept. 5–Sept. 13 &	5	15
	Oct. 24–Nov. 1 &	3	9
	Nov. 7–Dec. 27	3	9
	Jan. 2–Feb. 6	3	9
South Zone	Sept. 5–Sept. 13 &	5	15
	Oct. 24–Nov. 1 &	3	9
	Nov. 12–Feb. 6	3	9
Light Geese:			

Area	Season dates	Limits	
		Bag	Possession
Lake Erie Goose Zone	Oct. 10–Oct. 25 &	10	30
	Nov. 7–Dec. 20 &	10	30
	Jan. 2–Feb. 6	10	30
North Zone	Oct. 24–Nov. 1 &	10	30
	Nov. 7–Dec. 27 &	10	30
	Jan. 2–Feb. 6	10	30
South Zone	Oct. 24–Nov. 1 &	10	30
	Nov. 12–Feb. 6	10	30
Tennessee:			
Ducks (17):			
Reelfoot Zone	Nov. 14–Nov. 15 &	6	18
	Dec. 5–Jan. 31	6	18
Rest of State	Nov. 28–Nov. 29 &	6	18
	Dec. 5–Jan. 31	6	18
Mergansers	Same as for Ducks	5	15
Coots	Same as for Ducks	15	45
Canada Geese:			
Reelfoot Zone	Sept. 1–Sept. 20 &	5	15
	Oct. 10–Oct. 20 &	3	9
	Nov. 14–Nov. 15 &	3	9
	Dec. 5–Feb. 14	3	9
Rest of State	Sept. 1–Sept. 20 &	5	15
	Oct. 10–Oct. 20 &	3	9
	Nov. 28–Nov. 29 &	3	9
	Dec. 5–Feb. 14	3	9
White-fronted Geese:			
Reelfoot Zone	Nov. 14–Nov. 15 &	3	9
	Dec. 5–Feb. 14	3	9
Rest of State	Nov. 28–Nov. 29 &	3	9
	Dec. 5–Feb. 14	3	9
Brant	Same as for Canada Geese	1	3
Light Geese	Same as for Canada Geese	20	
Wisconsin:			
Ducks (18)(19)(20):			
North Zone	Sept. 26–Nov. 24	6	18
South Zone	Oct. 3–Oct. 11 &	6	18
	Oct. 17–Dec. 6	6	18
Mississippi River Zone	Oct. 3–Oct. 11 &	6	18
	Oct. 17–Dec. 6	6	18
Mergansers	Same as for Ducks	5	15
Coots	Same as for Ducks	15	45
Canada Geese:			
North Zone	Sept. 1–Sept. 15	5	15
	Sept. 16–Dec. 16	3	9
South Zone	Sept. 1–Sept. 15	5	15
	Sept. 16–Oct. 11 &	3	9
	Oct. 17–Dec. 6 &	3	9
	Dec. 22–Jan. 5	3	9
Mississippi River Zone	Sept. 1–Sept. 15	5	15
	Oct. 3–Oct. 11 &	3	9
	Oct. 17–Jan. 5	3	9
White-fronted Geese:			
North Zone	Sept. 16–Dec. 16	1	3
South Zone	Sept. 16–Oct. 11 &	1	3
	Oct. 17–Dec. 6 &	1	3
	Dec. 22–Jan. 5	1	3
Mississippi River Zone	Oct. 3–Oct. 11 &	1	3
	Oct. 17–Jan. 5	1	3
Brant	Same as for White-fronted Geese	1	3
Light Geese:		20	
North Zone	Sept. 1–Dec. 16	20	
South Zone	Sept. 1–Oct. 11 &	20	
	Oct. 17–Dec. 6 &	20	
	Dec. 22–Jan. 5	20	
Mississippi River Zone	Sept. 1–Sept. 15 &	20	
	Oct. 3–Oct. 11 &	20	
	Oct. 17–Jan. 5	20	

(1) In *Alabama* and *Michigan,* the dark goose daily bag limit may not include more than 1 brant. Additionally, after September 30, the daily bag may not include more than 3 Canada geese.

(2) In *Illinois,* the daily bag limit for scaup is 2 from October 17 through November 30 in the North Zone, from October 24 through December 7 in the Central Zone, from November 14 through December 28 in the South Central Zone, and from November 26 through January 9 in the South Zone.

(3) In *Indiana,* the daily bag limit for scaup is 2 from November 14 through December 13 and from December 26 through January 3 in the North Zone, from November 28 through January 10 in the Central Zone, and from December 12 through January 24 in the South Zone.
(4) In *Indiana,* the dark goose daily bag limit of 5 may include 5 Canada geese during September 14 through September 22. During all other open season segments, the dark goose daily bag limit may not include more than 3 Canada geese. The possession limit is three times the daily bag limit.
(5) In *Iowa,* the daily bag limit for scaup is 2 from October 18 through December 1 in the North Zone, from November 1 through December 15 in the Missouri River Zone, and from October 25 through December 8 in the South Zone.
(6) In *Iowa,* in the North Zone, the Missouri River Zone, and the South Zone, the dark goose daily bag limit may not include more than 2 Canada geese until October 31. After October 31, the daily bag limit may not include more than 3 Canada geese. The possession limit is three times the daily bag limit.
(7) In *Kentucky,* the daily bag limit for scaup is 2 from December 18 through January 31.
(8) In *Louisiana,* the daily bag limit for scaup is 2 from November 29 through December 6 and December 19 through January 24 in the West and Coastal Zones, and from December 19 through January 31 in the East Zone.
(9) In *Michigan,* the daily bag limit for scaup is 2 from September 26 through November 9 in the North Zone, from October 3 through November 16 in the Middle Zone, and from October 26 through December 6 and December 26 through December 27 in the South Zone.
(10) In *Minnesota,* the daily bag limit for scaup is 2 from October 23 through November 24 in the North Zone, from October 23 through November 29 in the Central Zone, and from October 23 through December 6 in the South Zone.
(11) In *Minnesota,* the daily bag limit is 15 and the possession limit is 45 coots and moorhens in the aggregate.
(12) In *Missouri,* the daily bag limit for scaup is 2 from November 7 through December 21 in the North Zone, from November 7 through November 13 and November 19 through December 26 in the Middle Zone, and from November 26 through November 29 and December 7 through January 16 in the South Zone.
(13) In *Missouri,* the daily bag and possession limits for Canada geese and brant are in the aggregate.
(14) In *Ohio,* the daily bag limit for scaup is 2 on October 25 and from November 7 through December 20 in the Lake Erie Zone, from November 13 through December 27 in the North Zone, and from December 11 through January 24 in the South Zone.
(15) In *Ohio,* only Canada geese may be taken during the September 5 to September 13 portion of the dark goose season.
(16) In *Ohio,* the dark goose daily bag limit may include no more than 1 brant.
(17) In *Tennessee,* the daily bag limit for scaup is 2 from December 18 through January 31.
(18) In *Wisconsin,* the daily bag limit may include no more than one female mallard.
(19) In *Wisconsin,* the daily bag limit may include no more than 1 black duck.
(20) In *Wisconsin,* the daily bag limit for scaup is 2 from October 11 through November 24 in the North Zone, from October 23 through December 6 in the South Zone, and from October 23 through December 6 in the Mississippi River Zone.

Central Flyway

Flyway-Wide Restrictions

Duck Limits: The daily bag limit is 6 ducks, which may include no more than 5 mallards (2 female mallards), 1 pintail, 2 canvasbacks, 2 redheads, 1 scaup, and 3 wood ducks. The possession limit is three times the daily bag limit.

Merganser Limits: The daily bag limit is 5 mergansers and may include no more than 2 hooded mergansers. In States that include mergansers in the duck bag limit, the daily limit is the same as the duck bag limit, of which only 2 may be hooded mergansers. The possession limit is three times the daily bag limit.

Area	Season dates	Limits	
		Bag	Possession
Colorado:			
Ducks:			
Southeast Zone	Oct. 28–Jan. 31	6	18
Northeast Zone	Oct. 10–Nov. 30 &	6	18
	Dec. 19–Jan. 31	6	18
Mountain/Foothills Zone	Oct. 3–Nov. 30 &	6	18
	Dec. 26–Jan. 31	6	18
Coots	Same as for Ducks	15	45
Mergansers	Same as for Ducks	5	15
Dark Geese:			
Northern Front Range Unit	Oct. 3–Oct. 21 &	5	15
	Nov. 21–Feb. 14	5	15
South Park Unit	Oct. 3–Jan. 15	5	15
San Luis Valley Unit	Oct. 3–Oct. 21 &	5	15
	Nov. 21–Feb. 14	5	15
North Park Unit	Oct. 3–Jan. 15	5	15
Rest of State in Central Flyway	Nov. 2–Feb. 14	5	15
Light Geese:			
Northern Front Range Unit	Oct. 31–Feb. 14	50	.....
South Park Unit	Oct. 31–Feb. 14	50	.....
San Luis Valley Unit	Oct. 31–Feb. 14	50	.....
North Park Unit	Oct. 31–Feb. 14	50	.....
Rest of State in Central Flyway	Oct. 31–Feb. 14	50	.....
Kansas:			
Ducks:			
High Plains	Oct. 10–Jan. 3 &	6	18
	Jan. 22–Jan. 31	6	18
Low Plains:.			
Early Zone	Oct. 10–Dec. 6 &	6	18
	Dec. 19–Jan. 3	6	18
Late Zone	Oct. 31–Jan. 3 &	6	18
	Jan. 23–Jan. 31	6	18
Southeast Zone	Nov. 14–Jan. 3 &	6	18
	Jan. 9–Jan. 31	6	18
Mergansers	Same as for Ducks	5	15

Area	Season dates	Limits	
		Bag	Possession
Coots	Same as for Ducks	15	45
Dark Geese (1)	Oct. 31–Nov. 1 &	6	18
	Nov. 4–Feb. 14	6	18
White-fronted Geese	Oct. 31–Jan. 3 &	2	6
	Jan. 23–Feb. 14	2	6
Light Geese	Oct. 31–Nov. 1 &	50	
	Nov. 4–Feb. 14	50	
Montana:			
Ducks and Mergansers (2):			
Zone 1	Oct. 3–Jan. 7	6	18
Zone 2	Oct. 3–Oct. 11 &	6	18
	Oct. 24–Jan. 19	6	18
Coots	Same as for Ducks	15	45
Dark Geese:			
Zone 1	Oct. 3–Jan. 10 &	5	15
	Jan. 11–Jan. 15	5	15
Zone 2	Oct. 3–Oct. 11 &	5	15
	Oct. 24–Jan. 27	5	15
Light Geese:			
Zone 1	Oct. 3–Jan. 10 &	20	60
	Jan. 16–Jan. 20	20	60
Zone 2	Same as for Dark Geese	20	60
Nebraska:			
Ducks:			
Zone 1	Oct. 10–Dec. 22	6	18
Zone 2:			
Low Plains	Oct. 3–Dec. 15	6	18
High Plains	Oct. 3–Dec. 15 &	6	18
	Jan. 6–Jan. 27	6	18
Zone 3:			
Low Plains	Oct. 24–Jan. 5	6	18
High Plains	Oct. 24–Jan. 27	6	18
Zone 4	Oct. 3–Dec. 15	6	18
Mergansers	Same as for Ducks	5	15
Coots	Same as for Ducks	15	45
Canada Geese:			
Niobrara Unit	Oct. 26–Feb. 7	5	15
East Unit	Oct. 26–Feb. 7	5	15
North Central Unit	Oct. 3–Jan. 15	5	15
Platte River Unit	Oct. 26–Feb. 7	5	15
Panhandle Unit	Oct. 26–Feb. 7	5	15
White-fronted Geese	Oct. 3–Dec. 6 &	2	6
	Jan. 16–Feb. 7	2	6
Light Geese	Oct. 3–Dec. 23 &	50	
	Jan. 16–Feb. 7	50	
New Mexico:			
Ducks and Mergansers (3):			
North Zone	Oct. 10–Jan. 13	6	18
South Zone	Oct. 28–Jan. 31	6	18
Coots	Same as for Ducks	15	45
Dark Geese:			
Middle Rio Grande Valley Unit	Dec. 19–Jan. 31	2	2
Rest of State	Oct. 17–Jan. 31	5	15
Light Geese	Oct. 17–Jan. 31	50	
North Dakota:			
Ducks (2):			
High Plains	Sept. 26–Dec. 6 &	6	18
	Dec. 12–Jan. 3	6	18
Remainder of State	Sept. 26–Dec. 6	6	18
Mergansers	Same as for Ducks	5	15
Coots	Same as for Ducks	15	45
Canada Geese (4):			
Missouri River Zone	Sept. 26–Jan. 1	5	15
Western ND Zone	Sept. 26–Dec. 24	8	24
Rest of State	Sept. 26–Dec. 19	8	24
White-fronted Geese	Sept. 26–Dec. 6	3	9
Light Geese	Sept. 26–Jan. 1	50	
Oklahoma:			
Ducks:			
High Plains	Oct. 10–Jan. 6	6	18
Low Plains:			
Zone 1	Nov. 14–Nov. 29 &	6	18
	Dec. 5–Jan. 31	6	18

Area	Season dates	Limits	
		Bag	Possession
Zone 2	Nov. 14–Nov. 29 &	6	18
	Dec. 5–Jan. 31	6	18
Mergansers	Same as for Ducks	5	15
Coots	Same as for Ducks	15	45
Dark Geese (1)	Nov. 7–Nov. 29 &	8	24
	Dec. 5–Feb. 14	8	24
White-fronted Geese	Nov. 7–Nov. 29 &	2	6
	Dec. 5–Feb. 7	2	6
Light Geese	Nov. 7–Nov. 29 &	50	
	Dec. 5–Feb. 14	50	
South Dakota:			
Ducks (2):			
High Plains	Oct. 10–Jan. 14	6	18
Low Plains:			
North Zone	Sept. 26–Dec. 8	6	18
Middle Zone	Sept. 26–Dec. 8	6	18
South Zone	Oct. 24–Jan. 5	6	18
Mergansers	Same as for Ducks	5	15
Coots	Same as for Ducks	15	45
Canada Geese:			
Unit 1	Oct. 1–Dec. 20	8	24
Unit 2	Nov. 2–Feb. 14	4	12
Unit 3	Oct. 17–Dec. 20 &	4	12
	Jan. 9–Jan. 17	4	12
White-fronted Geese	Sept. 26–Dec. 8	3	9
Light Geese	Sept. 26–Jan. 8	50	
Texas:			
Ducks (5):			
High Plains	Oct. 31–Nov. 1 &	6	18
	Nov. 6–Jan. 31	6	18
Low Plains:			
North Zone	Nov. 14–Nov. 29 &	6	18
	Dec. 5–Jan. 31	6	18
South Zone	Nov. 7–Nov. 29 &	6	18
	Dec. 12–Jan. 31	6	18
Mergansers	Same as for Ducks	5	15
Coots	Same as for Ducks	15	45
Canada Geese and Brant (6):			
East Tier:			
South Zone	Nov. 7–Jan. 31	5	15
North Zone	Nov. 7–Jan. 31	5	15
West Tier	Nov. 14–Feb. 14	5	15
White-fronted Geese (6):			
East Tier:			
South Zone	Nov. 7–Jan. 31	2	6
North Zone	Nov. 7–Jan. 31	2	6
West Tier	Nov. 14–Feb. 14	2	6
Light Geese:			
East Tier:			
South Zone	Nov. 7–Jan. 31	10	
North Zone	Nov. 7–Jan. 31	10	
West Tier	Nov. 14–Feb. 14	10	
Wyoming:			
Ducks (2)(7):			
Zone C1	Oct. 3–Oct. 18 &	6	18
	Oct. 31–Jan. 19	6	18
Zone C2	Sept. 26–Dec. 6 &	6	18
	Dec. 19–Jan. 12	6	18
Zone C3	Same as Zone C2	6	18
Mergansers	Same as for Ducks	5	15
Coots	Same as for Ducks	15	45
Dark Geese:			
Zone G1A (7)	Oct. 3–Oct. 14 &	2	4
	Nov. 14–Feb. 14	4	12
Zone G1	Oct. 3–Oct. 11 &	5	15
	Nov. 7–Nov. 29 &	5	15
	Dec. 4–Feb. 14	5	15
Zone G2	Sept. 26–Dec. 6 &	5	15
	Dec. 19–Jan. 20	5	15
Zone G3	Same as Zone G2.		
Zone G4	Same as Zone G1.		

Area	Season dates	Limits	
		Bag	Possession
Light Geese	Oct. 3–Jan. 3 &	20	60
	Feb. 3–Feb. 14	20	60

(1) In *Kansas* and *Oklahoma,* dark geese include Canada geese, brant, and all other geese except white-fronted geese and light geese.
(2) In *Montana,* during the first 9 days of the duck season, and in *North Dakota, South Dakota,* and *Wyoming,* during the first 16 days of the duck season, the daily bag and possession limit may include 2 and 6 additional blue-winged teal, respectively.
(3) In *New Mexico,* Mexican-like ducks are included in the aggregate with mallards.
(4) In *North Dakota,* see State regulations for additional shooting hour restrictions.
(5) In *Texas,* the daily bag limit is 6 ducks, which may include no more than 5 mallards (only 2 of which may be females), 2 redheads, 3 wood ducks, 1 scaup, 2 canvasbacks, 1 pintail, and 1 dusky duck (mottled duck, Mexican-like duck, black duck and their hybrids). The season for dusky ducks is closed the first 5 days of the season in all zones. The possession limit is three times the daily bag limit.
(6) In *Texas,* in the West Goose Zone, the daily bag limit for dark geese is 5 in the aggregate and may include no more than 2 white-fronted geese. Possession limits are three times the daily bag limits.
(7) See State regulations for additional restrictions.

Pacific Flyway

Flyway-Wide Restrictions

Duck and Merganser Limits: The daily bag limit of 7 ducks (including mergansers) may include no more than 2 female mallards, 1 pintail, 2 redheads, 2 scaup, and 2 canvasbacks. The possession limit is three times the daily bag limit.

Coot and Common Moorhen Limits: Daily bag and possession limits are in the aggregate for the two species.

Area	Season dates	Limits	
		Bag	Possession
Arizona:			
Ducks (1):		7	21
North Zone:			
Scaup	Oct. 17–Jan. 10	2	6
Other Ducks	Oct. 2–Jan. 10	7	21
South Zone:			
Scaup	Nov. 7–Jan. 31	2	6
Other Ducks	Oct. 23–Jan. 31	7	21
Coots and Moorhens	Same as for Other Ducks	25	75
Dark Geese:			
North Zone	Oct. 2–Jan. 10	4	12
South Zone	Oct. 23–Jan. 31	4	12
Light Geese	Same as for Dark Geese	10	30
California:			
Ducks:		7	21
Northeastern Zone:			
Scaup	Oct. 3–Nov. 29 &	2	6
	Dec. 7–Jan. 13	2	6
Other Ducks	Oct. 3–Jan. 13	7	21
Colorado River Zone:			
Scaup	Nov. 7–Jan. 31	2	6
Other Ducks	Oct. 23–Jan. 31	7	21
Southern Zone:			
Scaup	Nov. 7–Jan. 31	2	6
Other Ducks	Oct. 24–Jan. 31	7	21
Southern San Joaquin Valley Zone:			
Scaup	Nov. 7–Jan. 31	2	6
Other Ducks	Oct. 24–Jan. 31	7	21
Balance of State Zone:			
Scaup	Nov. 7–Jan. 31	2	6
Other Ducks	Oct. 24–Jan. 31	7	21
Coots and Moorhens	Same as for Other Ducks	25	75
Canada Geese (2)(3):			
Northeastern Zone (4)	Oct. 3–Jan. 10	10	30
Klamath Basin Special Management Area	Oct. 3–Jan. 10	10	30
Colorado River Zone	Oct. 23–Jan. 31	4	12
Southern Zone	Oct. 24–Jan. 31	3	9
Balance of State Zone	Oct. 3–Oct. 7 &	10	30
	Oct. 24–Jan. 31	10	30
North Coast Special Management Area	Nov. 7–Jan. 31 &	10	30
	Feb. 20–Mar. 10	10	30
White-fronted Geese (2):			
Northeastern Zone	Oct. 3–Nov. 29 &	10	30
	Jan. 2–Jan. 15 &	10	30
	Feb. 6–Mar.10	10	30
Klamath Basin Special Management Area	Oct. 3–Jan. 15	10	30
Colorado River Zone	Oct. 23–Jan. 31	4	12

Area	Season dates	Limits	
		Bag	Possession
Southern Zone	Oct. 24–Jan. 31	3	9
Balance of State Zone	Oct. 24–Jan. 31 &	10	30
	Feb. 20–Feb. 24	10	30
Sacramento Valley Special Management Area	Oct. 24–Dec. 21	3	9
Light Geese:			
Northeastern Zone	Oct. 3–Nov. 29 &	20	60
	Jan. 2–Jan. 15 &	20	60
	Feb. 6–Mar.10	20	60
Klamath Basin Special Management Area	Oct. 3–Jan. 15	20	60
Colorado River Zone	Oct. 23–Jan. 31	20	60
Southern Zone	Oct. 24–Jan. 31	20	60
Imperial County Special Management Area	Nov. 7–Feb. 5 &	20	60
	Feb. 8–Feb. 12 &	20	60
	Feb. 15–Feb. 21	20	60
Balance of State Zone	Oct. 24–Jan. 31 &	20	60
	Feb. 20–Feb. 24	20	60
Brant:			
Northern Zone	Nov. 18–Dec. 14	2	6
Balance of State Zone	Nov. 19–Dec. 15	2	6
Colorado:			
Ducks:		7	21
East Zone:			
Scaup	Oct. 3–Dec. 27	2	6
Other Ducks	Oct. 3–Jan. 15	7	21
West Zone:			
Scaup	Oct. 3–Oct. 21 &	2	6
	Nov. 7–Jan. 12	2	6
Other Ducks	Oct. 3–Oct. 21 &	7	21
	Nov. 7–Jan. 31	7	21
Coots	Same as for Other Ducks	25	75
Dark Geese:			
East Zone	Oct. 3–Jan. 6	4	12
West Zone	Oct. 3–Oct. 12 &	4	12
	Nov. 7–Jan. 31	4	12
Light Geese	Same as for Dark Geese	10	30
Idaho:			
Ducks:		7	21
Zone 1:			
Scaup	Oct. 3–Dec. 27	2	6
Other Ducks	Oct. 3–Jan. 15	7	21
Zone 2:			
Scaup	Oct. 3–Dec. 27	2	6
Other Ducks	Oct. 3–Jan. 15	7	21
Zone 3:			
Scaup	Nov. 7–Jan. 31	2	6
Other Ducks	Oct. 19–Jan. 31	7	21
Zone 4:			
Scaup	Oct. 3–Dec. 27	2	6
Other Ducks	Oct. 3–Jan. 15	7	21
Coots	Same as for Other Ducks	25	75
Canada Geese and Brant (5):			
Zone 1	Oct. 3–Jan. 15	4	12
Zone 2	Oct. 19–Jan. 31	4	12
Zone 3	Oct. 19–Jan. 31	4	12
Zone 4	Oct. 3–Dec. 31	4	12
Zone 5	Oct. 3–Jan. 15	4	12
White-fronted Geese:			
Zone 1	Oct. 3–Jan. 15	10	30
Zone 2	Oct. 3–Jan. 15	10	30
Zone 3	Oct. 19–Jan. 31	10	30
Zone 4	Nov. 2–Feb. 14	10	30
Zone 5	Oct. 3–Jan. 15	10	30
Light Geese:			
Zone 1	Oct. 3–Jan. 15	20	60
Zone 2	Nov. 5–Jan. 15 &	20	60
	Feb. 6–Mar. 10	20	60
Zone 3	Nov. 26–Mar. 10	20	60
Zone 4	Oct. 19–Jan. 31	20	60
Zone 5 (6)	Oct. 3–Jan. 15	20	60
Zone 6	Oct. 3–Jan. 15	20	60
Montana:			
Ducks:		7	21

Area	Season dates	Limits	
		Bag	Possession
Scaup	Oct. 3–Dec. 27	2	6
Other Ducks	Oct. 3–Jan. 10 &	7	21
	Jan. 16–Jan. 20	7	21
Coots	Same as for Other Ducks	25	25
Dark Geese (7)	Oct. 3–Jan. 10 &	4	12
	Jan. 16–Jan. 20	4	12
Light Geese (7)	Same as for Dark Geese	20	60
Nevada:			
Ducks:		7	21
Northeast Zone:			
Scaup	Sept. 26–Oct. 20 &	2	6
	Oct. 30–Dec. 29	2	6
Other Ducks	Sept. 26–Oct. 20 &	7	21
	Oct. 30–Jan. 17	7	21
Northwest Zone:			
Scaup	Oct. 29–Jan. 3 &	2	6
	Jan. 13–Jan. 31	2	6
Other Ducks	Oct. 10–Jan. 3 &	7	21
	Jan. 13–Jan. 31	7	21
South Zone:			
Scaup	Nov. 7–Jan. 31	2	6
Other Ducks	Oct. 17–Jan. 25 &	7	21
	Oct. 28–Jan. 31	7	21
Moapa Valley Special Management Area (8):			
Scaup	Nov. 7–Jan. 31	2	6
Other Ducks	Oct. 31–Jan. 31	7	21
Coots and Moorhens	Same as for Other Ducks	25	75
Canada Geese and Brant (5):			
Northeast Zone	Same as for Other Ducks	4	12
Northwest Zone	Same as for Other Ducks	4	12
South Zone	Same as for Other Ducks	4	12
Moapa Valley Special Management Area (8):	Same as for Other Ducks	4	12
White-fronted Geese:			
Northeast Zone	Same as for Canada Geese	10	30
Northwest Zone	Same as for Canada Geese	10	30
South Zone	Same as for Canada Geese	10	30
Moapa Valley Special Management Area (8):	Same as for Canada Geese	10	30
Light Geese (9):			
Northeast Zone	Oct. 12–Oct. 20 &	20	60
	Oct. 30–Jan. 17 &	20	60
	Feb. 20–Mar. 7	20	60
Northwest Zone	Oct. 26–Jan. 3 &	20	60
	Jan. 13–Jan. 31 &	20	60
	Feb. 20–Mar. 7	20	60
South Zone	Oct. 17–Oct. 25 &	20	60
	Oct. 28–Jan. 31	20	60
Moapa Valley Special Management Area (8):	Oct. 31–Jan. 31	20	60
New Mexico:			
Ducks:		7	21
Scaup	Oct. 17–Jan. 10	2	6
Other Ducks	Oct. 19–Jan. 31	7	21
Coots and Moorhens	Same as for Other Ducks	25	75
Canada Geese and Brant (5):			
North Zone	Sept. 26–Oct. 11 &	4	12
	Nov. 2–Jan. 31	4	12
South Zone	Oct. 17–Jan. 31	4	12
White-fronted Geese:			
North Zone	Same as for Canada Geese	10	30
South Zone	Same as for Canada Geese	10	30
Light Geese:			
North Zone	Same as for Canada Geese	20	60
South Zone	Same as for Canada Geese	20	60
Oregon:			
Ducks:		7	21
Zone 1:			
Columbia Basin Unit:			
Scaup	Nov. 7–Jan. 31	2	6
Other Ducks	Oct. 17–Nov. 1 &	7	21
	Nov. 5–Jan. 31	7	21
Rest of Zone 1	Same as Columbia Basin Unit.		
Zone 2:			

Area	Season dates	Limits	
		Bag	Possession
Scaup	Oct. 10–Nov. 29 &	2	6
	Dec. 3–Jan. 6	2	6
Other Ducks	Oct. 10–Nov. 29 &	7	21
	Dec. 3–Jan. 24	7	21
Coots	Same as for Other Ducks	25	75
Canada Geese:			
Northwest Permit Zone (10)(11)	Oct. 24–Nov. 1 &	6	18
	Nov. 21–Jan. 13 &	6	18
	Feb. 6–Mar. 10	6	18
Tillamook County Management Area	Closed.		
Southwest Zone	Oct. 17–Nov. 1 &	4	12
	Nov. 10–Jan. 31	4	12
South Coast Zone	Oct. 3–Dec. 6 &	6	18
	Dec. 19–Jan. 7 &	6	18
	Feb. 20–Mar. 10	6	18
Eastern Zone	Oct. 17–Nov. 1 &	4	12
	Nov. 10–Jan. 31	4	12
Klamath County Zone	Oct. 10–Nov. 29 &	4	12
	Dec. 15–Jan. 31	4	12
Harney and Lake County Zone	Oct. 10–Nov. 29 &	4	12
	Dec. 15–Jan. 31	4	12
Malheur County Zone	Oct. 10–Nov. 29 &	4	12
	Dec. 15–Jan. 31	4	12
White-fronted Geese:			
Northwest Permit Zone (10)	Same as for Canada Geese	10	30
Tillamook County Management Area	Closed.		
Southwest Zone	Same as for Canada Geese	10	30
South Coast Zone	Same as for Canada Geese	10	30
Eastern Zone	Same as for Canada Geese	10	30
Klamath County Zone	Oct. 10–Nov. 29 &	10	30
	Jan. 16–Mar. 10	10	30
Harney and Lake County Zone (12)	Oct. 10–Nov. 29 &	10	30
	Jan. 16–Mar. 10	10	30
Malheur County Zone	Oct. 10–Nov. 29 &	10	30
	Jan. 16–Mar. 10	10	30
Light Geese:			
Northwest Permit Zone (10)	Same as for Canada Geese	6	18
Tillamook County Management Area	Closed.		
Southwest Zone	Same as for Canada Geese	6	18
South Coast Zone	Same as for Canada Geese	6	18
Eastern Zone	Same as for Canada Geese	6	18
Klamath County Zone (13)	Oct. 10–Nov. 29 &	6	18
	Jan. 16–Mar. 10	6	18
Harney and Lake County Zone (13)	Oct. 10–Nov. 29 &	6	18
	Jan. 16–Mar. 10	6	18
Malheur County Zone (13)	Oct. 10–Nov. 29 &	6	18
	Jan. 16–Mar. 10	6	18
Brant	Nov. 28–Dec. 13	2	6
Utah:			
Ducks:		7	21
Zone 1:			
Scaup	Oct. 3–Dec. 27	2	6
Other Ducks	Oct. 3–Jan. 16	7	21
Zone 2:			
Scaup	Nov. 6–Jan. 30	2	6
Other Ducks	Oct. 17–Jan. 30	7	21
Coots	Same as for Other Ducks	25	75
Canada Geese and Brant (5):			
East Box Elder County Zone	Oct. 3–Jan. 16	4	12
Wasatch Front Zone	Oct. 3–Oct. 15 &	4	12
	Nov. 7–Feb. 7	4	12
Northern Zone	Oct. 3–Oct. 15 &	4	12
	Oct. 24–Jan. 24	4	12
Southern Zone	Oct. 17–Jan. 30	4	12
White-fronted Geese:			
East Box Elder County Zone	Same as for Canada Geese and Brant.	10	30
Wasatch Front Zone	Same as for Canada Geese and Brant.	10	30
Northern Zone	Same as for Canada Geese and Brant.	10	30

Area	Season dates	Limits	
		Bag	Possession
Southern Zone	Same as for Canada Geese and Brant.	10	30
Light Geese	Oct. 26–Dec. 15 &	20	60
	Jan. 15–Mar. 10	20	60
Washington:			
Ducks:		7	21
East and West Zones (14):			
Scaup	Nov. 7–Jan. 31	2	6
Other Ducks	Oct. 17–Oct 25 &	7	21
	Oct. 28–Jan. 31	7	21
Coots	Same as for Other Ducks	25	75
Canada Geese:			
Area 1 (15)	Oct. 17–Nov. 29 &	4	12
	Dec. 12–Jan. 31	4	12
Area 2 Inland (16)(17)	Oct. 17–Nov. 1 &	4	12
	Nov. 25–Jan. 17 &	4	12
	Feb. 13–Mar. 10	4	12
Area 2 Coast (16)(17)	Oct. 17–Dec. 6 &	4	12
	Dec. 23–Jan. 24 &	4	12
	Feb. 13–Feb. 24	4	12
Area 3 (15)	Oct. 17–Oct. 29 &	4	12
	Nov. 7–Jan. 31	4	12
Area 4 (15)	Oct. 17–Nov. 1 &	4	12
	Nov. 4 only &	4	12
	Nov. 7–Jan. 31	4	12
Area 5 (15)	Oct. 17–Nov. 2 &	4	12
	Nov. 7–Jan. 31	4	12
White-fronted Geese:			
Area 1 (15)	Same as for Canada Geese	10	30
Area 2 Inland (16)	Same as for Canada Geese	10	30
Area 2 Coast (16)	Same as for Canada Geese	10	30
Area 3 (15)	Same as for Canada Geese	10	30
Area 4 (15)	Same as for Canada Geese	10	30
Area 5 (15)	Oct. 17–Nov. 1 &	10	30
	Nov. 7–Jan. 31	10	30
Light Geese:			
Area 1 (15)	Oct. 17–Nov. 29 &	6	18
	Dec. 12–Jan. 31 &	6	18
	Feb. 13–Feb. 23	6	18
Area 2 Inland (16)	Same as for Canada Geese	6	18
Area 2 Coast (16)	Same as for Canada Geese	6	18
Area 3 (15)	Same as for Canada Geese	6	18
Area 4 (15)	Nov. 7–Jan. 31 &	6	18
	Feb. 13–Mar. 3	6	18
Area 5 (15)	Oct. 17–Nov. 1 &	6	18
	Nov. 4–Jan. 31	6	18
Brant (18):			
Coastal Zone	Jan. 9–Jan. 31	2	6
Puget Sound Zone	Jan. 16–Jan. 31	2	6
Wyoming:			
Ducks:		7	21
Snake River Zone:			
Scaup	Sept. 26–Dec. 20	2	6
Other Ducks	Sept. 26–Jan. 8	7	21
Balance of State Zone:			
Scaup	Sept. 26–Dec. 20	2	6
Other Ducks	Sept. 26–Jan. 8	7	21
Coots	Same as for Other Ducks	15	45
Dark Geese	Sept. 26–Dec. 31	4	12
Light Geese	Sept. 26–Dec. 31	10	30

(1) In *Arizona,* the daily bag limit may include no more than either 2 female mallards or 2 Mexican-like ducks, or 1 of each; and no more than 6 female mallards and Mexican-like ducks, in the aggregate, may be in possession. For black-bellied whistling ducks, the daily bag limit is 1 and the possession limit is 3.

(2) In *California,* the daily bag and possession limits for Canada geese and white-fronted geese are in the aggregate.

(3) In *California,* small Canada geese are cackling and Aleutian Canada geese, and large Canada geese are western and lesser Canada geese.

(4) In *California,* in the Northeastern Zone, the daily bag limit may include no more than 2 large Canada geese.

(5) The daily bag and possession limits for Canada geese and brant are in the aggregate.

(6) In *Idaho,* the season on light geese is closed in Fremont and Teton Counties.

(7) In *Montana,* check State regulations for special seasons and exceptions.

(8) In *Nevada,* youth 17 years of age or younger are allowed to hunt on October 24 on the Moapa Valley portion of Overton Wildlife Management Area (WMA). Youth must be accompanied by an adult who is 18 years of age or older.

(9) In *Nevada,* there is no open season on light geese in Ruby Valley within Elko and White Pine Counties. In addition, the season is closed in Alkali Lake, Fernley, Humboldt, Kirch, Mason Valley, Scripps, and Steptoe Valley WMAs and Washoe State Park from February 20 to March 7.
(10) In *Oregon,* in the Northwest Permit Zone, see State regulations for specific dates, times, and conditions of permit hunts and closures.
(11) In *Oregon,* in the Northwest Permit Zone, the season for dusky Canada geese is closed.
(12) In *Oregon,* in Lake County, the daily bag and possession limits for white-fronted geese are 1 and 3, respectively.
(13) In *Oregon,* in Klamath County, Harney and Lake County, and Malheur County Zones, during February 1 through March 10, the daily bag and possession limits are 20 and 60, respectively.
(14) In *Washington,* the daily bag limit in the West Zone may include no more than 2 scoters, 2 long-tailed ducks, and 2 goldeneyes, with the possession limit three times the daily bag limit. The daily bag and possession limit, and the season limit, for harlequins is 1.
(15) In *Washington,* in Areas 1, 3, and 5, hunting is allowed each day. In Area 4, hunting is allowed only on Saturdays, Sundays, Wednesdays, and certain holidays. See State regulations for details, including shooting hours.
(16) In *Washington,* in Areas 2 Inland and 2 Coast, see State regulations for specific dates, times, and conditions of permit hunts and closures.
(17) In *Washington,* in Areas 2 Inland and 2 Coast, the season for dusky Canada geese is closed.
(18) In *Washington,* brant may be hunted in Clallam, Pacific, Skagit, and Watcom Counties only; see State regulations for specific dates.

(f) *Youth and Veteran–Active Military Personnel Waterfowl Hunting Days.*

The following seasons are open only to youth and veteran–active military personnel, except where noted. Youth must be accompanied into the field by an adult 18 years of age or older. This adult cannot duck hunt but may participate in other open seasons.

Limits: Bag limits may include ducks, geese, swans, mergansers, coots, moorhens, and gallinules. The bag and possession limits are the same as those allowed in the regular season except in States that are allowed a daily bag limit of 1 or 2 scaup during different portions of the season, in which case the daily bag limit is 2 scaup per day and the possession limit is 6 scaup per day. Flyway species and area restrictions remain in effect.

Definitions

Youth: States may use their established definition of age for youth hunters. However, youth hunters may not be older than 17 years of age. Youth hunters 16 years of age and older must possess a Federal Migratory Bird Hunting and Conservation Stamp (also known as Federal Duck Stamp). Swans may only be taken by participants possessing applicable swan permits.

Veteran–Active Military Personnel: Veterans (as defined in section 101 of title 38, U.S. Code) and members of the Armed Forces on active duty, including members of the National Guard and Reserves on active duty (other than for training), may participate. All hunters must possess a Federal Migratory Bird Hunting and Conservation Stamp (also known as Federal Duck Stamp). Swans may only be taken by participants possessing applicable swan permits.

Area	Species	Season dates
ATLANTIC FLYWAY		
Connecticut (1)	Ducks, geese, mergansers, and coots	Oct. 3 & 31.
Delaware (1)	Ducks, geese, brant, mergansers, and coots	Oct. 17 & Feb. 6.
Florida	Ducks, geese, mergansers, coots, and moorhens.	
Youth		Nov. 14 & Feb. 13.
Veteran–Active Military Personnel		Feb. 6 & 7.
Georgia	Ducks, geese, mergansers, coots, moorhens, and gallinules.	Nov. 14 & 15.
Maine (1):	Ducks, geese, mergansers, and coots.	
North Zone		Sept. 19 & Dec. 12.
South Zone		Sept. 26 & Oct. 17.
Coastal Zone		Sept. 26 & Oct. 24.
Maryland (2)(3)	Ducks, sea ducks, Canada geese, light geese, brant, and coots.	Nov. 7 & Feb. 6.
Massachusetts:	Ducks, geese, mergansers, and coots.	
Youth Hunters		Sept. 26 & Oct. 10.
Veteran–Active Military Personnel		Oct. 3 & Jan. 30.
New Hampshire (1)	Ducks, geese, mergansers, and coots	Sept. 26 & 27.
New Jersey:	Ducks, geese, mergansers, coots, moorhens, and gallinules.	
Youth		
North Zone		Oct. 10 & Feb. 6.
South Zone		Nov. 7 & Feb. 6.
Coastal Zone		Feb. 6 & 13.
Veteran–Active Military Personnel		Oct. 3 & Feb. 6.
New York:	Ducks, Canada geese, brant, mergansers, coots.	
Youth		
Long Island Zone		Nov. 7 & 8.
Lake Champlain Zone		Sept. 26 & 27.
Northeastern Zone		Sept. 19 & 20.
Southeastern Zone		Sept. 19 & 20.
Western Zone		Oct. 3 & 4.
Veteran–Active Military Personnel		
Long Island Zone		Nov. 14 & 15.
Northeastern Zone		Sept. 19 & 20.
Southeastern Zone		Oct. 10 & 11.
Western Zone		Nov. 11 & 14.
North Carolina (4)(5)	Ducks, geese, brant, tundra swans, mergansers, and coots.	Feb. 6 & 13.
Pennsylvania (6):	Ducks, Canada geese, brant, mergansers, coots, moorhens, and gallinules.	
North Zone		Sept. 19 & Jan. 16.

Area	Species	Season dates
South Zone		Sept. 19 & Jan. 23.
Northwest Zone		Sept. 19 & Dec. 19.
Lake Erie Zone		Sept. 19 & Oct. 24.
Rhode Island (1)	Ducks, sea ducks, geese, mergansers, and coots	Oct. 24 & 25.
South Carolina	Ducks, geese, mergansers, and coots	Feb. 6 & 13.
Vermont (1)	Ducks, geese, mergansers and coots	Sept. 26 & 27.
Virginia (5)	Ducks, Canada geese, tundra swans, mergansers, and coots.	Oct. 24 & Feb. 6.
West Virginia (1)	Ducks, geese, mergansers, coots, and gallinules	Sept. 19 & Nov. 7.
MISSISSIPPI FLYWAY		
Alabama	Ducks, geese, mergansers, coots, moorhens, and gallinules.	Nov. 21 & Feb. 6.
Arkansas	Ducks, geese, mergansers, coots, moorhens, and gallinules.	Dec. 5 & Feb. 6.
Illinois (1):	Ducks, geese, mergansers, and coots.	
North Zone		Oct. 10 & 11.
Central Zone		Oct. 17 & 18.
South Central Zone		Nov. 7 & 8.
South Zone		Nov. 14 & 15.
Indiana:	Ducks, geese, mergansers, and coots.	
North Zone		Oct. 17 & 18.
Central Zone		Oct. 24 & 25.
South Zone		Oct. 31 & Nov. 1.
Iowa (1):	Ducks, mergansers, coots, moorhens, and gallinules.	
North Zone		Sept. 19 & 20.
Missouri River Zone		Oct. 3 & 4.
South Zone		Sept. 26 & 27.
Kentucky (1):	Ducks, geese, mergansers, coots, moorhens, and gallinules.	
West Zone		Feb. 6 & 7.
East Zone		Nov. 7 & 8.
Louisiana:	Ducks, geese, mergansers, coots, moorhens, and gallinules.	
Youth		
West Zone		Nov. 7 & Jan. 30.
East Zone		Nov. 14 & Feb. 6.
Coastal Zone		Nov. 7 & Nov. 8.
Veteran–Active Military Personnel		
West Zone		Nov. 8 & Jan. 31.
East Zone		Nov. 15 & Feb. 7.
Coastal Zone		Jan. 30 & Jan. 31.
Michigan	Ducks, geese, mergansers, coots, moorhens, and gallinules.	Sept. 19 & 20.
Minnesota (1)	Ducks, geese, mergansers, coots, moorhens, and gallinules.	Sept. 12 & 13.
Mississippi	Ducks, geese, mergansers, coots, moorhens, and gallinules.	Feb. 6 & Feb. 7.
Missouri (1):	Ducks, geese, mergansers, coots, moorhens, and gallinules.	
North Zone		Oct. 24 & 25.
Middle Zone		Oct. 24 & 25.
South Zone		Nov. 21 & 22.
Ohio:	Ducks, geese, mergansers, coots, moorhens, and gallinules.	
Lake Erie Marsh		Oct. 3 & 4.
North Zone		Oct. 3 & 4.
South Zone		Oct. 3 & 4.
Tennessee:	Ducks, geese, mergansers, and coots.	
Youth		
Reelfoot Zone		Feb. 6 & 13.
Remainder of State		Feb. 6 & 13.
Veteran–Active Military Personnel		
Reelfoot Zone		Feb. 7 & 14.
Remainder of State		Feb. 7 & 14.
Wisconsin (1)	Ducks, geese, mergansers, coots, moorhens, and gallinules.	Sept. 19 & 20.
CENTRAL FLYWAY		
Colorado:	Ducks, dark geese, mergansers, and coots.	
Mountain/Foothills Zone		Sept. 26 & 27.
Northeast Zone		Oct. 3 & 4.
Southeast Zone		Oct. 24 & 25.
Kansas (7):	Ducks, geese, mergansers, and coots.	
High Plains		Oct. 3 & 4.
Low Plains:		

Area	Species	Season dates
Early Zone		Oct. 3 & 4.
Late Zone		Oct. 24 & 25.
Southeast Zone		Nov. 7 & 8.
Montana (1)	Ducks, geese, mergansers, and coots	Sept. 26 & 27.
Nebraska (1):	Ducks, geese, mergansers, and coots.	
Zone 1		Oct. 3 & 4.
Zone 2		Sept. 26 & 27.
Zone 3		Oct. 17 & 18.
Zone 4		Sept. 26 & 27.
New Mexico (1):	Ducks, mergansers, coots, and moorhens.	
North Zone		Sept. 26 & 27.
South Zone		Oct. 3 & 4.
North Dakota	Ducks, geese, mergansers, and coots	Sept. 19 & 20.
Oklahoma:	Ducks, geese mergansers, and coots.	
High Plains		Oct. 3 & Feb. 6.
Low Plains:		
Zone 1		Nov. 7 & Feb. 6.
Zone 2		Nov. 7 & Feb. 6.
South Dakota (1)	Ducks, Canada geese, mergansers, and coots	Sept. 12 & 13.
Texas (1):	Ducks, geese, mergansers, coots, moorhens, and gallinules.	
High Plains		Oct. 24 & 25.
Low Plains:		
North Zone		Nov. 7 & 8.
South Zone		Oct. 31 & Nov. 1.
Wyoming:	Ducks, geese, mergansers, and coots.	
Zone C1		Sept. 26 & 27.
Zone C2		Sept. 19 & 20.
Zone C3		Sept. 19 & 20.
PACIFIC FLYWAY		
Arizona (1):	Ducks, geese, mergansers, coots, and moorhens.	
North Zone		Sept. 26 & 27.
South Zone		Feb. 6 & 7.
California:		
Youth	Ducks, geese, brant, mergansers, coots, and moorhens.	
Northeastern Zone		Sept. 19 & 20.
Colorado River Zone		Feb. 6 & 7.
Southern Zone		Feb. 6 & 7.
Southern San Joaquin Valley Zone		Feb. 6 & 7.
Balance of State Zone		Feb. 6 & 7.
Veteran–Active Military Personnel	Ducks, brant, mergansers, coots, and moorhens.	
Northeastern Zone		Jan. 16 & 17.
Southern Zone		Feb. 13 & 14.
Southern San Joaquin Valley Zone		Feb. 13 & 14.
Balance of State Zone		Feb. 13 & 14.
Colorado:	Ducks, geese, mergansers, and coots.	
East Zone		Sept. 26 & 27.
West Zone		Oct. 24 & 25.
Idaho	Ducks, geese, mergansers, and coots	Sept. 26 & 27.
Montana (1)	Ducks, geese, mergansers, and coots	Sept. 26 & 27.
Nevada (1)(5):	Ducks, geese, swans, mergansers, coots, and moorhens.	
Northeast Zone		Sept. 12 & 13.
Northwest Zone		Sept. 26 & Feb. 13.
South Zone		Feb. 13 & 14.
New Mexico (1)	Ducks, mergansers, coots, and moorhens	Oct. 3 & 4.
Oregon	Ducks, geese, mergansers, and coots.	
Youth		Sept. 26 & 27.
Veteran–Active Military Personnel		Feb. 6.
Utah (1)(5):	Ducks, dark geese, swans, mergansers, and coots.	
Zone 1		Sept. 19.
Zone 2		Oct. 3.
Washington (8):	Ducks, geese, brant, mergansers, and coots.	
Youth		
East Zone		Oct. 3 & Feb. 6.
West Zone		Sept. 26 & Feb. 6.
Veteran–Active Military Personnel		
East Zone		Feb. 6.
West Zone		Feb. 6.
Wyoming	Ducks, geese, mergansers, and coots	Sept. 19 & 20.

(1) The season is open to youth hunters only.

(2) In *Maryland,* youth hunter(s) must be accompanied by an adult 21 years of age or older that holds a valid Maryland hunting license or is exempt from the hunting license requirements. One adult may take one or more young hunters, and that adult may call waterfowl, assist with decoys and retrieve downed birds but may not possess a hunting weapon and may not participate in other seasons that are open on the youth waterfowl hunting days. Active military and honorably discharged veterans, of any age, that possess a valid Maryland hunting license or are exempt from the hunting license requirements may also hunt waterfowl on November 7, 2020, and February 6, 2021. Active military and honorably discharged veterans at least 21 years of age or older may possess hunting weapons and hunt while also providing assistance to eligible youth hunters.

(3) In *Maryland,* the bag limit for Canada geese is 1 in the AP Zone and 5 in the RP Zone.

(4) In *North Carolina,* the daily bag limit in the Northeast Hunt Zone may not include Canada geese and white-fronted geese except by permit.

(5) In *North Carolina, Virginia, Nevada,* and *Utah,* the daily bag limit may not include swans except by permit.

(6) In *Pennsylvania,* September 19 is open to youth hunters only.

(7) In *Kansas,* the adult accompanying the youth must possess any licenses and/or stamps required by law for that individual to hunt waterfowl.

(8) In *Washington,* the brant season and light goose season is closed in September.

■ 7. Section 20.106 is revised to read as follows:

§ 20.106 Seasons, limits, and shooting hours for sandhill cranes.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits on the species designated in this section are as follows:

Shooting and hawking hours are one-half hour before sunrise until sunset, except as otherwise noted. Area descriptions were published in the August 21, 2020, **Federal Register** (85 FR 51854).

Federally authorized, State-issued permits are issued to individuals, and only the individual whose name and address appears on the permit at the time of issuance is authorized to take sandhill cranes at the level allowed by the permit, in accordance with provisions of both Federal and State regulations governing the hunting season. The permit must be carried by the permittee when exercising its provisions and must be presented to any law enforcement officer upon request. The permit is not transferable or assignable to another individual, and may not be sold, bartered, traded, or otherwise provided to another person. If the permit is altered or defaced in any way, the permit becomes invalid.

CHECK STATE REGULATIONS FOR AREA DESCRIPTIONS AND ANY ADDITIONAL RESTRICTIONS.

Area	Season dates	Limits	
		Bag	Possession
MISSISSIPPI FLYWAY			
Alabama (1)			
North Zone	Dec. 4–Jan. 31	3	3.
Kentucky (1)(2)	Dec. 7–Jan. 31	2	3 per season.
Minnesota (1)			
NW Goose Zone	Sept. 19–Oct. 25	2	6.
Tennessee (1):			
Southeast Zone (3)	Dec. 5–Jan. 31	3	3 per season.
Rest of State	Dec. 5–Jan. 31	2	2 per season.
CENTRAL FLYWAY			
Colorado (1)	Oct. 3–Nov. 29	3	9.
Kansas (1)(2)(4)			
West Zone	Oct. 17–Dec. 13	3	9.
Central Zone	Nov. 11–Jan. 7	3	9.
Montana:			
Regular Season Area (1)	Oct. 3–Nov. 29	3	9.
Special Season Area (5)	Sept. 1–Oct. 30	2 per season	
New Mexico:			
Regular Season Area (1)	Oct. 24–Jan. 24	3	6.
Middle Rio Grande Valley Area (5)(6)	Nov. 21 &	3	3 per season.
	Nov. 7–Nov. 8 &	3	6 per season.
	Nov. 28–Nov. 29	3	6 per season.
	Dec. 5–Dec. 6 &	3	6 per season.
	Jan. 2–Jan. 3 &	3	6 per season.
	Jan. 9–Jan. 10	3	6 per season.
Southwest Area (5)	Oct. 24–Nov. 1 &	3	6 per season.
	Jan. 2–Jan. 3	3	6 per season.
Estancia Valley (5)(7)	Oct. 24–Nov. 1	3	6.
North Dakota (1):			
Area 1	Sept. 19–Nov. 15	3	9.
Area 2	Sept. 19–Nov. 15	2	6.
Oklahoma (1)	Oct. 24–Jan. 24	3	9.
South Dakota (1)	Sept. 26–Nov. 22	3	9.
Texas (1):			
Zone A	Oct. 31–Jan. 31	3	9.
Zone B	Nov. 27–Jan. 31	3	9.
Zone C	Dec. 19–Jan. 24	2	6.
Wyoming:			
Regular Season (Area 7) (1)	Sept. 12–Nov. 8	3	9.

Area	Season dates	Limits	
		Bag	Possession
Riverton-Boysen Unit (Area 4) (5)	Oct. 3–Oct. 25	1 per season.	
Big Horn, Hot Springs, Park, and Washakie Counties (Area 6) (5).	Sept. 19–Oct. 11	1 per season.	
Johnson, Natrona, and Sheridan Counties (Area 8) (5)	Sept. 1–Sept. 30	1 per season.	
PACIFIC FLYWAY			
Arizona (5):			
Zone 1 (8)	Nov. 13–Dec. 13	3 per season.	
Zone 2 (9)	Nov. 20–Nov. 30	3 per season.	
Zone 3 (10)	Nov. 28–Dec. 16	3 per season.	
Idaho (5):			
Areas 1, 2, 3, 4, 5, & 6	Sept. 1–Sept. 30	2 per season.	
Montana (5):			
Zones 1 & 4	Sept. 1–Oct. 30	1	1
Zones 2 & 3	Sept. 1–Oct. 30	2	2
Utah (5):			
Cache County	Sept. 5–Sept. 13	1 per season.	
East Box Elder County	Sept. 5–Nov. 3	1 per season.	
Rich County	Sept. 5–Sept. 13	1 per season.	
Uintah County	Oct. 3–Dec. 1	1 per season.	
Wyoming (5):			
Areas 1, 2, 3, & 5	Sept. 1–Sept. 8	1 per season.	

(1) Each person participating in the regular sandhill crane seasons must have a valid sandhill crane hunting permit in their possession while hunting.
(2) In *Kansas* and *Kentucky,* shooting hours are from sunrise until sunset.
(3) In *Tennessee,* in the Southeast Zone, the season is also closed from January 15 through January 17, 2021.
(4) In *Kansas,* each person desiring to hunt sandhill cranes is required to pass an annual, online sandhill crane identification examination.
(5) Hunting is by State permit only. See State regulations for further information.
(6) In *New Mexico,* in the Middle Rio Grande Valley Area (Bernardo and Casa Colorado Wildlife Management Areas), the season is only open for youth hunters on November 21. See State regulations for further details.
(7) In *New Mexico,* in the Estancia Valley Area, the season will be closed to crane hunting on October 28.
(8) In *Arizona,* in Zone 1, season dates are November 13 to 15, November 20 to 22, November 24 to 26, November 28 to 30, December 2 to 4, December 6 to 8, and December 11 to 13. November 13 to 15 is restricted to archery hunters only and December 11 to 13 is restricted to youth hunters only.
(9) In *Arizona,* in Zone 2, season dates are November 20 to 22, and November 28 to 30.
(10) In *Arizona,* in Zone 3, season dates are November 28 to 30, December 2 to 4, December 6 to 8, December 10 to 12, and December 14 to 16.

■ 8. Section 20.107 is revised to read as follows:

§ 20.107 Seasons, limits, and shooting hours for swans.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits on the species designated in this section are as follows:

Shooting hours are one-half hour before sunrise until sunset, except as otherwise restricted by State regulations. Hunting is by State permit only.

Federally authorized, State-issued permits are issued to individuals, and only the individual whose name and address appears on the permit at the time of issuance is authorized to take swans at the level allowed by the permit, in accordance with provisions of both Federal and State regulations governing the hunting season. The permit must be carried by the permittee when exercising its provisions and must be presented to any law enforcement officer upon request. The permit is not transferable or assignable to another individual, and may not be sold, bartered, traded, or otherwise provided to another person. If the permit is altered or defaced in any way, the permit becomes invalid.

Note: Successful permittees must immediately validate their harvest by that method required in State regulations.

CHECK STATE REGULATIONS FOR ADDITIONAL RESTRICTIONS AND DELINEATIONS OF GEOGRAPHICAL AREAS. SPECIAL RESTRICTIONS MAY APPLY ON FEDERAL AND STATE PUBLIC HUNTING AREAS AND FEDERAL INDIAN RESERVATIONS.

Area	Season dates	Limits
ATLANTIC FLYWAY		
Delaware	Nov. 11–Jan. 30	1 tundra swan per permit.

Area	Season dates	Limits
North Carolina	Nov. 7–Jan. 30	1 tundra swan per permit.
Virginia	Nov. 18–Jan. 31	1 tundra swan per permit.
CENTRAL FLYWAY (1)		
Montana	Oct. 3–Jan. 7	1 tundra swan per permit.
North Dakota	Oct. 3–Jan. 1	1 tundra swan per permit.
South Dakota	Oct. 3–Jan. 8	1 tundra swan per permit.
PACIFIC FLYWAY (1)		
Idaho (2)	Oct. 19–Dec. 1	1 swan per season.
Montana (2)	Oct. 10–Dec. 1	1 swan per season.
Nevada (3)(4)	Oct. 10–Jan. 3 &	2 swans per season.
	Jan. 13–Jan. 31	2 swans per season.
Utah (3)(4)	Oct. 3–Dec. 13	1 swan per season.

(1) See State regulations for description of area open to swan hunting.
(2) In *Idaho* and *Montana,* all harvested swans must be reported by way of a bill measurement card within 3 days of harvest.
(3) In *Nevada* and *Utah,* all harvested swans and tags must be checked or registered within 3 days of harvest.
(4) Harvests of trumpeter swans are limited to 20 in Utah and 10 in Nevada. When it has been determined that the quota of trumpeter swans allotted to Nevada and Utah have been filled, the season for taking of any swan species in the respective State will be closed by either the Director upon giving public notice through local information media at least 48 hours in advance of the time and date of closing, or by the State through State regulations with such notice and time (not less than 48 hours) as they deem necessary.

■ 9. Section 20.109 is revised to read as follows:

§ 20.109 Extended seasons, limits, and hours for taking migratory game birds by falconry.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Hawking hours are one-half hour before sunrise until sunset except as otherwise restricted by State regulations.

Area descriptions were published in the August 21, 2020, **Federal Register** (85 FR 51854).

Limits: The daily bag limit may include no more than 3 migratory game birds in the aggregate. The possession limit is three times the daily bag limit. These limits apply to falconry during both regular hunting seasons and extended falconry seasons, unless further restricted by State regulations. The falconry bag and possession limits are not in addition to regular season limits. Unless otherwise specified, extended falconry for ducks does not include sea ducks within the special sea duck areas.

Although many States permit falconry during the gun seasons, only extended falconry seasons are shown below. Please consult State regulations for details.

CHECK STATE REGULATIONS FOR ADDITIONAL RESTRICTIONS AND DELINEATIONS OF GEOGRAPHICAL AREAS. SPECIAL RESTRICTIONS MAY APPLY ON FEDERAL AND STATE PUBLIC HUNTING AREAS AND FEDERAL INDIAN RESERVATIONS.

Area	Extended falconry dates
ATLANTIC FLYWAY	
Delaware:	
Doves	Feb. 1–Feb. 19.
Rails	Nov. 26–Jan. 7.
Woodcock	Oct. 1–Nov. 3 & Feb. 1–Mar. 10.
Ducks, mergansers, and coots	Feb. 1–Mar. 6.
Brant	Feb. 1–Feb. 24.
Florida:	
Doves	Feb. 1–Feb. 17.
Rails	Nov. 10–Dec. 16.
Woodcock	Nov. 24–Dec. 17 & Feb. 1–Mar. 10.
Moorhens and gallinules	Nov. 10–Dec. 13.
Ducks, mergansers, and coots	Nov. 3–Nov. 12 & Feb. 8–Feb. 4.
Georgia:	
Ducks, geese, moorhens, gallinules, and sea ducks	Nov. 30–Dec. 5.
Maine:	
Ducks, geese, and brant:	
North Zone	Dec. 19–Feb. 9.
South & Coastal Zones	Jan. 7–Feb. 27.
Maryland:	
Doves	Jan. 12– Jan. 30.
Rails	Nov. 21–Jan. 2.
Woodcock	Oct. 1–Oct. 20 & Feb. 1–Mar. 10.
Ducks	Feb. 1–Mar. 10.
Brant	Feb. 1–Mar. 10.
Light Geese	Feb. 25–Mar. 10.
Massachusetts:	
Ducks, mergansers, sea ducks, and coots	Oct. 8–Oct. 10 & Jan. 26–Feb. 8.
New Hampshire:	
Ducks, mergansers, and coots:	
Northern Zone	Dec. 1–Jan. 14.
Inland Zone	Nov. 9–Nov. 16 & Dec. 13–Jan. 18.

Area	Extended falconry dates
Coastal Zone	Jan. 25–Mar. 10.
New Jersey:	
Woodcock:	
North Zone	Oct. 1–Oct. 16 & Nov. 30–Jan. 30.
South Zone	Oct. 1–Nov. 6 & Dec. 2–Dec. 16 & Jan. 3–Jan. 30.
Ducks, mergansers, coots, and brant:	
North Zone	Jan. 17–Mar.10.
South Zone	Jan. 17–Mar. 10.
Coastal Zone	Jan. 31–Mar. 10.
New York:	
Ducks, mergansers and coots:	
Long Island Zone	Nov. 1–Nov. 20 & Nov. 30–Dec. 11 & Feb. 1–Feb. 13.
Northeastern Zone	Oct. 1–Oct. 2 & Oct. 26–Oct. 30 & Dec. 7–Jan. 13.
Southeastern Zone	Oct. 1–Oct. 16 & Nov. 30–Dec. 4 & Dec. 21–Jan. 13.
Western Zone	Oct. 1–Oct. 16 & Nov. 11–Nov. 27 & Jan. 4–Jan. 13.
North Carolina:	
Doves	Oct. 17–Oct. 31.
Rails, moorhens, and gallinules	Nov. 28–Jan. 2.
Woodcock	Nov. 7–Nov. 28 & Feb. 1–Feb. 27.
Ducks, mergansers and coots	Oct. 17–Oct. 31 & Feb. 1–Feb. 13.
Pennsylvania:	
Doves	Nov. 28–Dec. 17.
Rails	Nov. 21–Jan. 2.
Woodcock and snipe	Sept. 1–Oct. 16 & Nov. 28–Dec. 12 & Dec. 24–Jan. 2.
Moorhens and gallinules	Nov. 21–Dec. 31.
Ducks, mergansers, and coots:	
North Zone	Oct. 26–Nov. 16 & Feb. 9–Mar. 10.
South Zone	Oct. 26–Nov. 16 & Feb. 9–Mar. 10.
Northwest Zone	Dec. 14–Dec. 28 & Feb. 1–Mar. 10.
Lake Erie Zone	Jan. 18–Mar. 10.
Canada and white-fronted geese:	
SJBP Zone	Mar. 4–Mar. 10.
AP Zone	Jan. 7–Mar. 10.
RP Zone	Mar. 6–Mar. 10.
South Carolina:	
Ducks, mergansers, and coots	Nov. 2–Nov. 20 & Dec. 1–Dec. 11.
Virginia:	
Doves	Jan. 20–Jan. 31.
Woodcock	Oct. 17–Nov. 6 & Dec. 1–Dec. 23 & Jan. 14–Jan. 31.
Rails, moorhens, and gallinules	Nov. 18–Dec. 22.
Ducks, mergansers, and coots	Nov. 30–Dec. 18 & Feb. 1–Feb. 12.
Canada geese:	
Eastern (AP) Zone	Nov. 18–Nov. 29 & Jan. 2–Jan. 15 & Feb. 1–Feb. 24.
Western (SJBP) Zone	Feb. 16–Feb. 24.
Brant	Oct. 17–Nov. 23 & Nov. 30–Dec. 18.
MISSISSIPPI FLYWAY	
Arkansas:	
Ducks, mergansers, and coots	Feb. 1–Feb. 15.
Illinois:	
Doves	Nov. 15–Dec. 1.
Rails	Sept. 1–Sept. 4 & Nov. 14–Dec. 16.
Woodcock	Sept. 1–Oct. 16 & Dec. 1–Dec. 16.
Ducks, mergansers, and coots	Feb. 10–Mar. 10.
Indiana:	
Doves	Oct. 19–Oct. 31 & Jan. 6–Jan. 9.
Woodcock	Sept. 20–Oct. 14 & Nov. 29–Jan. 4.
Ducks, mergansers, and coots:	
North Zone	Sept. 27–Sept. 30 & Feb. 14–Mar. 10.
Central Zone	Oct. 24–Oct. 30 & Feb. 17–Mar. 10.
South Zone	Oct. 31–Nov. 6 & Feb. 17–Mar. 10.
Iowa:	
Ducks, mergansers, and coots	Jan. 2–Jan. 30.
Kentucky:	
Ducks, mergansers, and coots	Nov. 30–Dec. 6 & Feb. 1–Feb. 15.
Louisiana:	
Doves	Sept. 17–Oct. 3.
Rails and moorhens	Nov. 5–Nov. 13 & Jan. 7–Jan. 31.
Woodcock	Nov. 2–Dec. 17.
Ducks:	
West Zone	Nov. 5–Nov. 13 & Jan. 25–Jan. 31.
East Zone	Nov. 5–Nov. 20.
Coastal Zone	Nov. 5–Nov. 13 & Jan. 25–Jan. 31.
Michigan:	
Ducks, mergansers, coots, and moorhens	Dec. 28–Jan. 10 & Feb. 24–Mar. 10.

Area	Extended falconry dates
Minnesota:	
Doves	Nov. 30–Dec. 16.
Rails and snipe	Nov. 3–Dec. 16.
Woodcock	Sept. 1–Sept. 18 & Nov. 3–Dec. 16.
Ducks, mergansers, coots, moorhens, and gallinules	Dec. 12–Jan. 25.
Mississippi:	
Doves	Dec. 2–Dec. 18.
Ducks, mergansers and coots	Feb. 1–Mar. 1.
Missouri:	
Doves	Nov. 30–Dec. 16.
Ducks, mergansers, and coots	Sept. 12–Sept. 27 & Feb. 10–Mar. 10.
Tennessee:	
Doves	Sept. 29–Sept. 30 & Jan. 16–Jan. 30.
Rails, moorhens, and gallinules	Nov. 10–Dec. 14.
Woodcock	Nov. 1–Nov. 8 & Dec. 2–Jan. 9 & Feb. 1–Feb. 15.
Snipe	Nov. 14–Feb. 28.
Moorhens and gallinules	Nov. 10–Dec. 12.
Ducks, mergansers, and coots:	
Reelfoot Zone	Nov. 30–Dec. 4 & Feb. 1–Feb. 28.
Rest of the State	Nov. 30–Dec. 4 & Feb. 1–Feb. 28.
Wisconsin:	
Rails, snipe, moorhens, and gallinules:	
North Zone	Sept. 1–Sept. 25 & Nov. 25–Dec. 6.
South Zone	Sept. 1–Oct. 2 & Oct. 12–Oct. 16.
Mississippi River Zone	Same as South Zone.
Woodcock	Sept. 1–Sept. 18 & Nov. 3–Dec. 16.
Ducks, mergansers, and coots	Sept. 19–Sept. 20 & Jan. 8–Feb. 12.
CENTRAL FLYWAY	
Kansas:	
Ducks, mergansers, and coots:	
Low Plains	Feb. 24–Mar. 10.
Montana (1):	
Ducks, mergansers, and coots	Sept. 23–Oct. 2.
Nebraska:	
Ducks, mergansers, and coots:	
Zone 1	Feb. 25–Mar. 10.
Zone 2	Feb. 25–Mar. 10.
Zone 3	Feb. 25–Mar. 10.
Zone 4	Feb. 25–Mar. 10.
New Mexico:	
Doves:	
North Zone	Nov. 30–Dec. 4 & Dec. 21–Jan. 1.
South Zone	Oct. 29–Nov. 5 & Nov. 22–Nov. 30.
Band-tailed pigeons:	
North Zone	Sept. 1–Sept. 14.
South Zone	Oct. 1–Oct. 14.
Ducks and coots	Sept. 12–Sept. 20.
Sandhill cranes (2):	
Regular Season Area	Oct. 10–Oct. 23.
Estancia Valley Area	Nov. 2–Dec. 22.
Common moorhens	Nov. 21–Dec. 27.
Sora and Virginia rails	Nov. 21–Dec. 27.
North Dakota:	
Ducks, mergansers, coots, and snipe	Sept. 1–Sept. 4 & Sept. 7–Sept. 11.
Oklahoma:	
Doves	Feb. 20–Mar. 8.
Ducks, mergansers, and coots:	
Low Plains	Feb. 15–Mar. 1.
Gallinules and rails	Feb. 1–Mar. 9.
Woodcock	Dec. 14–Feb. 13.
Sandhill cranes	Jan. 25–Feb. 7.
South Dakota:	
Ducks, mergansers, and coots:	
High Plains	Sept. 1–Sept. 8.
Low Plains:	
North Zone	Sept. 1–Sept. 25 & Dec. 12–Dec. 19.
Middle Zone	Sept. 1–Sept. 25 & Dec. 12–Dec. 19.
South Zone	Oct. 3–Oct. 23 & Jan. 9–Jan. 18.
Texas:	
Doves	Nov. 20–Dec. 6.
Rails, gallinules, and woodcock	Feb. 1–Feb. 15.
Ducks, mergansers, and coots:	
Low Plains	Feb. 1–Feb. 15.
Wyoming:	

Area	Extended falconry dates
Doves	Nov. 30–Dec. 16.
Rails	Nov. 10–Dec. 16.
Ducks, mergansers, and coots	
Zone C1	Sept. 26–Sept. 27 & Oct. 21–Oct. 28.
Zone C2	Sept. 19–Sept. 25 & Dec. 7–Dec. 9.
Zone C3	Same as Zone C2.
PACIFIC FLYWAY	
Arizona:	
Doves	Sept. 16–Nov. 1.
Ducks, mergansers, coots, and moorhens:	
North Zone	Sept. 28–Oct. 1.
South Zone	Feb. 1–Feb. 4.
California:	
Ducks, mergansers, coots, and moorhens:	
Colorado River Zone	Feb. 1–Feb. 4.
Southern Zone	Feb. 10–Feb. 12.
Southern San Joaquin Valley Zone	Feb. 10–Feb. 12.
Balance of State Zone	Feb. 10–Feb. 12.
Canada geese and white-fronted geese:	
Southern Zone	Feb. 3–Feb. 7.
Light geese:	
Southern Zone (3)	Feb. 3–Feb. 7.
New Mexico:	
Doves:	
North Zone	Nov. 30–Dec. 4 & Dec. 21–Jan. 1.
South Zone	Oct. 29–Nov. 5 & Nov. 22–Nov. 30.
Oregon:	
Doves	Oct. 31–Dec. 16.
Band-tailed pigeons (4)	Sept. 1–Sept. 14 & Sept. 24–Dec. 16.
Washington:	
Doves	Oct. 31–Dec. 16.
Ducks, mergansers, coots, and dark geese:	
East Zone	Oct. 3 & Feb. 6.
West Zone	Sept. 26 & Feb. 6.
Light geese and brant	Feb. 6.
Wyoming:	
Doves	Nov. 30–Dec. 16.
Sora and Virginia rails	Nov. 10–Dec. 16.
Ducks, mergansers, and coots	Sept. 19–Sept. 20.

(1) In *Montana,* the limits are 2 daily and 6 in posession.
(2) In *New Mexico,* the limits for sandhill cranes are 3 daily and 6 in possession.
(3) In *California,* in the Imperial County Special Management Area, there is no extended falconry season.
(4) In *Oregon,* no more than 1 pigeon daily in bag or possession.

[FR Doc. 2020–17693 Filed 8–27–20; 8:45 am]

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Proposed Rules

Federal Register
Vol. 85, No. 168
Friday, August 28, 2020

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB–2020–0027]

12 CFR Part 1026

CARD Act Rules Review Pursuant to the Regulatory Flexibility Act; Request for Information Regarding Consumer Credit Card Market

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Regulatory review and request for comments; request for information regarding consumer credit card market.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is requesting comment on two related, but separate, reviews. First, the Bureau is conducting a review of the Credit Card Accountability Responsibility and Disclosure Act of 2009 (CARD Act) Rules. As part of this review, the Bureau is seeking comment on the economic impact of the CARD Act Rules on small entities so that it can determine whether the rules should be continued without change, or should be amended or rescinded, consistent with the stated objectives of applicable statutes, to minimize any significant economic impact of the rules upon a substantial number of such small entities. Second, the Bureau is conducting a review of the consumer credit card market, within the limits of its existing resources available for reporting purposes, pursuant to the CARD Act, and is seeking comment on a number of aspects of the consumer credit card market.

DATES: Comments must be received by October 27, 2020.

ADDRESSES: You may submit responsive information and other comments, identified by Docket No. CFPB–2020–0027 by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: 2020-RFI-CardActReviews@cfpb.gov.* Include Docket No. CFPB–2020–0027 in the subject line of the message.
- *Hand Delivery/Mail/Courier:* Comment Intake—CARD Act Rules RFA Review and Credit Card Market Review, Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, DC 20552. Please note that due to circumstances associated with the COVID–19 pandemic, the Bureau discourages the submission of comments by hand delivery, mail, or courier.

Instructions: The Bureau encourages the early submission of comments. All submissions must include the document title and docket number. Please note the specific rule or topic on which you are commenting at the top of each response (you do not need to address all rules or topics). Because paper mail in the Washington, DC area and at the Bureau is subject to delay and in light of difficulties associated with mail and hand deliveries during the COVID–19 pandemic, commenters are encouraged to submit comments electronically. In general, all comments received will be posted without change to *http://www.regulations.gov.* In addition, once the Bureau's headquarters reopens, comments will be available for public inspection and copying at 1700 G Street NW, Washington, DC 20552, on official business days between the hours of 10 a.m. and 5 p.m. eastern time. At that time, you can make an appointment to inspect the documents by telephoning 202–435–9169.

All submissions in response to this Request for Information (RFI), including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Proprietary information or sensitive personal information, such as account numbers or Social Security numbers, or names of other individuals, should not be included. Submissions will not be edited to remove any identifying or contact information.

The Bureau is requesting comment on the following two related, but separate, reviews: (1) The RFA section 610 review; and (2) the CARD Act section 502(a) review. The Bureau requests that when a commenter makes a specific comment, the commenter indicates whether that comment relates to the RFA section 610 review, the CARD Act section 502(a) review, or both.

FOR FURTHER INFORMATION CONTACT: Yaritza Velez, Counsel, or Krista Ayoub, Senior Counsel, Office of Regulations, at 202–435–7700. If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION: The Bureau is requesting comment on two related, but separate, reviews. Part I sets forth a description of the review of the Credit Card Accountability Responsibility and Disclosure Act of 2009 (CARD Act) [1] Rules (as defined below) that the Bureau is conducting consistent with section 610 of the Regulatory Flexibility Act (RFA).[2] As discussed below, the CARD Act Rules generally affect credit card issuers and other creditors that offer open-end (not home-secured) credit plans. The CARD Act Rules also affect certain credit unions that were offering certain multifeatured plans at the time the CARD Act Rules were adopted and were separately approving and underwriting certain advances under those plans. As part of this review, the Bureau is seeking comment on the economic impact of the CARD Act Rules on small entities so that the agency can determine whether the rules should be continued without change, or should be amended or rescinded, consistent with the stated objectives of applicable statutes, to minimize any significant economic impact of the rules upon a substantial number of such small entities.

Part II discusses the review that the Bureau must conduct of the consumer credit card market every two years under section 502(a) of the CARD Act.[3] To inform the Bureau's next review, the Bureau invites members of the public, including consumers, credit card issuers, industry analysts, consumer groups, and other interested persons to submit information and other comments relevant to the issues identified in part II, as well as any information they believe is relevant to a review of the credit card market. This review relates to the credit card market generally, and not just to small entities.

[1] Public Law 111–24, 123 Stat. 1734 (2009). One purpose of the CARD Act is to establish fair and transparent practices relating to the extension of open-end consumer credit plans.

[2] Public Law 96–354, 94 Stat. 1164 (1980).

[3] *See* 15 U.S.C. 1616(a).

The statutory authorities require these reviews, and these are not triggered by the current, COVID–19 related economic conditions, although the Bureau recognizes that the information submitted will reflect those conditions.

The Bureau believes that commenters may benefit from the Bureau issuing one RFI for the two reviews, because it expects that some commenters may wish to comment on both reviews and may find some benefit in commenting on both reviews at the same time. The Bureau requests that when a commenter makes a specific comment, the commenter indicates whether that comment relates to the RFA section 610 review, the CARD Act section 502(a) review, or both.

I. RFA Section 610 Review

The RFA requires each agency to consider the effect on small entities for certain rules it promulgates.[4] Specifically, section 610 of the RFA [5] provides that each agency shall publish in the **Federal Register** a plan for the periodic review of the rules issued by the agency which have or will have a significant economic impact upon a substantial number of small entities.

The Bureau has published such a plan in the **Federal Register**.[6] Section 610 provides that the purpose of the review is to determine whether such rules should be continued without change, or should be amended or rescinded, consistent with the stated objectives of applicable statutes, to minimize any significant economic impact of the rules upon a substantial number of such small entities.[7] As also set forth in section 610, in each review the Bureau will consider several factors:

1. The continued need for the rule;
2. The nature of public complaints or comments on the rule;
3. The complexity of the rule;
4. The extent to which the rule overlaps, duplicates, or conflicts with Federal, State, or other rules; and
5. The time since the rule was evaluated or the degree to which technology, market conditions, or other factors have changed the relevant market.[8]

A. CARD Act Rules

This section lists and briefly describes the rules that the Bureau plans to review in 2020 under the criteria described by section 610 of the RFA and pursuant to the Bureau's review plan.[9]

1. The Rules

From July 2009 to April 2011, the Board of Governors of the Federal Reserve System (Board) published an interim final rule [10] and three final rules,[11] primarily to implement a number of substantive and disclosure provisions required by the CARD Act. This document collectively refers to these four rules as the ''CARD Act Rules.'' [12] The CARD Act Rules amended Regulation Z, which implements the Truth in Lending Act (TILA),[13] and the official staff commentary to the regulation, which interprets the requirements of Regulation Z.[14] The Board issued the CARD Act Rules pursuant to its authority under section 2 of the CARD Act [15] and TILA sections 105(a) and (f), 127(c)(5), 143, 148(d), and 149(b).[16]

Many of the provisions in the CARD Act Rules apply to a ''card issuer,'' as defined in § 1026.2(a)(7),[17] that extends credit under a ''credit card account under an open-end (not home-secured) consumer credit plan,'' as defined in § 1026.2(a)(15)(ii). Among other things, the CARD Act Rules contain provisions to implement the CARD Act that: (1) Prohibit card issuers from extending credit without assessing the consumer's ability to pay, with special rules regarding the extension of credit to persons under the age of 21; [18] (2) restrict the amount of required fees that a card issuer can charge during the first year after an account is opened; [19] (3) limit the amount card issuers can charge for penalty fees, such as when a consumer makes a late payment or exceeds his or her credit limit; [20] (4) restrict the circumstances under which card issuers can increase interest rates and certain fees on credit card accounts, and require subsequent reevaluations of rate increases; [21] (5) restrict fees for over-the-limit transactions to one per billing cycle and require that the consumer opt in to payment of such transactions in order for the fee to be charged; [22] (6) restrict how payments in excess of the minimum payment may be allocated; [23] and (7) require card issuers to submit to the Bureau agreements for open-end consumer credit card plans, and agreements with institutions of higher education (or an affiliated organization) regarding the issuance of credit cards to students at that institution.[24]

In addition to the provisions that implement the CARD Act, the CARD Act Rules also incorporated provisions of (1) a final rule amending Regulation Z that the Board adopted in January 2009 (January 2009 Regulation Z Rule); [25] and (2) the Board's final rule amending Regulation AA under the Federal Trade Commission Act (FTC Act) [26] to protect consumers from unfair acts or practices with respect to consumer credit card accounts (January 2009 FTC Act Rule).[27] The CARD Act Rules generally incorporated these provisions, with revisions as applicable to be consistent with the CARD Act.[28] The CARD Act Rules also generally finalized provisions of the Board's proposed rules to provide clarifications and technical amendments to the January 2009 Regulation Z Rule and the January 2009 FTC Act Rule (May 2009 Proposed Rules), with revisions as

[4] The term ''small entity'' is defined in the RFA. *See* 5 U.S.C. 601(6).

[5] 5 U.S.C. 610(a).

[6] 84 FR 21732 (May 15, 2019).

[7] 5 U.S.C. 610(a).

[8] 5 U.S.C. 610(b).

[9] 84 FR 21732 (May 15, 2019).

[10] 74 FR 36077 (July 22, 2009).

[11] 75 FR 7658 (Feb. 22, 2010); 75 FR 37526 (June 29, 2010); 76 FR 22948 (Apr. 25, 2011).

[12] The CARD Act Rules also implemented the Credit CARD Technical Corrections Act of 2009. Public Law 111–93, 123 Stat. 2998 (2009); 75 FR 7658 (Feb. 22, 2010).

[13] 15 U.S.C. 1601 *et seq.*

[14] The CARD Act Rules were originally adopted by the Board in 12 CFR part 226 but, upon transfer of authority by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) to implement TILA to the Bureau, were renumbered as 12 CFR part 1026. 76 FR 79768 (Dec. 22, 2011); *see also* 81 FR 25323 (Apr. 28, 2016). The Bureau subsequently amended some of the provisions in the CARD Act Rules. *See, e.g.,* 78 FR 18795 (Mar. 28, 2013); 78 FR 25818 (May 3, 2013).

[15] Section 2 of the CARD Act states that the Board ''may issue such rules and publish such model forms as it considers necessary to carry out this Act.'' Public Law 111–24, 123 Stat. 1734 (2009).

[16] 15 U.S.C. 1604(a) and (f), 1637(c)(5), 1663, 1665c, and 1665d.

[17] *See also* 15 U.S.C. 1602(o).

[18] 12 CFR 1026.51.

[19] 12 CFR 1026.52(a).

[20] 12 CFR 1026.52(b).

[21] 12 CFR 1026.55 and 1026.59.

[22] 12 CFR 1026.56.

[23] 12 CFR 1026.53.

[24] 12 CFR 1026.57(d) and 1026.58(c). The CARD Act Rules also contained the following other provisions to implement the CARD Act: (1) § 1026.5(a)(2)(iii); (2) § 1026.5(b)(2)(ii)(A) and (B); (3) § 1026.7(b)(11) and (12); (4) § 1026.9(c)(2), (e), (g), and (h); (5) § 1026.10(b)(2)(ii), (b)(3), (d), (e), and (f); (6) § 1026.11(c); (7) § 1026.16(f); (8) § 1026.57(a) through (c); and (9) § 1026.58(a) through (b) and (d) through (g).

[25] 74 FR 5244 (Jan. 29, 2009).

[26] 15 U.S.C. 41–58.

[27] *See* 74 FR 5498 (Jan. 29, 2009). The Board issued this final rule jointly with similar rules issued by the Office of Thrift Supervision (OTS) and the National Credit Union Administration (NCUA).

[28] 74 FR 54124, 54125 (Oct. 21, 2009); 75 FR 7658, 7659 (Feb. 22, 2010). Because the Board incorporated the provisions of the January 2009 Regulation Z Rule and the January 2009 FTC Act Rule, as amended, into the CARD Act Rules, the Board withdrew the January 2009 Regulation Z Rule and the January 2009 FTC Act Rule. 75 FR 7925 (Feb. 22, 2010).

applicable to be consistent with the CARD Act.[29]

The Board adopted the January 2009 Regulation Z Rule following a comprehensive review of TILA's rules for open-end (revolving) credit that is not home-secured. The January 2009 Regulation Z Rule amended many of the Regulation Z provisions that apply to open-end credit, including those in subparts A (General) and B (Open-end Credit), appendix G, and related commentary. The January 2009 Regulation Z Rule was designed, in part, to improve the effectiveness of the disclosures that ''creditors,'' as defined in § 1026.2(a)(17),[30] must provide under Regulation Z to consumers at application and throughout the life of an open-end account.[31] The January 2009 Regulation Z Rule provisions, as amended, that the Board incorporated into the CARD Act Rules, included changes to the format, timing, and content requirements for the five main types of disclosures for open-end credit governed by Regulation Z: (1) Credit and charge card application and solicitation disclosures; [32] (2) account-opening disclosures; [33] (3) periodic statement disclosures; [34] (4) subsequent notices such as change-in-terms notices; [35] and (5) advertising provisions.[36] These revisions to the disclosure provisions generally affect creditors that offer open-end (not home-secured) credit plans (including credit card accounts and open-end plans that are not credit card accounts such as overdraft lines of credit and other personal lines of credit), and persons advertising open-end (not home-secured) credit, whether or not they are creditors.[37]

Among other things, the CARD Act Rules also incorporated provisions from the January 2009 Regulation Z Rule that revised commentary to the definition of ''open-end credit,'' as defined in § 1026.2(a)(20).[38] These revisions clarified that advances that are separately underwritten are generally not open-end credit but closed-end credit for which closed-end disclosures must be given.[39] The Board expected these revisions to primarily impact certain credit unions that were at that time offering certain multifeatured plans and were separately approving and underwriting certain advances under those plans.[40]

The January 2009 FTC Act Rule contained provisions that are similar to several of those adopted in the CARD Act.[41] The January 2009 FTC Act Rule was designed to protect consumers from unfair acts or practices with respect to consumer credit card accounts, including (1) requiring institutions to provide consumers with a reasonable amount of time to make a payment before the institution can consider the consumer late in making that payment; (2) requiring institutions to allocate amounts paid in excess of the minimum payment in specified ways; (3) restricting institutions from increasing rates on existing balances except in specified circumstances; (4) prohibiting institutions from imposing finance charges based on balances for days in billing cycles that precede the most recent billing cycle as a result of the loss of a grace period; and (5) limiting the amount of fees for the issuance or availability of credit that institutions may charge to an account during the first year after account opening. The CARD Act Rules generally incorporated these provisions, with revisions as applicable to be consistent with the CARD Act.

The May 2009 Proposed Rules generally proposed clarifications and technical amendments to the January 2009 Regulation Z Rule and the January 2009 FTC Act Rule. The Board proposed these clarifications to resolve confusion regarding how institutions would comply with particular aspects of those rules. The proposed amendments to the January 2009 Regulation Z Rule also included several proposed provisions applicable to deferred interest plans, such as plans that permit a consumer to avoid interest charges if a purchase balance is paid in full by a certain date.[42] The CARD Act Rules generally finalized the provisions in the May 2009 Proposed Rules, with revisions as applicable to be consistent with the CARD Act.

The Bureau recodified Regulation Z, including the amendments made by the CARD Act Rules, in 2011 when the Bureau assumed rulemaking responsibility under TILA.[43]

2. The Market

As discussed above in part I.A.1, the CARD Act Rules primarily apply to credit card accounts and other open-end (not home-secured) products. The Bureau has monitored the credit card market generally, including through biennial reviews and submission of reports to Congress pursuant to section 502 of the CARD Act.[44] To date, the Bureau has issued four reports pursuant to that obligation—in 2013, 2015, 2017, and 2019 (collectively, the Reports).[45] Several of these Reports have examined changes in the credit card market since the CARD Act Rules became effective, although data have generally not been available to evaluate changes specific to small entities in a comparable level of detail as was possible for large entities.[46]

a. Credit Card Market

i. Market Structure and Participants

The credit card market is one of the United States' largest consumer financial markets, with nearly 170 million Americans having at least one credit card and collectively carrying nearly $1 trillion in total credit card debt.[47] The market has been growing in recent years by most measures, with diverse participation from the largest banks to small community banks, from credit unions to non-bank program managers, and from servicers to fintech startups. The market is highly concentrated, with the 10 largest issuers consistently representing the majority of total credit card balances, while many smaller providers account for a smaller share of balances.

In 2010, there were 4,642 banks, thrifts, and credit unions that offered credit cards and as a result were affected by the CARD Act.[48] Of these affected

[29] 74 FR 20784 (May 5, 2009); 74 FR 20804 (May 5, 2009).

[30] *See also* 15 U.S.C. 1602(g).

[31] One purpose of TILA is to promote the informed use of consumer credit by providing for disclosures about its terms and cost. 15 U.S.C. 1601(a).

[32] 12 CFR 1026.60.

[33] 12 CFR 1026.6(b).

[34] 12 CFR 1026.7(b).

[35] 12 CFR 1026.9(c)(2) and (g).

[36] 12 CFR 1026.16.

[37] 74 FR 5244, 5249, 5391 (Jan. 29, 2009).

[38] *See also* 15 U.S.C. 1602(j).

[39] Comment 2(a)(20)–5.

[40] 74 FR 5244, 5258–60, 5391 (Jan. 29, 2009).

[41] *See* 75 FR 7658, 7661–62, 7666–67 (Feb. 22, 2010).

[42] 74 FR 20784, 20786–87, 20788–91 (May 5, 2009); *see also* 12 CFR 1026.7(b)(14) and 1026.16(h).

[43] 76 FR 79768 (Dec. 22, 2011); *see also* 81 FR 25323 (Apr. 28, 2016).

[44] *See* 15 U.S.C. 1616.

[45] *See* Bureau of Consumer Fin. Prot., *CARD Act Report,* (Oct. 1, 2013) (2013 Report), *https://files.consumerfinance.gov/f/201309_cfpb_card-act-report.pdf;* Bureau of Consumer Fin. Prot., *The Consumer Credit Card Market,* (Dec. 2015) (2015 Report), *https://files.consumerfinance.gov/f/201512_cfpb_report-the-consumer-credit-card-market.pdf;* Bureau of Consumer Fin. Prot., *The Consumer Credit Card Market,* (Dec. 2017) (2017 Report), *https://files.consumerfinance.gov/f/documents/cfpb_consumer-credit-card-market-report_2017.pdf;* Bureau of Consumer Fin. Prot., *The Consumer Credit Card Market,* (Aug. 2019) (2019 Report), *https://files.consumerfinance.gov/f/documents/cfpb_consumer-credit-card-market-report_2019.pdf.*

[46] *See* 2017 Report at 19 n.13.

[47] *See* 2019 Report at 6, 11.

[48] This analysis considers data reported through the Federal Financial Institutions Examination Council (FFIEC) Call Report and NCUA Call Report to determine the number of banks, thrifts, and credit unions that participate in the credit card

Continued

entities, 4,044 were small entities as defined by the current SBA threshold of $600 million or less in total assets.[49] The trend toward bank and credit union consolidation was present prior to the CARD Act and has continued, which has reduced the number of small entities participating in the credit card market. As of 2019, 4,305 banks, thrifts, and credit unions offered credit cards, of which 3,437 were considered small entities.[50]

Consumer credit cards generally can be divided into two distinct segments: general purpose cards and private label cards. General purpose cards are credit cards that can be used to purchase goods and services at a wide range of merchants. These cards display the brand of a major payment card network, most commonly American Express, Discover, Mastercard, or Visa. General purpose cards are offered by many banks, credit unions, and community banks. Some card issuers specialize in offering credit cards to consumers with subprime credit scores, while others may offer credit cards to consumers with prime or non-prime scores.

In contrast, private label cards—sometimes called ''store cards''—do not carry a network brand. Consumers can use these cards only at the particular merchant or affiliated group of merchants associated with the card. This segment is highly concentrated, with only a handful of providers representing the overwhelming share of private label credit card balances. Deferred interest is a notable feature with this kind of card.

ii. Credit Card Pricing Structure and Credit Availability

Credit card pricing is fairly complex and involves different components, such as interest rates and fees. The cost to the consumer also depends on a number of consumer-dependent factors, such as the cardholder's creditworthiness, usage of features and rewards, and repayment behavior.

Consumers who utilize a credit card may pay for that credit in a number of different ways. Consumers may be charged an annual (or monthly) fee. They may incur penalty fees if they violate the account terms, most commonly by making a payment late. They may be charged a variety of other fees relating to specific features or usages of the account, such as cash advance fees, balance transfer fees, or foreign transaction fees. Finally, consumers may pay interest charges if, for example, consumers carry a balance from month-to-month or utilize a cash advance.

As discussed above, pursuant to the CARD Act,[51] the Bureau has published four Reports detailing its reviews of the state of the credit card market in which it examines, among other things, the cost and availability of card credit and recent innovations in the market. Several of these Reports have also examined changes in the credit card market since the CARD Act Rules became effective, although data have generally not been available to evaluate changes specific to small entities in a comparable level of detail as was possible for large entities.[52] The Bureau's Reports observed the following changes in terms of credit card pricing following the implementation of the CARD Act: (1) Over-the-limit fees declined sharply, to a nearly non-existent level, after the effective date of the CARD Act opt-in rule in February 2010; (2) The average late fee declined from the fourth quarter of 2009 to the same quarter in 2010, following the effective date of the CARD Act Rules' safe harbors for penalty fee amounts; (3) There has been an increase in the amount and prevalence of annual fees following the CARD Act's implementation;[53] and (4) The total fees, as a share of cycle ending balance, however, were 180 basis points (43 percent) lower in the fourth quarter of 2010 than the same quarter of 2008, prior to the implementation of the CARD Act. This effect was most noticeable for the deep subprime segment, which may be correlated with the 25 percent fee cap for cards in their first year as set forth in the CARD Act.

In addition, the Reports also found that, beginning in the first quarter of 2009 and continuing through the second quarter of 2010, the first full quarter after most of the provisions of the CARD Act took effect in February 2010, the account-weighted average retail annual percentage rate (APR)[54] increased by 230 basis points. The increase was more modest among accounts with deep subprime credit scores and highest among accounts held by consumers with prime and superprime credit scores. However, for accounts with deep subprime credit scores, the effective interest rate fell by 200 basis points from the fourth quarter of 2008 to the same quarter in 2012, with much of that decline occurring during the period prior to when most of the CARD Act provisions became effective in February 2010 when retail APRs were increasing. Also, the incidence of repricing[55] has come down significantly and has remained at very low levels since the CARD Act's February 2010 effective date of limitations on repricing activity.

The Reports also found changes related to credit availability. First, the Reports found that there has been a reduction in the availability of credit for consumers with subprime scores as well as for students and young adults, the latter a direct effect of the CARD Act's restrictions on issuing cards to students and individuals under the age of 21. Second, a small but discernible percentage of applicants that issuers deemed otherwise creditworthy were declined as a result of insufficient income to satisfy the CARD Act's ability-to-pay requirement. Third, there has been a marked decline in the percentage of consumers receiving credit line increases on their accounts, also possibly due to the ability-to-pay requirement. Fourth, the Bureau reviewed evidence that suggested issuers might be using line management as a means of responding to revealed risk post-origination, in place of repricing balances in ways restricted by the CARD Act.

market. Call Report data are matched to data on institution characteristics and banking structure from the Board's National Information Center. Prior to the first quarter of 2012, thrifts were not required to file a Call Report, likely resulting in an underestimate of the number of thrifts operating in the credit card market prior to 2012. To determine whether an entity is considered small according to the Small Business Administration (SBA) definition, this analysis uses average assets across the calendar year.

[49] U.S. Small Bus. Admin., *Table of Small Business Size Standards Matched to North American Industry Classification System Codes,* effective Aug. 19, 2019, Sector 52 (Finance and Insurance), *https://www.sba.gov/document/support—table-size-standards.*

[50] Other potentially affected small entities include non-depository institutions that issue credit cards, though data are currently too limited to assess the number of such entities.

[51] 15 U.S.C. 1616.

[52] *See* 2017 Report at 19 n.13.

[53] Rewards cards may be a reason for the increase in credit card annual fees. *See* 2019 Report at 12. Credit card rewards programs have rapidly increased in prevalence over the past decade. Issuers are offering a greater diversity of rewards programs—and in many cases more compelling value propositions—to match the increasing popularity of these products with consumers. For many consumers, rewards have become central to the decision of which credit cards to acquire and how to use them. *See* 2015 Report at 263; 2017 Report at 60; 2019 Report at 100–101.

[54] Discussions of credit card interest rates often focus on the APR as it is the interest rate charged on balances (the ''retail APR''). The APR is often used as shorthand for expressing the costs associated with using a credit card. However, for several reasons, the retail APR may not provide an accurate indication of the effective interest rates paid by consumers. The effective interest rate is defined as total interest charges for a period of time, stated as a percent of average cycle-ending balance for the same period of time. 2013 Report at 29.

[55] Repricing is a practice in which an issuer increases a consumer's APR.

The Bureau's 2019 Report included a review of academic scholarship examining the CARD Act's effects. In many cases, these academic analyses corroborate the Bureau's findings from prior years' card market reports including, for example, findings that the CARD Act led to reductions in consumers' total payments toward certain fees such as late fees and over-limit fees. However, across the methodologies and analyses reviewed, a consistent theme is the challenge of disentangling the effects of the CARD Act itself, rather than the effects of other market changes such as the Great Recession. Overall, the scholarship review suggests that the CARD Act's effect on consumer welfare is mixed, with some scholarship suggesting the CARD Act may have had unintended consequences.[56]

iii. Other Developments and Innovation

The Reports also discuss new developments and innovation in the credit card market since the CARD Act Rules became effective. The following section discusses: (1) Credit card agreements; (2) use of digital account servicing platforms; (3) new fixed payment features being offered; and (4) credit card payment rates.

The Bureau's 2013 Report found that credit card agreements became simpler and shorter after the CARD Act Rules became effective.[57] However, the Bureau's 2015 Report noted that card agreements became longer, but not more complex, from 2012 to 2014.[58] The Bureau's 2017 Report noted declines in the complexity level of credit card pricing disclosures from 2009 to 2010, and that the level of complexity had remained stable.[59] These agreements remain complex documents.

Consumers are increasingly relying on digital account servicing platforms, such as websites or mobile applications, where consumers can view and manage account activity. As of 2018, 78 percent of active accounts were enrolled in online portals for general purpose cards, as compared to 55 percent in 2014.[60] The share of accounts held by consumers who opt out of paper billing statements has risen by more than one-third since 2014,[61] and the share of accounts held by consumers who make payments against their accounts using digital channels has risen from 38 percent reported in 2013 [62] to 55 percent in 2018.[63]

A few issuers have begun offering a feature that leverages a card's existing credit line to provide a fixed repayment plan that is separate from payments made toward the revolving balance on the account. Issuers have implemented a variety of these types of payment options into the card servicing platform for easier signup. New flexible payment features of credit card accounts fall into two categories: those that provide a payment plan for existing purchases and those that provide a payment plan for future purchases.[64]

Fixed payment plans for existing purchases allow certain individual purchases made on a credit card to be paid off using fixed monthly payments over a set period of time. Issuers that offer this type of feature let consumers select eligible transactions through the card's mobile app or online portal for fixed monthly payments. The issuers' products (or announced products) differ slightly but, in general, purchases over a certain dollar threshold are eligible.[65]

Credit repayment flexibility is not new, but today's options differ in their use of credit card mobile apps. One issuer launched a credit card balance management platform in 2009, but it was delivered separately from the primary account interaction. Today's repayment flexibility products are presented to the consumer in the flow of viewing his or her transaction history. Eligible transactions are denoted with an icon that links to the product terms. A range of repayment periods and corresponding costs are offered (*e.g.,* three payments, six payments, or 12 payments). In addition, one issuer provides a corresponding feature through which cardholders may pay down the account balance in an amount equal to a specific transaction's dollar amount.[66]

The second set of flexible repayment options for credit card accounts consists of features that provide a payment plan for purchases yet to be made. Multiple issuers offer cardholders the opportunity to receive a cash disbursement from an unused portion of their credit line, which is repaid in equal monthly payments over a set period of time. These initiatives allow the issuers to increase consumer use of portions of credit line that are not currently being used. A card issuer may offer this feature to cardholders that meet certain basic eligibility checks, such as satisfactory payment history on the card and meaningful unused line size. Cardholders may be able to select different lengths of repayment, depending on their eligibility. The transactions extended under this feature are repaid using equal monthly payments for a set period of time.[67]

These fixed payment plans and their structures involve a broad array of regulatory provisions adopted in the CARD Act Rules, such as limitations on APR and fee increases, payment allocation rules, and ability to pay.[68]

Credit card payment rates have been increasing since 2010, as measured by total payments as a share of total statement balances. It is unclear precisely what combination of factors has contributed to this change. However, increases in payment rates have coincided with some of the regulatory changes created by the CARD Act, such as clearer due dates, new ability-to-pay rules, and payment disclosure requirements, along with the improvement in macroeconomic conditions and changes in consumer profiles.[69]

b. Other Open-End (Not Home-Secured) Products

As discussed in part I.A.1, the CARD Act Rules include some provisions that apply to open-end (not home-secured) plans generally, including open-end plans that are not credit card accounts, such as overdraft lines of credit and other personal lines of credit. The Bureau is aware, through its market monitoring function, of the growth of open-end personal lines of credit. Several non-depository lenders offer small-dollar open-end personal lines of credit in amounts ranging from approximately $500 to $4,500. Some States specifically authorize personal small-dollar lines of credit. For example, the Tennessee Flexible Credit Act allows licensed lenders to make open-end lines of credit, unsecured or secured by personal property, with an outstanding principal balance of no more than $4,000.[70] Even with this market monitoring, the Bureau does not know with certainty the total number of small entities that offer open-end (not home-secured) products that are not credit card accounts. Individuals and businesses may extend small amounts of consumer credit covered by TILA and

[56] *See* 2019 Report at 13.
[57] 2013 Report at 5, 63–66.
[58] 2015 Report at 119–23.
[59] *See* 2017 Report at 195–205.
[60] 2019 Report at 48.
[61] 2019 Report at 49.
[62] 2013 Report at 68.
[63] 2019 Report at 53.
[64] *Id.* at 177.
[65] *Id.* at 178.
[66] *Id.*
[67] *Id.* at 179.
[68] *Id.*
[69] *See* 2015 Report at 49–50.
[70] Tenn. Code Ann. sec. 45–12–101, 45–12–102, and 45–12–111.

Regulation Z without the Bureau's awareness.[71]

As discussed in part I.A.1, the CARD Act Rules also had an impact on certain multifeatured plans that were being offered by credit unions at the time the CARD Act Rules were adopted. Some reports suggest these plans were offered by over 3,000 credit unions prior to the adoption of the CARD Act Rules,[72] with others citing a number just under 2,000,[73] although more recent data appear to be unavailable.

The NCUA in July 2012 issued a supervisory letter to provide guidance to federal credit unions on a permissible blended approach to multifeatured lending that is consistent with the CARD Act Rules.[74] In preparing this letter, NCUA consulted with the Bureau on the interpretation of Regulation Z as it relates to multifeatured open-end lending. Among other things, this letter discussed a permissible blended approach to multifeatured lending that has a single loan agreement with both open-end and closed-end credit subaccounts. NCUA indicated that this blended approach is consistent with Regulation Z, provided the credit union complies with the requirements under 12 CFR part 1026, subpart B for open-end credit and 12 CFR part 1026, subpart C, for each closed-end loan transaction under the single plan.

3. Bureau Resources and Analysis

Since 2011, the Bureau has published various reports and other materials about the credit card market. As discussed in part I.A.2 and pursuant to the CARD Act, the Bureau has published four Reports detailing its reviews of the state of the credit card market in which it examines, among other things, the cost and availability of card credit and recent innovations in the market. In 2011, the Bureau published findings from a Bureau-convened conference on the effects of the CARD Act.[75] Pursuant to the CARD Act,[76] the Bureau publishes annually a report that discusses agreements between card issuers and institutions of higher education (or certain organizations affiliated with such institutions) in connection with the issuance of credit cards. To date, the Bureau has published eight of these reports.[77] Other Bureau reports specific to the credit card market have generally focused on consumer behaviors in the market, including end-of-year credit card borrowing and patterns of revolving and repayment.[78]

Pursuant to the CARD Act and TILA, the Bureau collects various information from card issuers. The Bureau collects credit card agreements from card issuers on a quarterly basis.[79] The Bureau publishes the agreements on its website in the credit card agreement database.[80] In addition, the Bureau collects annually and publishes on its website college credit card marketing agreement data and credit card issuers' marketing agreements with colleges, universities, and their affiliates, as well as the number of cards covered by, and the amount of payments made by issuers under these agreements.[81] The Bureau also collects information semi-annually from certain card issuers through its terms of credit card plans (TCCP) survey and publishes these data on its website.[82] These data show features of the most commonly held (*i.e.,* modal) credit card for issuers that report such information. Other previously collected data include the credit card database, which shows monthly account-level aggregates for credit cards from several large issuers, and surveys of several credit card issuers including questions regarding card application and approval, digital account servicing, deferred interest, and loan performance.[83] Other data similar to these monthly account-level aggregates are also shared with the Bureau via memoranda of understanding (MOUs) with other bank regulators.

4. Previous Input to the Bureau

In 2011, the Bureau issued an RFI related to streamlining regulatory requirements (2011 RFI).[84] The 2011 RFI asked the public to identify provisions of the inherited regulations that the Bureau should make the highest priority for updating, modifying, or eliminating because they are outdated, unduly burdensome, or unnecessary. The 2011 RFI also discussed several specific requirements that may warrant review, such as the ability-to-pay rules. It also sought suggestions for practical measures to make complying with the regulations easier. The Bureau received around 10 letters that included information about credit card accounts and open-end (not home-secured) credit generally. These comments came from a variety of stakeholders, including trade groups and other market participants, card issuers, and consumer advocacy groups.

Also, as discussed in part I.A.2 and pursuant to the CARD Act, the Bureau has published four biennial Reports on the state of the credit card market that examine, among other things, the cost and availability of card credit and recent innovations in the market. In connection with these Reports, the CARD Act requires the Bureau to ''solicit comment from consumers, credit card issuers, and other interested parties.'' [85] For each of the four Reports,

[71] *See* 12 CFR 1026.1(c)(1). Regulation Z generally applies to each individual or business that offers or extends credit when four conditions are met: (i) The credit is offered or extended to consumers; (ii) the offering or extension of credit is done regularly; (iii) the credit is subject to a finance charge or is payable by a written agreement in more than four installments; and (iv) the credit is primarily for personal, family, or household purposes.

[72] Nicole Kellner-Swick & Ashley L. Sweeney, *Multi-Featured Open-End Lending: The Past, Present and Future,* That Credit Union Blog (Jan. 23, 2013), *https://thatcreditunionblog.wordpress.com/2013/01/23/multi-featured-open-end-lending-the-past-present-and-future/;* Michelle A. Samaad, *Open-End Lending Drop Blamed on Regs, Confusion,* Credit Union Times (Aug. 5, 2012), *https://www.cutimes.com/2012/08/05/open-end-lending-drop-blamed-on-regs-confusion/?slreturn=20180603145338.*

[73] In response to the initial regulatory flexibility analysis in relation to the January 2009 Regulation Z Rule, a commenter that provides insurance and related financial services to credit unions reported that based on internal records, over 1,900 credit unions with assets under $50 million and that offer multifeatured plans would incur an average cost of $100,000 per credit union to switch to closed-end disclosures if clarifications related to the definition of open-end credit were adopted as proposed. 74 FR 5244, 5391 (Jan. 29, 2009).

[74] Nat'l Credit Union Admin., *Multi-Featured Open-End Lending (MFOEL)* (July 2012), *https://www.ncua.gov/regulation-supervision/letters-credit-unions-other-guidance/multi-featured-open-end-lending-mfoel-0.*

[75] *See* Press Release, Bureau of Consumer Fin. Prot., *CFPB Launches Public Inquiry on the Impact of the Card Act* (Dec. 19, 2012), *https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-launches-public-inquiry-on-the-impact-of-the-card-act/.*

[76] 15 U.S.C. 1637(r)(3).

[77] Bureau of Consumer Fin. Prot., *Student banking reports to Congress, https://www.consumerfinance.gov/data-research/student-banking/student-banking-reports-congress/*(last visited July 29, 2020). The Board published two such reports subsequent to the passage of the CARD Act but prior to the transfer of this CARD Act mandate to the Bureau.

[78] *See* Bureau of Consumer Fin. Prot., *Quarterly consumer credit trends: End-of-year credit card borrowing* (June 2018), *https://www.consumerfinance.gov/data-research/research-reports/quarterly-consumer-credit-trends-end-year-credit-card-borrowing/;* Bureau of Consumer Fin. Prot., *Data point: Credit card revolvers* (July 2019), *https://www.consumerfinance.gov/data-research/research-reports/data-point-credit-card-revolvers/.*

[79] 15 U.S.C. 1632(d)(2) and (3).

[80] Bureau of Consumer Fin. Prot., *Credit card agreement database, https://www.consumerfinance.gov/credit-cards/agreements/* (last visited July 29, 2020).

[81] 15 U.S.C. 1637(r)(2); Bureau of Consumer Fin. Prot., *College credit card marketing agreements and data, https://www.consumerfinance.gov/data-research/student-banking/marketing-agreements-and-data/* (last visited July 29, 2020).

[82] 15 U.S.C. 1646; Bureau of Consumer Fin. Prot., *Terms of credit card plans (TCCP) survey, https://www.consumerfinance.gov/data-research/credit-card-data/terms-credit-card-plans-survey/* (last visited July 29, 2020).

[83] 12 U.S.C. 5512(c)(4).

[84] 76 FR 75825 (Dec. 5, 2011).

[85] 15 U.S.C. 1616(b).

the Bureau has done so through a RFI published in the **Federal Register**.[86] In these RFIs, the Bureau sought comment on various topics, including the terms of credit card agreements and practices of credit card issuers, the effectiveness of credit card disclosures, the adequacy of protection from unfair or deceptive acts or practices, whether the CARD Act affects the cost and availability of credit, whether the CARD Act has had an impact on issuer safety and soundness, whether the CARD Act had any effect on the use of risk-based pricing, and whether the CARD Act had any impact on credit card innovation. In response to the RFIs, comments were submitted by a variety of stakeholders, including trade groups representing credit card issuers and other market participants, card issuers, other industry-side market participants, individual consumers, and consumer advocacy groups. Each of the four Reports discussed the comments received, as applicable, in response to the relevant RFI.

The Bureau also received information about credit card accounts and open-end (not home-secured) credit generally in response to the Bureau's 2018 Call for Evidence Initiative, which included requesting input on all inherited regulations and rulemaking authorities.[87] The Bureau received 13 comments that included information about credit card accounts and open-end (not home-secured) credit generally. These comments came from a variety of stakeholders, including trade groups representing credit card issuers and other market participants, card issuers, and consumer advocacy groups.

Through the RFIs discussed above, market monitoring, and other measures, the Bureau has heard concerns expressed by some card issuers and trade groups about several of the CARD Act Rules' provisions and how they apply to credit card accounts, such as concerns about (1) application, account-opening, periodic statement, and advertising disclosure rules; (2) format and font size requirements for disclosures; (3) change-in-terms notice and penalty rate notice requirements; (4) billing error rights and procedures; (5) ability-to-pay requirements; (6) restrictions on rate and fee increases; (7) restrictions on certain fees imposed during the first year after account opening; (8) restrictions on penalty fees; (9) rules for reevaluating rate increases; (10) restrictions on how payments may be allocated; and (11) submission of account agreements to the Bureau.

The Bureau's experience suggests there is little overlap, duplication, or conflict between the CARD Act Rules and Federal, State, or other rules. The Bureau has not received any requests for a determination that the CARD Act Rules preempt State law.

B. Request for Comment

Consistent with the section 610 review plan, the Bureau asks the public to comment on the CARD Act Rules, including the following topics:

(1) The current scale of the economic impacts of the rules as a whole on small entities and of their major components on small entities, including impacts on reporting, recordkeeping, and other compliance requirements.

(2) Whether and how those impacts on small entities could be reduced, consistent with the stated objectives of applicable statutes and the rules.

(3) Current information relevant to the factors that the Bureau is required to consider in completing a section 610 review under the RFA, as described above.

Where possible, please submit detailed comments, data, and other information to support any submitted positions.

II. CARD Act Section 502(a) Review

As discussed in part I.A.2, section 502(a) of the CARD Act[88] requires the Bureau to conduct a review, within the limits of its existing resources available for reporting purposes, of the consumer credit card market every two years. As discussed in part I.A.4, to inform that review, CARD Act section 502(b) instructs the Bureau to seek public comment.[89]

As discussed in part I.A.2, the Bureau has issued four Reports in relation to these reviews. The Bureau's first Report describing this review was published in October 2013; the Bureau's second such Report was published in December 2015; the Bureau's third such Report was published in December 2017; and the Bureau's fourth such Report was published in August 2019. To inform the Bureau's next review, the Bureau invites members of the public, including consumers, credit card issuers, industry analysts, consumer groups, and other interested persons to submit information and other comments relevant to the issues expressly identified in part II.B below, as well as any information they believe is relevant to a review of the credit card market.

A. Background: The CARD Act

The CARD Act was signed into law in May 2009.[90] Passage of the CARD Act was expressly intended to ''establish fair and transparent practices related to the extension of credit'' in the credit card market.[91] As discussed in part I.A.1, to achieve these agreed-upon purposes, the CARD Act changed the requirements applicable to credit card practices in a number of significant respects.[92]

B. Request for Comment

In connection with its pending review, the Bureau seeks information from members of the public about how the credit card market is functioning. The Bureau seeks comments on the experiences of consumers and providers in the credit card market and on the overall health of the credit card market, as outlined in CARD Act section 502(a) and in (1) through (7) below. As noted above, while the Bureau identifies specific topics of interest below, the Bureau wants to be alerted to and understand the information that consumers, credit card issuers, industry analysts, consumer groups, and other interested persons believe is most relevant to the Bureau's review of the credit card market, so this list of subjects should not be viewed as exhaustive. Commenters are encouraged to address any other aspects of the consumer credit card market that they consider would be of interest or concern to the Bureau.

Please feel free to comment generally and/or respond to any or all of the questions below but please indicate in your comments on which topic areas or questions you are commenting:

(1) *The terms of credit card agreements and the practices of credit card issuers.*

a. How have the substantive terms and conditions of credit card agreements or the length and complexity of such agreements changed over the past two years?

b. How have issuers changed their pricing, marketing, underwriting, or other practices?

c. How are the terms of, and practices related to, major supplementary credit card features (such as credit card rewards, deferred interest promotions, balance transfers, and cash advances) evolving?

d. How have issuers changed their practices related to deferment,

[86] 77 FR 75410 (Dec. 20, 2012); 80 FR 14365 (Mar. 19, 2015); 82 FR 13313 (Mar. 10, 2017); 84 FR 647 (Jan. 31, 2019).

[87] 83 FR 12881 (Mar. 26, 2018).

[88] *See* 15 U.S.C. 1616(a).

[89] *See* 15 U.S.C. 1616(b).

[90] The CARD Act's provisions took effect in three stages: August 2009, February 2010, and October 2011.

[91] Public Law 111–24, 123 Stat. 1734 (2009).

[92] *See also* 2013 Report at 10–13.

forbearance, or other forms of debt relief or assistance offered to consumers?

e. How have creditors as well as third-party collectors changed their practices over the past two years of collecting on delinquent and charged-off credit card debt?

f. Has the use of electronic communication (*e.g.,* email or SMS) by creditors and debt collectors in connection with credit card debt grown or otherwise evolved?

g. How are the practices of for-profit debt settlement companies changing and what trends are occurring in the debt settlement industry? How are creditors and non-profit credit counseling agencies responding to these changes and trends?

(2) *The effectiveness of disclosure of terms, fees, and other expenses of credit card plans.*

a. How effective are current disclosures of rates, fees, and other cost terms of credit card accounts in conveying to consumers the costs of credit card plans?

b. What further improvements in disclosure, if any, would benefit consumers and what costs would card issuers or others incur in providing such disclosures?

c. How well are current credit card disclosure rules and practices adapted to the digital environment? What adaptations to credit card disclosure regimes in the digital environment would better serve consumers or reduce industry compliance burden?

(3) *The adequacy of protections against unfair or deceptive acts or practices relating to credit card plans.*

a. What unfair, deceptive, or abusive acts and practices exist in the credit card market? How prevalent are these acts and practices and what effect do they have? How might any such conduct be prevented and at what cost?

(4) *The cost and availability of consumer credit cards.*

a. How have the cost and availability of consumer credit cards (including with respect to non-prime borrowers) changed since the Bureau reported on the credit card market in 2019? What is responsible for changes (or absence of changes) in cost and availability? Has the impact of the CARD Act on cost and availability changed over the past two years?

b. How, if at all, are the characteristics of consumers with lower credit scores changing? How are groups of consumers in different score tiers faring in the market? How do other factors relating to consumer demographics or financial lives affect consumers' ability to successfully obtain and use card credit?

(5) *The safety and soundness of credit card issuers.*

a. How is the credit cycle evolving? What, if any, safety and soundness risks are present or growing in this market, and which entities are disproportionately affected by these risks? How, if at all, do these safety and soundness risks to entities relate to long-term indebtedness on the part of some consumers, or changes in consumers' ability to manage and pay their debts? Has the impact of the CARD Act on safety and soundness changed over the past two years?

(6) *The use of risk-based pricing for consumer credit cards.*

a. How has the use of risk-based pricing for consumer credit cards changed since the Bureau reported on the credit card market in 2019? What has driven those changes or lack of changes? Has the impact of the CARD Act on risk-based pricing changed over the past two years?

b. How have CARD Act provisions relating to risk-based pricing impacted (positively or negatively) the evolution of practices in this market?

(7) *Consumer credit card product innovation.*

a. How has credit card product innovation changed since the Bureau reported on the credit card market in 2019? What has driven those changes or lack of changes? Has the impact of the CARD Act on product innovation changed over the past two years?

b. How have broader innovations in finance, such as (but not limited to) new products and entrants, evolving digital tools, greater availability of and new applications for consumer data, and new technological tools (like machine learning), impacted the consumer credit card market, either directly or indirectly? In what ways do CARD Act provisions or its implementing regulations encourage or discourage innovation? In what ways do innovations increase or decrease the impact of certain CARD Act provisions, or change the nature of those impacts?

Signing Authority

The Director of the Bureau, having reviewed and approved this document, is delegating the authority to electronically sign this document to Laura Galban, a Bureau Federal Register Liaison, for purposes of publication in the **Federal Register**.

Dated: August 26, 2020.

Laura Galban,

Federal Register Liaison, Bureau of Consumer Financial Protection.

[FR Doc. 2020–19112 Filed 8–27–20; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2020–0666; Airspace Docket No. 20–ACE–16]

RIN 2120–AA66

Proposed Amendment of Class E Airspace; Burlington, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend the Class E airspace extending upward from 700 feet above the surface at Coffey County Airport, Burlington, KS. The FAA is proposing this action as the result of an airspace review caused by the decommissioning of the Boyd non-directional beacon (NDB) which provided navigation information to the instrument procedures at this airport.

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

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590; telephone (202) 366–9826, or (800) 647–5527. You must identify FAA Docket No. FAA–2020–0666/Airspace Docket No. 20–ACE–16 at the beginning of your comments. You may also submit comments through the internet at *https://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays.

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

FOR FURTHER INFORMATION CONTACT: Rebecca Shelby, Federal Aviation Administration, Operations Support

Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5857.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2020–0666/Airspace Docket No. 20–ACE–16.'' The postcard will be date/time stamped and returned to the commenter.

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

Availability of NPRMs

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

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

Availability and Summary of Documents for Incorporation by Reference

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

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by amending the Class E airspace extending upward from 700 feet above the surface to within a 6.5-mile radius of Coffey County Airport, Burlington, KS; removing the Boyd NDB from the airspace legal description.

This action is due to an airspace review caused by the decommissioning of the Boyd NDB which provided navigation information to the instrument procedures at this airport.

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

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

Regulatory Notices and Analyses

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

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

ACE KS E5 Burlington, KS [Amended]

Coffey County Airport, KS

(Lat. 38°18′09″ N, long. 95°43′30″ W)

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

Issued in Fort Worth, Texas, on August 24, 2020.

Steven T. Phillips,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2020–18918 Filed 8–27–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2020–0751; Airspace Docket No. 20–ANM–42]

RIN 2120–AA66

Proposed Amendment of Class E Airspace; Paris, ID

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify the Class E airspace extending upward from 700 feet above the surface at Bear Lake County Airport, Paris, ID, to accommodate new area navigation (RNAV) procedures at the airport. This action would ensure the safety and management of instrument flight rules (IFR) operations within the National Airspace System.

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

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590; telephone: 1–800–647–5527, or (202) 366–9826. You must identify FAA Docket No. FAA–2020–0751; Airspace Docket No. 20–ANM–42, at the beginning of your comments. You may also submit comments through the internet at https://*www.regulations.gov.*

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

FOR FURTHER INFORMATION CONTACT: Richard Roberts, Federal Aviation Administration, Western Service Center, Operations Support Group, 2200 S. 216th Street, Des Moines, WA 98198; telephone (206) 231–2245.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend Class E airspace at Bear Lake County Airport, Paris, ID to support IFR operations at the airport.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Persons wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2020–0751; Airspace Docket No. 20–ANM–42''. The postcard will be date/time stamped and returned to the commenter.

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

Availability of NPRMs

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

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 2200 S. 216th Street, Des Moines, WA 98198.

Availability and Summary of Documents for Incorporation by Reference

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

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) Part 71 by modifying Class E airspace extending upward from 700 feet above the surface at Bear Lake County Airport, Paris, ID, The area east of the airport will be reduced from 15.3 miles wide (from east to west) and 28.1 miles tall (from north to south) to two miles each side of the 115° bearing from the airport from the 6.6-mile radius to 11 miles southeast from the airport and the trapezoidal area west of the airport extending approximately 10.5 miles wide (from east to west) and 33.8 miles tall (from north to south) will be reduced to 2 miles each side of the airport 315° bearing extending from the 6.6-mile radius to 17 miles northwest from the airport, as the additional airspace is no longer required for operations.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.11D, dated August 8, 2019,

and effective September 15, 2019, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

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

Regulatory Notices and Analyses

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

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

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

ANM ID E5 Paris, ID

Bear Lake County Airport, ID
(Lat. 42°14′59″ N, long. 111°20′30″ W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of the Bear Lake County Airport and that airspace 2 miles each side of the airport 315° bearing extending from the 6.6-mile radius to 17 miles northwest from the airport, and that airspace 2 miles each side of the 115° bearing from the 6.6-mile radius to 11 miles southeast from the airport.

Issued in Seattle, Washington, on August 21, 2020.

Byron Chew,

Acting Group Manager, Operations Support Group, Western Service Center.

[FR Doc. 2020–18823 Filed 8–27–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2020–0763; Airspace Docket No. 20–ASO–22]

RIN 2120–AA66

Proposed Amendment of Class E Airspace; Montezuma, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace extending upward from 700 feet above the surface in Montezuma, GA, due to the decommissioning of the Montezuma non-directional beacon (NDB) and cancellation of the associated approach at Dr. CP Savage Sr. Airport. This action would also update the geographic coordinates of the airport. Controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations in the area.

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

ADDRESSES: Send comments on this proposal to: The U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001; Telephone: (800) 647–5527, or (202) 366–9826. You must identify the Docket No. FAA–2020–0763; Airspace Docket No. 20–ASO–22, at the beginning of your comments. You may also submit comments through the internet at *https://www.regulations.gov.*

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

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, 1701 Columbia Avenue, College Park, GA 30337; telephone (770) 883–5664.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend Class E airspace at Dr. CP Savage Sr. Airport, Montezuma, GA, to support IFR operations in the area.

Comments Invited

Interested persons are invited to comment on this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (Docket No. FAA–2020–0763 and Airspace Docket No. 20–ASO–22) and be submitted in triplicate to DOT Docket Operations (see **ADDRESSES** section for the address and

phone number). You may also submit comments through the internet at *https://www.regulations.gov.*

Persons wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2020–0763; Airspace Docket No. 20–ASO–22''. The postcard will be date/time stamped and returned to the commenter.

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

Availability of NPRMs

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

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined between 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays at the office of the Eastern Service Center, Federal Aviation Administration, Room 350, 1701 Columbia Avenue, College Park, GA 30337.

Availability and Summary of Documents for Incorporation by Reference

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

The Proposal

The FAA proposes an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 to amend Class E airspace extending upward from 700 feet above the surface at Dr. CP Savage Sr. Airport, Montezuma, GA, by eliminating the Montezuma NDB and the associated extension, and increasing the radius of the airport from 6.3 miles to 6.9 miles. In addition, the FAA proposes to update the geographic coordinates of the airport to coincide with the FAA's aeronautical database.

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

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

Regulatory Notices and Analyses

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

Environmental Review

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

ASO GA E5 Montezuma, GA [Amended]

Dr. CP Savage Sr. Airport, GA
(Lat. 32°18′11″ N, long. 84°00′27″ W)

That airspace extending upward from 700 feet or more above the surface within a 6.9-mile radius of Dr. CP Savage Sr. Airport.

Issued in College Park, Georgia, on August 25, 2020.

Matthew N. Cathcart,

Manager, Airspace & Procedures Team North, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2020–18990 Filed 8–27–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2020–0750; Airspace Docket No. 20–ACE–17]

RIN 2120–AA66

Proposed Amendment of Class E Airspace; Trenton, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend the Class E airspace extending upward from 700 feet above the surface at Trenton Municipal Airport, Trenton, MO. The FAA is proposing this action as the result of an airspace review caused by the decommissioning of the Trenton non-directional beacon (NDB) which provided navigation information to the instrument procedures at this airport. The geographical coordinates

would also be updated to coincide with the FAA's aeronautic database. Airspace redesign is necessary for the safety and management of instrument flight rules (IFR) operations at this airport.

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

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590; telephone (202) 366–9826, or (800) 647–5527. You must identify FAA Docket No. FAA–2020–0750/Airspace Docket No. 20–ACE–17 at the beginning of your comments. You may also submit comments through the internet at *https://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays.

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

FOR FURTHER INFORMATION CONTACT: Rebecca Shelby, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5857.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2020–0750/Airspace Docket No. 20–ACE–17.'' The postcard will be date/time stamped and returned to the commenter.

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

Availability of NPRMs

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

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

Availability and Summary of Documents for Incorporation by Reference

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

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by amending the Class E airspace extending upward from 700 feet above the surface to within a 6.4-mile radius of Trenton Municipal Airport, Trenton, MO; removing the Trenton NDB from the airspace legal description.

This action is due to an airspace review caused by the decommissioning of the Trenton NDB.

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

Regulatory Notices and Analyses

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

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

ACE MO E5 Trenton, MO [Amended]

Trenton Municipal Airport, MO
(Lat. 40°05′01″ N, long. 93°35′27″ W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Trenton Municipal Airport.

Issued in Fort Worth, Texas, on August 24, 2020.

Steven T. Phillips,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2020–18921 Filed 8–27–20; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 281 and 282

[EPA–R06–UST–2018–0703; FRL–10011–50–Region 6]

New Mexico: Final Approval of State Underground Storage Tank Program Revisions and Incorporation by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to the Resource Conservation and Recovery Act (RCRA or Act), the Environmental Protection Agency (EPA) is proposing to approve revisions to the State of New Mexico's Underground Storage Tank (UST) program submitted by the State. This proposed action is based on EPA's determination that these revisions satisfy all requirements needed for program approval. This proposal action also proposes to codify EPA's approval of New Mexico's state program and to incorporate by reference those provisions of the State regulations that we have determined meet the requirements for approval. The provisions will be subject to EPA's inspection and enforcement authorities under sections 9005 and 9006 of RCRA subtitle I and other applicable statutory and regulatory provisions.

DATES: Send written comments by September 28, 2020.

ADDRESSES: Submit any comments, identified by EPA–R06–UST–, by one of the following methods:

1. *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the on-line instructions for submitting comments.

2. *Email: lincoln.audray@epa.gov.*

Instructions: Direct your comments to Docket ID No. EPA–R06–UST–2018–0703. EPA's policy is that all comments received will be included in the public docket without change and may be 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 Federal *https://www.regulations.gov* website is an ''anonymous access'' system, which means the 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 the 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, the 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 the EPA cannot read your comment due to technical difficulties, and cannot contact you for clarification, the 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.

You can view and copy the documents that form the basis for this codification at the Environmental Protection Agency, Region 6, 1201 Elm Street, Suite #500, Dallas, Texas 75270. This facility is open from 8:30 a.m. to 4:30 p.m. Monday through Friday, excluding Federal holidays and facility closures due to COVID–19. We recommend that you telephone Audray Lincoln, Environmental Protection Specialist at (214) 665–2239, before visiting the Region 6 office. Interested persons wanting to examine these documents should make an appointment with the office at least two weeks in advance. The documents are also available in the docket for this rulemaking at *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Audray Lincoln, Region 6, Project Officer, LUST Prevention/Corrective Action Section (LCRPU), Land Chemical and Redevelopment Division, EPA Region 6, 1201 Elm Street, Suite #500, Dallas, Texas 75270, phone number (214) 665–2239, email address *lincoln.audray@epa.gov.* Out of an abundance of caution for members of the public and our staff, the EPA Region 6 office will be closed to the public to reduce the risk of transmitting COVID–19. We encourage the public to submit comments via *https://www.regulations.gov,* as there will be a delay in processing mail and no courier or hand deliveries will be accepted. Please call or email the contact listed above if you need alternative access to material indexed but not provided in the docket.

SUPPLEMENTARY INFORMATION: In the final rules section of this **Federal Register**, the EPA is approving the State's UST program submittal as a direct rule without prior proposal

because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated. If the EPA receives relevant adverse comments, the direct final rule will be withdrawn, and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. For additional information, see the direct final rule published in the ''Rules and Regulations'' section of this **Federal Register**.

Authority: This proposed rule is issued under the authority of Sections 2002(a), 9004, and 7004(b) of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912, 6991c, 6991d, and 6991e.

Dated: July 20, 2020.

Kenley McQueen,

Regional Administrator, Region 6.

[FR Doc. 2020–16275 Filed 8–27–20; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 200818–0221]

RIN 0648–BJ63

Fisheries Off West Coast States; Delay Implementation of West Coast Groundfish Electronic Monitoring Program

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

ACTION: Proposed rule; request for comments.

SUMMARY: This proposed rule would revise regulations to delay implementation of the Electronic Monitoring (EM) Program for the West Coast Groundfish Trawl Rationalization Program. This action would delay implementation of the EM Program to January 1, 2022. NMFS is proposing this change to provide additional time for industry and prospective service providers to prepare for implementation, as it is expected to strengthen Council and industry support for the EM program and may increase participation when it is implemented in 2022.

DATES: Comments on this proposed rule must be received no later than September 28, 2020.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2020–0116.

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2020-0116,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Barry Thom, c/o Colin Sayre, Sustainable Fisheries Division, West Coast Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115–0070.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

Electronic Access

This proposed rule is accessible via the internet at the Office of the Federal Register website at *https://www.federalregister.gov.* Background information and documents are available at the NMFS West Coast Region website at: *http://www.westcoast.fisheries.noaa.gov/fisheries/groundfish/index.html* and at the Pacific Fishery Management Council's website at *http://www.pcouncil.org/groundfish/fishery-management-plan/groundfish-amendments-in-development/.*

FOR FURTHER INFORMATION CONTACT: Colin Sayre, phone: 206–526–4656, or email: *colin.sayre@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

At the recommendation of the Pacific Coast Fishery Management Council (Council), NMFS published a final rule on June 28, 2019 (84 FR 31146) that authorized the use of EM in place of human observers to meet requirements for 100-percent monitoring at sea for catcher vessels in the groundfish trawl catch share fishery (Trawl Rationalization Program). EM video systems are used to record catch and discards by the vessel crew while at sea. Vessel operators are responsible for recording catch and discards in a logbook, which is then used to debit individual fishing quota (IFQ) accounts and cooperative allocations. After an EM vessel completes a fishing trip, the vessel operator submits the video data to their third party EM service provider for analysis to be used to audit the vessel operator's self-reported discard logbooks. The June 2019 final rule established requirements for vessel owners and operators and EM service providers participating in the EM program, and for first receivers receiving catch from EM trips. The EM program is set to begin January 1, 2021, and NMFS has been working on implementation of the program in preparation for the start date.

At its April and June 2020 meetings, the Council recommended that NMFS delay implementation of the EM program to January 1, 2022, to provide more time to prepare. Specifically, the Council wants to provide more time for industry and the Pacific States Marine Fisheries Commission (PSMFC) to develop a model for industry to fund PSMFC for review of video from their fishing trips. PSMFC has been reviewing video data from the experimental EM Exempted Fishing Permit (EFP) program, funded by NMFS, since 2015. Members of the fishing industry and the Council would like PSMFC to continue participating as a NMFS-certified, third party service provider under the EM regulatory program. They believe that PSMFC can provide video review services at lower cost than private sector service provider companies. PSMFC is eligible to apply for an EM provider permit under the regulations, but remains concerned that accepting funds directly from industry would undermine the apparent impartiality of its role in data collection programs on the west coast. The Council has requested that NMFS delay implementation of the regulatory program to provide more time for the industry and PSMFC to address these concerns before PSMFC applies to be a service provider in 2022. The Council believes that a delay is necessary to increase industry buy-in and for success of the EM program at reducing monitoring costs for the fishery.

At its April 2020 meeting, the Council initiated a regulatory amendment to consider changes to the EM program under Section 6.2 of the Pacific Coast Groundfish Fishery Management Plan, which allows the Council to recommend management measures in two meetings.

The Council adopted for public review several mostly administrative changes to the EM program, including delaying implementation of the EM program until January 1, 2022. The Council finalized its recommended changes to the EM program regulations at its June 2020 meeting. NMFS has taken up the Council's recommendation to delay the EM program in this rulemaking, and, to expedite completion of this rulemaking before January 2021, has postponed consideration of the other regulatory changes to a separate rulemaking to be completed at a later date.

In this rule, NMFS is proposing to implement the Council's recommendation to delay implementation of the EM program to 2022, as it would strengthen Council and industry support for the EM program and may increase participation when it is implemented in 2022. Delaying implementation of the EM program could postpone the benefits that the EM program is expected to provide to vessel owners, as detailed in the June 2019 final rule, for an additional year. NMFS intends to maintain the EM EFP program through 2021, contingent on funding, and to allow additional vessels to join. Vessels in the EFP program have been able to use EM in place of human observers and benefit from its cost savings while NMFS collected information to use in developing the regulations for and implementing the EM program. Maintaining the EFP in 2021 would allow vessels to continue to use EM in place of observers and mitigate potential negative economic effects of delaying the regulations.

Thus far in the EM EFP program, NMFS has funded review and storage of the video and reporting of the data using Federal funds provided to PSMFC through a grant. Although NMFS intends to renew the EFP for 2021, NMFS has not identified funding for these costs beyond 2020. If NMFS does not receive Federal funds to pay for the video review, storage, and reporting in 2021, the EFP could end, leaving vessel owners with no alternative to human observers in 2021 under this proposed rule. This would result in higher monitoring costs relative to maintaining the 2021 implementation date for the regulations for vessels that would use EM if available.

If Federal funding is not available for the EFP in 2021, vessel owners could instead pay PSMFC or a private, third party EM service provider directly for the video review, storage, and reporting for the EM EFP. Per NMFS's Procedural Directive on ''Cost Allocation in Electronic Monitoring Programs for Federally Managed U.S. Fisheries,'' the video review, storage, and reporting are sampling costs that are an industry responsibility. NMFS has funded these costs for the EM EFP while Federal funds have been available, but participating vessels could take responsibility for these costs in the EFP to continue to use EM in 2021. This third party model is not authorized in the EFP as currently written, so NMFS would need to undertake revisions to add it to the EFP before 2021. Vessel owners would also need to solicit and contract with a third party provider. NMFS is prepared to revise the EFPs to allow vessel owners to hire third party EM service providers, including PSMFC, for 2021, if necessary. Hiring a third party provider would be more costly for vessel owners than if NMFS funded the video review costs, but would still be expected to be a cost savings relative to using a human observer, as detailed in the June 2019 final rule. Given the cost savings, NMFS believes it is likely the EFP will continue in one form or another in 2021 and therefore the EFP program would mitigate any negative economic effects of this proposed rule. NMFS is requesting public comment on whether this is a reasonable assumption and, therefore, whether the EFP can be expected to mitigate the potentially negative economic effects of this proposed rule.

Under the EM program, first receivers accepting landings from EM vessels would no longer be able to use an observer on the vessel to monitor offloads and would have to obtain a catch monitor for these offloads. This may result in increased monitoring costs for first receivers under the EM program. In addition, under the EM program first receivers are required to sort and dispose of any prohibited or protected species retained by EM vessels. First receivers already have such disposition requirements for landings from Pacific whiting maximized retention trips under the current regulations, but EM would expand the existing whiting sorting and disposition requirements to landings from all EM trips beginning in 2021. Under this proposed rule, these additional costs would be postponed to 2022. However, because NMFS has maintained an EFP program since 2015 that allows vessels to use EM, NMFS believes that first receivers have already adjusted to the effects of these provisions under the EM EFP program, and therefore NMFS believes that this proposed rule will have no additional impact on first receivers relative to no regulatory action.

NMFS has already received applications from some prospective companies interested in obtaining an EM service provider permit for 2021. If the EM program is delayed through this proposed rule, any application received will be considered for permits for 2022 instead of 2021.

Summary of Proposed Regulations

This proposed rule would amend language in 50 CFR 660.603, which describes electronic monitoring provider permits and responsibilities, and 50 CFR 660.604, which describes vessel and first receiver responsibilities, to delay the acceptance of EM service provider and EM Authorization applications to 2021, thereby delaying implementation of the EM program to January 1, 2022. The proposed regulations were deemed by the Council to be consistent with the regulatory amendment and necessary to implement such provisions pursuant to section 303(c) of the Magnuson-Stevens Act through an August 10, 2020 letter from the Council Executive Director to the NMFS West Coast Regional Administrator.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Pacific Coast Groundfish Fishery Management Plan, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

This proposed rule is expected to be an Executive Order 13771 deregulatory action.

This proposed rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section and in the **SUMMARY** section of the preamble.

This action impacts mainly commercial harvesting entities engaged in the groundfish limited entry trawl

fishery. The SBA established criteria for business in the fishery sector to qualify as small entities. For Regulatory Flexibility Act purposes only, NMFS established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of $11 million for all its affiliated operations worldwide. According to the most recent year of data from the Northwest Fisheries Science Center's Economic Data Collection Program, there were 85 active trawl vessels that participated in the trawl fishery with an average revenue of $732,017 in 2018. Limited entry groundfish vessels are required to self-report size of business across all affiliated entities; of the businesses that earn the majority of their revenue from commercial fishing, none self-reported as large businesses. There were 14 licensed groundfish processors that received catch in the trawl fishery with an average total revenue of $27,772,991 in 2018, three of which self-identified as small businesses. There are not yet any permitted EM service providers operating in the fishery, but four companies have submitted applications for permits. NMFS does not have any economic information on these EM service provider companies.

NMFS considers two criteria in determining the significance of adverse regulatory effects, namely, disproportionality and profitability. Disproportionality compares the effect of the regulatory action between small and large entities. This proposed rule is anticipated to affect all entities and is not expected to place any of the small entities described above at a significant competitive disadvantage relative to large entities. This proposed rule would delay implementation of the EM program to 2022. The EM program is expected to provide a cost savings and operational flexibility by providing vessel owners an alternative to human observers to meet monitoring requirements. As this action would delay implementation of the EM program, it would postpone these potential cost savings to vessel owners for an additional year. However, since 2015, NMFS has been operating an EFP program to test EM, which has enabled participating vessels to use EM in place of human observers while NMFS collected information for developing and implementing the EM program. Most vessels interested in using EM have been able to participate in the EM program and benefit from the cost savings EM provides, regardless of business size. NMFS intends to maintain this EFP program through 2021, contingent on funding, and to allow additional vessels to join, which would mitigate the negative economic effects of delaying the EM program implementation through this proposed rule. Even if NMFS does not receive Federal funding to continue the EFP program, participating vessel owners could hire a third party provider to process and report their EM data, instead of hiring an observer. Although this third party model would be more costly for vessel owners than if NMFS funded the video review and reporting, it would still be expected to be less costly than using a human observer, as described in the preamble to this proposed rule. Therefore, we do not expect significant or disproportionate adverse economic effects on small entities from this proposed rule.

As discussed above, this proposed rule would delay implementation of the EM program which is expected to provide cost savings and operational flexibility to vessel owners. In this way, this proposed rule would postpone those cost savings for an additional year. However, as interested vessel owners can participate in the EM EFP program, NMFS does not expect this action to have significant adverse economic effects on profitability of fishing businesses.

Because this action is not expected to have a significant adverse economic effects on a substantial number of small entities, an initial regulatory flexibility analysis is not required and none has been prepared.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, and Indian Fisheries.

Dated: August 18, 2020.

Samuel D. Rauch III,

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

For the reasons set out in the preamble, 50 CFR part 660 is proposed to be amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES

■ 1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.,* 16 U.S.C. 773 *et seq.,* and 16 U.S.C 7001 *et seq.*

■ 2. In § 660.603, revise paragraph (b) introductory text to read as follows:

§§ 660.603 Electronic monitoring provider permits and responsibilities.

* * * * *

(b) *Provider permits.* To be an EM service provider, a person must obtain an EM service provider permit and endorsement by submitting an application to the NMFS West Coast Region Fisheries Permit Office. NMFS has already accepted any EM service provider application submitted as of [DATE OF PUBLICATION OF THE FINAL RULE]. NMFS will begin accepting additional applications for EM service providers permits May 1, 2021. A person may meet some requirements of this section through a partnership or subcontract with another entity, in which case the application for an EM service provider permit must include information about the partnership. An applicant may submit an application at any time. If a new EM service provider, or an existing EM service provider seeking to deploy a new EMS or software version, submits an application by June 1, NMFS will issue a new permit by January 1 of the following calendar year. Applications submitted after June 1 will be processed as soon as practicable. NMFS will only process complete applications. Additional endorsements to provide observer or catch monitor services may be obtained under § 660.18.

* * * * *

■ 3. In § 660.604, revise paragraph (e) introductory text to read as follows:

§ 660.604 Vessel and first receiver responsibilities.

* * * * *

(e) *Electronic Monitoring Authorization.* To obtain an EM Authorization, a vessel owner must submit an initial application to the NMFS West Coast Region Fisheries Permit Office, then a final application that includes an EM system certification and a vessel monitoring plan (VMP). NMFS will only review complete applications. NMFS has already accepted any EM Authorization application submitted as of the [DATE OF PUBLICATION OF THE FINAL RULE]. NMFS will begin accepting applications for EM Authorizations September 1, 2021. A vessel owner may submit an application at any time. Vessel owners that want to have their EM Authorizations effective for January 1 of the following calendar year must submit their complete application to NMFS by October 1. Vessel owners that want to have their EM Authorizations effective for May 15 must submit their complete application to NMFS by February 15 of the same year.

* * * * *

[FR Doc. 2020–18456 Filed 8–27–20; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 85, No. 168
Friday, August 28, 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

Submission for OMB Review; Comment Request

August 24, 2020.

The Department of Agriculture will submit the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Comments are requested regarding: Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments regarding these information collections are best assured of having their full effect if received by September 28, 2020. 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.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Agricultural Marketing Service

Title: Regulations Governing for Voluntary Grading of Shell Eggs, Poultry Product, and Rabbit Product-7 CFR part 54, 56, 62 and 70

OMB Control Number: 0581–0128.

Summary of Collection: The Agricultural Marketing Act of 1946 (60 Stat. 1087–1091, as amended; 7 U.S.C. 1621–1627) (AMA) directs and authorizes the Secretary of Agriculture to provide consumers with voluntary Federal grading and certification services that facilitate the marketing of agricultural commodities. The Quality Assessment Division (QAD) provides these services under the authority of 7 CFR parts 54, 56, and 70. The regulations provide a voluntary program for grading and certification services based on U.S. standards, grades, and weight classes to enable orderly marketing of the corresponding agricultural products. The regulation in 7 CFR part 62, Quality Systems Verification Programs (QSVP) is a collection of voluntary, audit-based, user-fee fund programs that allow applicants to have program documentation and program processes assessed by AMS auditor(s) and other USDA officials. This program is made available to respondents who would need to request or apply for the specific service they wish on a user fee-for-service basis.

Need and Use of the Information: Using forms LPS–109, LPS–110, LPS–157, LPS–240P, LPS–240S, LPS–210P, LPS–210S and LPS–234, information is collected only from respondents who elect to utilize this voluntary user fee-for-service. Only authorized representatives of the USDA use the information collected. The information is used to administer, conduct and carry out the grading services requested by the respondents. If the information were not collected, the agency would not be able to provide the voluntary grading services authorized and requested by congress, provide the types of services requested by industry, administer the program, ensure properly grade-labeled products, calculate the cost of the service or collect for the cost furnishing service.

Description of Respondents: Business or other for profit, Farms.

Number of Respondents: 1,639.

Frequency of Responses: Reporting: On occasion; Semi-annually; Monthly; Annually; Other (daily).

Total Burden Hours: 9,265.

Agricultural Marketing Service

Title: USDA Farmers Market Application.

OMB Control Number: 0581–0229.

Summary of Collection: The Agricultural Marketing Act of 1946 (7 U.S.C. 1622(n) authorizes the Secretary to conduct services and to perform activities that will facilitate the marketing and utilization of agricultural products through commercial channels. The Agricultural Marketing Service (AMS) is authorized to implement established regulations and procedures under 7 CFR part 170 for AMS to operate the U.S. Department of Agriculture (USDA) Farmers Market, specify vendor criteria and selection procedures, and define guidelines to be used for governing the USDA Farmers Market annually.

Need and Use of the Information: Information will be collected on form TM–28, ''USDA Farmers Market Application.'' The application was developed to ensure a uniform and fair process for deciding which farm operations are allowed to participate in the market, as well as ensure diversity of product for consumers. The Program has expanded to a year-round market. The Summer/Outdoor market season is from June through November and the Winter/Indoor market season operates from December through May. AMS will collect information to review the type of products available for sale and selecting participants for the annual market season. The information collected consists of (1) certification that the applicant is the owner or a representative of the farm or business; (2) name(s), address, telephone number and email address; (3) farm or business location; (4) types of products grown; (5) business practices; and (6) insurance coverage. Without an application and guidelines, AMS will be unable to continue operating annually each market season.

Description of Respondents: Business or other for-profit; Farms; Individuals.

Number of Respondents: 60.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 193.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2020–18922 Filed 8–27–20; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

August 25, 2020.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding: Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques and other forms of information technology.

Comments regarding this information collection received by September 28, 2020 will be considered. 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.

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Forest Service

Title: Special Use Administration.

OMB Control Number: 0596–0082.

Summary of Collection: Several statutes authorize the Forest Service (FS) to issue and administer authorizations for use and occupancy of National Forest System (NFS) lands and require the collection of information from the public for those purposes. The laws for authorizing the use and managing these uses of NFS lands include: The Organic Administration Act of 1897 (16 U.S.C. 551); Title V of the Federal Land Policy and Management Act of 1976 (FLPMA, 43 U.S.C. 1761–1771); The Act of March 4, 1915 (16 U.S.C. 497); The National Forest Ski Area Permit Act (16 U.S.C. 497b); Section 28 of the Mineral Leasing Act (30 U.S.C. 185); The National Forest Roads and Trails Act (FRTA, 16 U.S.C. 532–538); Section 7 of the Granger-Thye Act (16 U.S.C. 480d); The Act of May 26, 2000 (16 U.S.C. 460*l*–6d); The Federal Lands Recreation Enhancement Act (16 U.S.C. 6801–6814); Act of September 3, 1954 (68 Stat. 1146; 43 U.S.C. 931c, 931d); Archeological Resource Protection Act of October 31, 1979 (16 U.S.C.1996); The Rural Electrification Act of 1936, as amended; and Title VI of the Civil Rights Act of 1964.

Forest Service regulations implementing these authorities are found under Title 36, Code of Federal Regulations, Section 251, Subpart B (36 CFR 251, Subpart B). Information collected include submission of applications, execution of forms, and imposition of terms and conditions that entail information collection requirements, such as the requirement to submit annual financial information; to prepare and update an operating plan; to prepare and update a maintenance plan; and to submit compliance reports and information updates.

Need and Use of the Information: The information collected is evaluated by the FS to ensure that authorized uses of NFS lands are in the public interest and are compatible with the agency's mission. The information helps each agency identify environmental and social impacts of special uses for purposes of compliance with the National Environmental Policy Act and program administration. Information is collected under six categories: (1) Information required from proponents and applicants to evaluate proposals and applications to use or occupy NFS lands; (2) information required from applicants to complete special use authorizations; (3) annual financial information required from holders to determine land use fees; (4) information required from holders to prepare and update operating plans; (5) information required from holders to prepare and update maintenance plans; and (6) information required from holders to complete compliance reports and information updates.

Description of Respondents: Individuals or households; Business or other for-profit; Not-for-profit institutions; Farms; Federal Government; State, Local or Tribal Government.

Number of Respondents: 153,612.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 150,789.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2020–19016 Filed 8–27–20; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

August 25, 2020.

The Department of Agriculture will submit the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Comments are requested regarding: Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments regarding these information collections are best assured of having their full effect if received by September 28, 2020. 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.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs

potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Agricultural Marketing Service

Title: Generic Information Collection and Clearance of Qualitative Feedback on Agency Service Delivery.

OMB Control Number: 0581–0269.

Summary of Collection: Executive Order 12862 directs Federal agencies to provide service to the public that matches or exceeds the best service available in the private sector. Improving Agricultural Marketing Service (AMS) programs requires ongoing assessment of service delivery, by which we mean systematic review of the operation of a program compared to a set of explicit or implicit standards, as a means of contributing to the continuous improvement of the program.

Need and Use of the Information: The information collection activity will garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between AMS and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management. Feedback collected under this generic clearance will provide useful information, but it will not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: The target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential non-response bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

Description of Respondents: Farms; Business or other for-profit; Not-for-profit Institutions and State, Local or Tribal Government.

Number of Respondents: 100,000.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 50,000.

Agricultural Marketing Service

Title: USDA Web Based Supply Chain Management System (WBSCM).

OMB Control Number: 0581–0273.

Summary of Collection: Section 32 of the Act of August 24, 1935, as amended (Section 32 Pub. L. 74–320; 7 U.S.C. 612(c); Sections 6(a) and (e), 13, and 17 of the National School Lunch Act, as amended, (42 U.S.C. 1751, 1761, and 1766) in addition to several other acts authorize the Agricultural Marketing Service (AMS) Procurement Branches to prepare and issue announcements for the purchase and sale of perishable agricultural commodities. AMS purchases agricultural commodities for the Section 32 and 6a & e National School Lunch Program/Child & Adult Care Food Program; Nutrition Service Incentive Program; Food Distribution Program on Indian Reservations; Commodity Supplemental Food Program; The Emergency Food Assistance Program and Disaster Feeding in addition to providing support for commodity markets with surplus inventory.

Need and Use of the Information: AMS issues solicitation for offers in order to solicit bids for commodities for delivery to domestic nutrition assistance programs. Vendors respond by making electronic offers using the secure Web Based Supply Chain Management System (WBSCM). Vendors must be registered, and have an ID and password, in order to submit bids electronically through WBSCM via the internet. The information will change in response to the needs of the domestic feeding programs and each solicitation. Information collected has been consolidated into three processes—a New Vendor Application, Bid Solicitation, and Contract Delivery, Invoice Submission and Inspection Results. The data collected from vendors assists AMS with making a determination whether a business is viable and capable of supplying product to the Federal government.

Description of Respondents: Business or other for profit; Farms.

Number of Respondents: 330.

Frequency of Responses: Reporting: On occasion; Weekly; Monthly; Quarterly.

Total Burden Hours: 48,376.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2020–18942 Filed 8–27–20; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: National Study of State Adoption and Use of Pandemic-Electronic Benefit Transfer During Covid–19

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

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on this proposed information collection. This collection is a new collection to collect information on the operational aspects of the Pandemic Electronic Benefit Transfer program (P–EBT).

DATES: Written comments must be received on or before October 27, 2020.

ADDRESSES: Comments may be sent to: Edward Harper, Food and Nutrition Service, U.S. Department of Agriculture, 1320 Braddock Place, Alexandria, VA 22314. Comments may also be submitted via fax to the attention of Edward Harper at 703–305–2340 or via email to *edward.harper@usda.gov.* Comments will also be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations.gov,* and follow the online instructions for submitting comments electronically.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this information collection should be directed to Edward Harper at 703–305–2340.

SUPPLEMENTARY INFORMATION: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions that were 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 use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Title: National Study of State Adoption and Use of Pandemic-Electronic Benefit Transfer during Covid–19.

Form Number: Not applicable.

OMB Number: Not Yet Assigned.

Expiration Date: Not Yet Assigned.

Type of Request: New collection.

Abstract: The Families First Coronavirus Response Act of 2020 provides the Secretary of Agriculture authority to approve State agency plans for temporary emergency benefits under the Food and Nutrition Act of 2008. Children who would receive free or reduced-price meals under the Richard B. Russell National School Lunch Act, if not for the school closures, are eligible under this provision.

This collection seeks to gather information on operational issues and challenges encountered by Child Nutrition (CN) and Supplemental Nutrition Assistance Program (SNAP) State agencies while implementing the PEBT program. The study will collect information on State systems, including student information and direct certification systems and the records contained in those systems, school meal application data, information on the efficacy of the PEBT program, costs of operating the program, and organizational and operational challenges. This study will also seek to collect administrative data on per recipient benefits at the school district level.

Affected Public: Respondent groups include: (1) All CN State agencies administering the NSLP and SBP; (2) All SNAP State agencies administering the SNAP program.

Estimated Number of Respondents: The total estimated number of respondents is 150. This includes 75 CN State agency respondents and 75 SNAP State agency respondents. In some States, more than one State agency administers the school meal programs. There are 59 State agencies that administer the school meal programs. The additional respondents included in the estimate account for time spent consulting with staff actively involved in the P–EBT operations.

Estimated Number of Responses per Respondent: The CN and SNAP State agencies will be asked to complete one survey and provide requested administrative data for the period P–EBT was operational. There will be one response per respondent.

Estimated Total Annual Responses: $150 \times 1 = 150$.

Estimated Time per Response: The response time is estimated to be about 3 hours for each CN and SNAP State agency to complete.

Estimated Total Annual Burden on Respondents: 450 hours. See the table below for estimated total annual burden for each State agency director.

Respondent	Estimated number respondent	Responses annually per respondent	Total annual responses	Estimated avg. number of hours per response	Estimated total hours
Reporting Burden					
Child Nutrition State agencies	75	1	75.00	3	225
SNAP State agencies	75	1	75.00	3	225

Pamilyn Miller,

Administrator, Food and Nutrition Service.

[FR Doc. 2020–18952 Filed 8–27–20; 8:45 am]

BILLING CODE 3410–30–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Alaska 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 a teleconference meeting of the Alaska Advisory Committee (Committee) to the Commission will be held at 12:00 p.m. Alaska Time (AKT) on Friday, September 4, 2020. The purpose of the meeting is to review their two statements on voting rights and Alaska Native concerns.

DATES: The meeting will be held on Friday, September 4, 2020 at 12:00 p.m. AKT.

Public Call Information:

Dial: 800–437–2398

Conference ID: 8287097

FOR FURTHER INFORMATION CONTACT: Ana Victoria Fortes (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: 800–437–2398, conference ID number: 8287097. 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 or 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 meeting at. *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzljAAA*.

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

Agenda

I. Welcome
II. Review Statement on Voting Rights
III. Review Statement on Alaska Native Concerns
IV. Public Comment
V. Adjournment

Exceptional Circumstance: Pursuant to 41 CFR 102–3.150, the notice for this meeting is given less than 15 calendar days prior to the meeting because of the exceptional circumstances of the COVID crisis and DFO availability.

Dated: August 25, 2020.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2020–19017 Filed 8–27–20; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Indiana Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Indiana Advisory Committee (Committee) will hold a series of meetings via teleconference on Wednesday, September 9, and Wednesday, September 23, 2020 at 4:00 p.m. ET for the purpose of discussing the Committee's draft Lead Poisoning and Environmental Justice report.

DATES: The meetings will be held on:

- Wednesday, September 9, at 4:00 p.m. ET.
- Wednesday, September 23, at 4:00 p.m. ET.

Public Call Information: Dial: 800–353–6461; Conference ID: 3275376.

FOR FURTHER INFORMATION CONTACT: Mallory Trachtenberg, DFO, at *mtrachtenberg@usccr.gov* or 202–809–9618.

SUPPLEMENTARY INFORMATION: Members of the public can listen to the discussion. This meeting is available to the public through the above listed toll-free number. An open comment period will be provided to allow members of the public to make a statement as time allows. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to Mallory Trachtenberg at *mtrachtenberg@usccr.gov* in the Regional Program Unit Office/Advisory Committee Management Unit. Persons who desire additional information may contact the Regional Program Unit may contact the Regional Programs Unit Office at 202–809–9618.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzlgAAA* under the Commission on Civil Rights, Indiana Advisory Committee link. Persons interested in the work of this Committee are also directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit office at the above email or phone number.

Agenda

I. Welcome and Roll Call
II. Announcements and Updates
III. Discussion: Draft Report on Lead Poisoning and Environmental Justice
IV. Next Steps
V. Public Comment
VI. Adjournment

Dated: August 25, 2020.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2020–19006 Filed 8–27–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration, U.S. Department of Commerce.

ACTION: Notice and opportunity for public comment.

SUMMARY: The Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance from the firms listed below. Accordingly, EDA has initiated investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each of the firms contributed importantly to the total or partial separation of the firms' workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

SUPPLEMENTARY INFORMATION:

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION OF ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE

[7/22/2020 through 8/21/2020]

Firm name	Firm address	Date accepted for investigation	Product(s)
EnTech Plastics, Inc	1 Plastics Road, Corry, PA 16407	8/13/2020	The firm manufactures injection molding of plastic products.

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION OF ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE—Continued

[7/22/2020 through 8/21/2020]

Firm name	Firm address	Date accepted for investigation	Product(s)
Acrilex, Inc	230 Culver Avenue, Jersey City, NJ 07305.	8/14/2020	The firm manufactures plastic sheets of acrylic, polycarbonate, and other materials.
Audubon Machinery Corporation	814 Wurlitzer Drive, North Tonawanda, NY 14120.	8/20/2020	The firm manufactures industrial washing equipment and oxygen generators.
Automated Machine Systems, Inc	10525 Chester Road, Cincinnati, OH 45215.	8/20/2020	The firm manufactures specialty equipment for plastic joining, precision fastening, and leak testing.
Digital Tool and Die, Inc	2606 Sanford Avenue SW, North Grandville, MI 49418.	8/21/2020	The firm manufactures metal stamping dies and stamped metal parts.
Lovejoy Chaplet Corporation	12 River Street, Hoosick Falls, NY 12090.	8/21/2020	The firm manufactures precision machined parts, screws, washers.

Any party having a substantial interest in these proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Trade Adjustment Assistance Division, Room 71030, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice. These petitions are received pursuant to section 251 of the Trade Act of 1974, as amended.

Please follow the requirements set forth in EDA's regulations at 13 CFR 315.9 for procedures to request a public hearing. The Catalog of Federal Domestic Assistance official number and title for the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance for Firms.

Bryan Borlik,

Director.

[FR Doc. 2020–18903 Filed 8–27–20; 8:45 am]

BILLING CODE 3510–WH–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 2102]

Approval for Production Authority, Foreign-Trade Zone 134, Wacker Polysilicon North America, LLC (Polysilicon), Charleston, Tennessee

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones (FTZ) Act provides for ''. . . the establishment . . . of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs and Border Protection ports of entry;

Whereas, the Chattanooga Chamber Foundation, grantee of FTZ 134, has requested production authority on behalf of Wacker Polysilicon North America, LLC (Wacker), within Subzone 134B in Charleston, Tennessee (B–31–2019, docketed May 2, 2019);

Whereas, notice inviting public comment has been given in the **Federal Register** (84 FR 20091, May 8, 2019) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiners' report, and finds that the requirements of the FTZ Act and the Board's regulations would be satisfied, and that the proposal would be in the public interest if subject to the restriction listed below;

Now, therefore, the Board hereby orders:

The application for production authority under zone procedures within Subzone 134B on behalf of Wacker Polysilicon North America, LLC, as described in the application and **Federal Register** notice, is approved, subject to the FTZ Act and the Board's regulations, including Section 400.13, and further subject to a restriction prohibiting the admission of foreign-status silicon metal subject to an antidumping or countervailing duty order.

Dated: August 21, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 2020–19003 Filed 8–27–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Corporation for Travel Promotion Board of Directors

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Second notice of an opportunity for travel and tourism industry leaders to apply for membership on the Board of Directors of the Corporation for Travel Promotion. The initial notice for this opportunity was published on Thursday, July 02, 2019.

SUMMARY: The Department of Commerce is currently seeking applications from travel and tourism leaders from specific industries for membership on the Board of Directors (Board) of the Corporation for Travel Promotion (doing business as Brand USA). The purpose of the Board is to guide the Corporation for Travel Promotion on matters relating to the promotion of the United States as a travel destination and communication of travel facilitation issues, among other tasks.

DATES: All applications must be received by the National Travel and Tourism Office by close of business on Friday, September 11, 2020. Applicants who applied to the previously published **Federal Register** Notice (85 FR 39881 published on 07/02/2020) do not need to re-apply.

ADDRESSES: Please submit application information by email to *CTPBoard@trade.gov.*

FOR FURTHER INFORMATION CONTACT: Julie Heizer, National Travel and Tourism Office, U.S. Department of Commerce; telephone: 202–482–0140; email: *CTPBoard@trade.gov.*

SUPPLEMENTARY INFORMATION: The Travel Promotion Act of 2009 (TPA) was

signed into law on March 4, 2010 and was amended in July 2010, December 2014, and again in December 2019. The TPA established the Corporation for Travel Promotion (the Corporation), as a non-profit corporation charged with the development and execution of a plan to (A) provide useful information to those interested in traveling to the United States; (B) identify and address perceptions regarding U.S. entry policies; (C) maximize economic and diplomatic benefits of travel to the United States through the use of various promotional tools; (D) ensure that international travel benefits all States, territories of the United States, and the District of Columbia; (E) identify opportunities to promote tourism to rural and urban areas equally, including areas not traditionally visited by international travelers; and (F) give priority to countries and populations most likely to travel to the United States.

The Corporation is governed by a Board of Directors, consisting of 11 members with knowledge of international travel promotion or marketing, broadly representing various regions of the United States. The TPA directs the Secretary of Commerce (after consultation with the Secretary of Homeland Security and the Secretary of State) to appoint the Board of Directors for the Corporation.

At this time, the Department will be selecting three individuals with the appropriate expertise and experience from *specific sectors of the travel and tourism industry* to serve on the Board as follows:

1. One (1) shall have appropriate expertise and experience in the small business or retail sector, or in associations representing that sector;

2. One (1) shall have appropriate expertise and experience as an official of a State tourism office; and

3. One (1) shall have appropriate expertise and experience in the travel distribution services sector.

To be eligible for Board membership, individuals must have international travel and tourism marketing experience, be a current or former chief executive officer, chief financial officer, or chief marketing officer or have held an equivalent management position. Additional consideration will be given to individuals who have experience working in U.S. multinational entities with marketing budgets, and/or who are audit committee financial experts as defined by the Securities and Exchange Commission (in accordance with *15 U.S.C. 7265*). Individuals must be U.S. citizens, and in addition, cannot be federally registered lobbyists or registered as a foreign agent under the Foreign Agents Registration Act of 1938, as amended.

Those selected for the Board must be able to meet the time and effort commitments of the Board.

Board members serve at the discretion of the Secretary of Commerce (who may remove any member of the Board for good cause). The terms of office of each member of the Board appointed by the Secretary shall be three (3) years. Board members can serve a maximum of two consecutive full three-year terms. Board members are not considered Federal government employees by virtue of their service as a member of the Board and will receive no compensation from the Federal government for their participation in Board activities. Members participating in Board meetings and events may be paid actual travel expenses and per diem by the Corporation when away from their usual places of residence.

Individuals who want to be considered for appointment to the Board should submit the following information by the Friday, September 11, 2020 deadline to the email address listed in the **ADDRESSES** section above:

1. Name, title, and personal resume of the individual requesting consideration, including address, email address, and phone number.

2. A brief statement of why the person should be considered for appointment to the Board. This statement should also address the individual's relevant international travel and tourism marketing experience and audit committee financial expertise, if any, and indicate clearly the sector or sectors enumerated above in which the individual has the requisite expertise and experience. Individuals who have the requisite expertise and experience in more than one sector can be appointed for only one of those sectors. Appointments of members to the Board will be made by the Secretary of Commerce.

3. An affirmative statement that the applicant is a U.S. citizen, is not a federally-registered lobbyist and further, is not required to register as a foreign agent under the Foreign Agents Registration Act of 1938, as amended.

4. A statement acknowledging that the applicant is or is not an audit committee financial expert as defined by the Securities and Exchange Commission (in accordance with *15 U.S.C. 7265*).

Dated: August 25, 2020.

Julie Heizer,

Deputy Director, National Travel and Tourism Office.

[FR Doc. 2020–18977 Filed 8–27–20; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–127]

Certain Non-Refillable Steel Cylinders From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Duty Determination

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

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that countervailable subsidies are being provided to producers and exporters of certain non-refillable steel cylinders (non-refillable cylinders) from the People's Republic of China (China) during the period of investigation January 1, 2019 through December 31, 2019. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable August 28, 2020.

FOR FURTHER INFORMATION CONTACT: Kristen Johnson or John Conniff, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4793 or (202) 482–1009, respectively.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 703(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on April 22, 2020.[1] On June 2, 2020, Commerce postponed the preliminary determination of this investigation and reset the deadline to August 24, 2020.[2]

For a complete description of the events that followed the initiation of this investigation, see the Preliminary

[1] *See Certain Non-Refillable Steel Cylinders from the People's Republic of China: Initiation of Countervailing Duty Investigation,* 85 FR 22407 (April 22, 2020) (*Initiation Notice*).

[2] *See Certain Non-Refillable Steel Cylinders from the People's Republic of China: Postponement of Preliminary Determination in the Countervailing Duty Investigation,* 85 FR 33631 (June 2, 2020).

Decision Memorandum.[3] A list of topics discussed in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* The signed and electronic versions of the Preliminary Decision Memorandum are identical in content.

Scope of the Investigation

The products covered by this investigation are non-refillable cylinders from China. For a complete description of the scope of this investigation, see Appendix I.

Scope Comments

In accordance with the Preamble to Commerce's regulations,[4] the Initiation Notice set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[5] The petitioner [6] commented on the scope of the investigation as it appeared in the Initiation Notice.[7] Commerce intends to issue its preliminary decision regarding comments concerning the scope of the antidumping duty (AD) and countervailing duty (CVD) investigations in the preliminary determination of the companion AD investigation, the deadline for which is October 23, 2020.[8]

Methodology

Commerce is conducting this investigation in accordance with section 701 of the Act. For each of the subsidy programs found countervailable, Commerce preliminarily determines that there is a subsidy, *i.e.,* a financial contribution by an ''authority'' that gives rise to a benefit to the recipient, and that the subsidy is specific.[9] For full description of the methodology underlying our preliminary conclusions, see the Preliminary Decision Memorandum.

In making the preliminary findings, Commerce relied, in part, on facts available. For further information, see ''Use of Facts Otherwise Available and Adverse Inferences'' in the Preliminary Decision Memorandum.

Alignment

As noted in the Preliminary Decision Memorandum, in accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), and based on the petitioner's request,[10] Commerce is aligning the final CVD determination in this investigation with the final determination in the companion AD investigation of non-refillable cylinders from China. Consequently, the final CVD determination will be issued on the same date as the final AD determination, which is currently scheduled no later than January 6, 2021, unless postponed.[11]

All-Others Rate

Sections 703(d) and 705(c)(5)(A) of the Act provide that in the preliminary determination, Commerce shall determine an estimated all-others rate for companies not individually examined. This rate shall be an amount equal to the weighted average of the estimated subsidy rates established for those companies individually examined, excluding any zero and de minimis rates and any rates based entirely under section 776 of the Act.

In this investigation, Commerce calculated individual estimated countervailable subsidy rates for Ningbo Eagle Machinery & Technology Co., Ltd. and Wuyi Xilinde Machinery Manufacture Co., Ltd. that are not zero, de minimis, or based entirely on the facts otherwise available. Commerce calculated the all-others rate using a weighted average of the individual estimated subsidy rates calculated for the examined respondents using each company's publicly ranged values for the value of their exports of subject merchandise to the United States.[12]

Rate for Non-Responsive Companies

Seven potential producers and/or exporters of non-refillable cylinders from China did not respond to Commerce's Quantity and Value (Q&V) Questionnaire.[13] We find that, by not responding to the Q&V Questionnaire, these companies withheld requested information and significantly impeded this proceeding. Thus, in reaching our preliminary determination, pursuant to sections 776(a)(2)(A) and (C) of the Act, we are basing the CVD rate for these seven companies on facts otherwise available.

We further preliminarily determine that an adverse inference is warranted, pursuant to section 776(b) of the Act. By failing to submit responses to Commerce's Q&V Questionnaire, the seven companies did not cooperate to the best of their ability in this investigation. Accordingly, we preliminarily find that an adverse inference is warranted to ensure that the seven companies will not obtain a more favorable result than had they fully complied with our request for information. For more information on the application of adverse facts available to the non-responsive companies, see ''Use of Facts Otherwise Available and Adverse Inferences'' in the Preliminary Determination Memorandum.

Preliminary Determination

Commerce preliminarily determines that the following estimated countervailable subsidy rates exist:

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Determination of the Countervailing Duty Investigation of Certain Non-Refillable Steel Cylinders from the People's Republic of China,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[4] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

[5] *See Initiation Notice.*

[6] The petitioner is Worthington Industries.

[7] *See* Petitioner's Letters, ''Certain Non-Refillable Steel Cylinders from the People's Republic of China—Petitioner's Scope Comments,'' dated May 8, 2020; and ''Certain Non-Refillable Steel Cylinders from the People's Republic of China—Petitioner's Updated Scope Comments,'' dated August 4, 2020.

[8] *See Certain Non-Refillable Steel Cylinders from the People's Republic of China: Postponement of the Preliminary Determination in the Less Than Fair Value Investigation,* signed August 14, 2020 (*AD Postponement Notice*).

[9] *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.

[10] *See* Petitioner's Letter, ''Certain Non-Refillable Steel Cylinders from the People's Republic of China—Petitioner's Request to Align Final Determinations,'' dated August 13, 2020.

[11] *See AD Postponement Notice.*

[12] With two respondents under examination, Commerce normally calculates (A) a weighted-average of the estimated subsidy rates calculated for the examined respondents using each company's proprietary U.S. sale quantities for the merchandise under consideration; (B) a simple average of the estimated subsidy rates calculated for the examined respondents; and (C) a weighted-average of the estimated subsidy rates calculated for the examined respondents using each company's publicly-ranged U.S. sale quantities for the merchandise under consideration. Commerce then compares (B) and (C) to (A) and selects the rate closest to (A) as the most appropriate rate for all other producers and exporters. *See, e.g., Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part,* 75 FR 53661, 53663 (September 1, 2010).

[13] The seven companies are Jiangsu Kasidi Chemical Machinery Co., Ltd.; Jinhua Sinoblue Machinery Manufacturing Co., Ltd.; Ningbo Runkey CGA Cylinders Co., Ltd.; Ninhua Group Co., Ltd.; Shanghai Ronghua High-Pressure Vessel Co., Ltd.; Zhejiang Ansheng Mechanical Manufacture Co., Ltd.; and Zhejiang Nof Chemical Co., Ltd.

Company	Subsidy rate *Ad Valorem* (percent)
Ningbo Eagle Machinery & Technology Co., Ltd	25.91
Wuyi Xilinde Machinery Manufacture Co., Ltd	22.97
All Others	24.11
Jiangsu Kasidi Chemical Machinery Co., Ltd	190.67
Jinhua Sinoblue Machinery Manufacturing Co., Ltd	190.67
Ningbo Runkey CGA Cylinders Co., Ltd	190.67
Ninhua Group Co., Ltd	190.67
Shanghai Ronghua High-Pressure Vessel Co., Ltd	190.67
Zhejiang Ansheng Mechanical Manufacture Co., Ltd	190.67
Zhejiang Nof Chemical Co., Ltd	190.67

Suspension of Liquidation

In accordance with section 703(d)(1)(B) and (d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise as described in the scope of the investigation section entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Further, pursuant to 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the rates indicated above.

Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties in this preliminary determination within five days of its public announcement, or if there is no public announcement, within five days of the date of this notice in accordance with 19 CFR 351.224(b).

Verification

As provided in section 782(i)(1) of the Act, Commerce intends to verify the information relied upon in making its final determination.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the last verification report is issued in this investigation. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than seven days after the deadline date for case briefs.[14] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Parties are reminded that briefs and hearing requests are to be filed electronically using ACCESS and that electronically filed documents must be received successfully in their entirety by 5 p.m. Eastern Time on the due date. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[15]

International Trade Commission Notification

In accordance with section 703(f) of the Act, Commerce will notify the International Trade Commission (ITC) of its determination. If Commerce's final determination is affirmative, the ITC will make its final determination before the later of 120 days after the date of this preliminary determination or 45 days after the final determination.

Notification to Interested Parties

This determination is issued and published pursuant to sections 703(f) and 777(i) of the Act and 19 CFR 351.205(c).

Dated: August 24, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation is certain seamed (welded or brazed), non-refillable steel cylinders meeting the requirements of, or produced to meet the requirements of, U.S. Department of Transportation (USDOT) Specification 39, TransportCanada Specification 39M, or United Nations pressure receptacle standard ISO 11118 and otherwise meeting the description provided below (non-refillable steel cylinders). The subject non-refillable steel cylinders are portable and range from 300-cubic inch (4.9 liter) water capacity to 1,526-cubic inch (25 liter) water capacity. Subject non-refillable steel cylinders may be imported with or without a valve and/or pressure release device and unfilled at the time of importation.

Specifically excluded are seamless non-refillable steel cylinders.

The merchandise subject to this investigation is properly classified under statistical reporting numbers 7311.00.0060 and 7311.00.0090 of the Harmonized Tariff Schedule of the United States (HTSUS). The merchandise may also under HTSUS statistical reporting numbers 7310.29.0025 and 7310.29.0050. Although the HTSUS statistical reporting numbers are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope Comments
IV. Scope of the Investigation
V. Diversification of China's Economy
VI. Subsidies Valuation
VII. Use of Facts Otherwise Available and Adverse Inferences
VIII. Benchmarks and Interest Rates
IX. Analysis of Programs
X. Calculation of the All-Others Rate
XI. Recommendation

[FR Doc. 2020–18991 Filed 8–27–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA416]

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

[14] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements); *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19,* 85 FR 17006 (March 26, 2020) (*Temporary Rule*); and *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

[15] *See Temporary Rule.*

SUMMARY: The Gulf of Mexico Fishery Management Council will hold a meeting of its Law Enforcement Technical Committee (LETC), in conjunction with the Gulf States Marine Fisheries Commission's (GSMFC) Law Enforcement Committee (LEC).

DATES: The meeting will convene on Monday, September 14, 2020; beginning at 9 a.m. and adjourning no later than 12 p.m., CST.

ADDRESSES: The meeting will be held via webinar. From 9 a.m. to 10 a.m. CST, the meeting will be in closed session. From 10 a.m. to 12 p.m., the meeting will be open and can be accessed using the following link: *https://global.gotomeeting.com/join/879119909.*

Council address: Gulf of Mexico Fishery Management Council, 4107 W Spruce Street, Suite 200, Tampa, FL 33607; telephone: (813) 348–1630.

FOR FURTHER INFORMATION CONTACT: Dr. Ava Lasseter, Anthropologist, Gulf of Mexico Fishery Management Council; *ava.lasseter@gulfcouncil.org,* telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION: The items of discussion on the agenda are as follows:

Joint Gulf Council's Law Enforcement Technical Committee (LETC) and GSMFC's Law Enforcement Committee (LEC) Meeting Agenda, Monday, September 14, 2020, 9 a.m. Until 12 p.m., CST

The joint meeting will begin in closed session with introductions and a discussion of enforcement of recreational red snapper case handling.

The general session will convene at 10 a.m. CST, beginning with introductions, adoption of agenda, and approval of minutes from the Joint LEC/LETC Meeting on March 11, 2020.

The Gulf Council LETC will discuss the call for nominations for the 2020 Officer/Team of the Year award, and discuss any Other Business items.

The GSMFC LEC will review and approve the LETC/LEC 2021–22 Operations Plan; and review the IJF Program Activity for the status of the Red Drum Profile, and Commission Publications. The committee will present the State Report Highlights from Florida, Alabama, Mississippi, Louisiana, Texas, U.S. Coast Guard (USCG), NOAA Office of Law Enforcement (OLE), and U.S. Fish and Wildlife Service (USFWS); and any Other Business items. *Written state reports are requested in advance and only highlights will be presented for time purposes during state reporting item.*

—Meeting adjourns

The Agenda is subject to change, and the latest version along with other meeting materials will be posted on *www.gulfcouncil.org* as they become available.

The Law Enforcement Technical Committee consists of principal law enforcement officers in each of the Gulf States, as well as the NOAA OLE, USFWS, the USCG, and the NOAA Office of General Counsel for Law Enforcement.

Although other non-emergency issues not on the agenda may come before this group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Actions will be restricted to those issues specifically identified in the agenda and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kathy Pereira at the Gulf Council Office (see **ADDRESSES**), at least 5 working days prior to the meeting.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 25, 2020.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2020–18966 Filed 8–27–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA423]

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will hold a three-day meeting via webinar of its Standing, Reef Fish, Ecosystem and Socioeconomic Scientific and Statistical Committees (SSC)

DATES: The meeting will be held on Monday, September 14, 2020, from 9 a.m. to 4:30 p.m., Tuesday, September 15, 2020, from 9 a.m. to 4:30 p.m. and Wednesday, September 16, 2020, from 9 a.m. to 4:30 p.m., EDT.

ADDRESSES: The meeting will take place via webinar; you may register by visiting *www.gulfcouncil.org* and clicking on the SSC meeting on the calendar.

Council address: Gulf of Mexico Fishery Management Council, 4107 W. Spruce Street, Suite 200, Tampa, FL 33607; telephone: (813) 348–1630.

FOR FURTHER INFORMATION CONTACT: Ryan Rindone, Lead Fishery Biologist, Gulf of Mexico Fishery Management Council; *ryan.rindone@gulfcouncil.org,* telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION:

Monday, September 14, 2020; 9 a.m.–4:30 p.m., EDT

The meeting will begin with Introductions and Adoption of Agenda, Approval of Minutes from the August 11–12, 2020 webinar meeting, review of Scope of Work, and Selection of SSC Representative for the October 26–29, 2020 Gulf Council Meeting in Gulfport, Mississippi. The Committees will review the following; SEDAR 38 Update—Gulf of Mexico Migratory Group King Mackerel, including assessment presentations, projections, and the Stock Assessment Executive Summary. The Committees will also review the Gulf Gray Triggerfish Interim Analysis, including presentation and projections; and SEDAR 74: Red Snapper Research Track Terms of Reference.

Tuesday, September 15, 2020; 9 a.m.–4:30 p.m., EDT

The Committees will review and hold discussions on the Great Red Snapper Count, Sea Grant/NMFS Greater Amberjack Research Program, Carryover in the Red Snapper Individual Fishing Quota (IFQ) Program, Allocation Review Procedures, and SEDAR 75: Gulf of Mexico Gray Snapper Terms of Reference, Schedule, and Participant Solicitation.

Wednesday, September 16, 2020; 9 a.m.–4 p.m., EDT

The Committees will review ''*Testing assumptions about sex change and spatial management in the protogynous gag grouper, Mycteroperca microlepis,* Habitat Research, and Red Snapper Supply Chains and Markets.

Lastly, the Committee will discuss Other Business items and receive public comment.

—Meeting Adjourns

The meeting will be broadcast via webinar. You may register for the webinar by visiting *www.gulfcouncil.org* and clicking on the SSC meeting on the calendar.

The Agenda is subject to change, and the latest version along with other meeting materials will be posted on *www.gulfcouncil.org* as they become available.

Although other non-emergency issues not on the agenda may come before the Scientific and Statistical Committees for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Actions of the Scientific and Statistical Committee will be restricted to those issues specifically identified in the agenda and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 25, 2020.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2020–18967 Filed 8–27–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA247]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Seabird Research Activities in Central California

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

ACTION: Notice; proposed issuance of an Incidental Harassment Authorization; request for comments.

SUMMARY: NMFS has received a request from Point Blue Conservation Science (Point Blue), for authorization to take marine mammals incidental to conducting seabird research activities in central California. Point Blue's activities are identical to activities previously analyzed and for which take was authorized by NMFS. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an incidental harassment authorization (IHA) to incidentally take marine mammals during the specified activities. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorizations and agency responses will be summarized in the final notice of our decision.

DATES: Comments and information must be received no later than September 28, 2020.

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Physical comments should be sent to 1315 East-West Highway, Silver Spring, MD 20910 and electronic comments should be sent to *ITP.Fowler@noaa.gov.*

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments received electronically, including all attachments, must not exceed a 25-megabyte file size. Attachments to electronic comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted online at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act* without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Amy Fowler, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the original application and supporting documents (including NMFS FR notices of the original proposed and final authorizations, and the previous IHA), as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

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

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

National Environmental Policy Act

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

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. Accordingly, NMFS has preliminarily determined that the issuance of the proposed IHA qualifies to be categorically excluded from further NEPA review.

We will review all comments submitted in response to this notice prior to concluding our NEPA process or making a final decision on the IHA request.

History of Request

On January 4, 2018, NMFS received a request from Point Blue for an IHA to take marine mammals incidental to seabird and marine mammal research monitoring taking place at three locations in central California. Point Blue's request is for take of California sea lions (*Zalophus californianus*), Pacific harbor seals *(Phoca vitulina*), northern elephant seals (*Mirounga angustirostris*), and Steller sea lions (*Eumetopias jubatus*) by Level B harassment only. NMFS published a notice of a proposed IHA and request for comments in the **Federal Register** on May 7, 2018 (83 FR 20045). We subsequently published the final notice of our issuance of the IHA on July 5, 2018 (83 FR 31372), making the IHA valid for July 7, 2018 through July 6, 2019.

On September 17, 2019, NMFS received an application from Point Blue requesting a letter of authorization (LOA) for take of marine mammals incidental to seabird research activities in central California over the course of five years. We determined the application was adequate and complete on November 26, 2019 and published a notice of receipt of application in the **Federal Register** on December 4, 2019 (84 FR 66379). On June 17, 2020, NMFS received a request from Point Blue for an IHA to take marine mammals incidental to seabird research and monitoring in central California. Point Blue's application was determined to be adequate and complete on August 6, 2020. This IHA would be effective for a period of one year from the date of issuance, with the LOA expected to be effective from January 1, 2021 to December 31, 2025.

Point Blue's proposed activities are identical to those analyzed in the 2018 IHA, as are the proposed mitigation, monitoring, and reporting requirements described in detail in the **Federal Register** notice of issuance of the 2018 IHA (83 FR 31372; July 5, 2018). The proposed take numbers for Steller sea lions have increased slightly, while the proposed take numbers for California sea lions, harbor seals, and northern elephant seals are identical to those analyzed in the 2018 IHA. Please see the *Estimated Take* section of this notice for more information.

Description of the Proposed Activity and Anticipated Impacts

Point Blue plans to monitor and census seabird populations, observe seabird nesting habitat, restore nesting burrows, and resupply a field station annually in central California. The planned activities occur on Southeast Farallon Island (SEFI), Año Nuevo Island (ANO), and Point Reyes National Seashore (PRNS). Point Blue, along with partners Oikonos Ecosystem Knowledge and PRNS, have been conducting seabird research activities at these locations for over 30 years. This research is conducted under cooperative agreements with the U.S. Fish and Wildlife Service (USFWS) in consultation with the Gulf of the Farallones National Marine Sanctuary. Presence of researchers has the potential to disturb pinnipeds hauled out at SEFI, ANO, and PRNS. The seabird research and monitoring activities planned by Point Blue are identical to those analyzed in the 2018–2019 IHA.

NMFS refers the reader to the documents related to the previously issued 2018–2019 IHA for more detailed description of the project activities. These previous documents include the **Federal Register** notice of the issuance of the 2018–2019 IHA for Point Blue's seabird research activities (83 FR 31372, July 5, 2018), the **Federal Register** notice of the proposed IHA (83 FR 20045; May 7, 2018), Point Blue's application, and all associated references and documents, which are available at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-research-and-other-activities.* A detailed description of the seabird research and monitoring activities is found in these documents.

Detailed Description of the Action

A detailed description of the proposed seabird research and monitoring activities is found in these previous documents. The location, timing, and nature of the activities, including the types of equipment planned for use, are identical to those described in the previous notices.

Description of Marine Mammals

A description of the marine mammals in the area of the activities for which take has been authorized, including information on abundance, status, distribution, and hearing, may be found in the **Federal Register** notice of the proposed IHA for the 2018–2019 authorization (83 FR 20045; May 7, 2018). NMFS has reviewed the monitoring data from the initial IHA, recent draft Stock Assessment Reports, information on relevant Unusual Mortality Events, and other scientific literature. The 2018 Stock Assessment Report notes that the estimated abundance of California sea lions has decreased slightly, however, neither this nor any other new information affects which species or stocks have the potential to be affected or the pertinent information in the ''Description of Marine Mammals in the Area of Specified Activities'' section contained in the supporting documents for the initial IHA.

Potential Effects on Marine Mammals and Their Habitat

A description of the potential effects of the specified activities on marine mammals and their habitat may be found in the documents supporting the previous IHA, which remains applicable to the issuance of the proposed 2020 IHA. There is no new information on potential effects that affects our initial analysis of potential impacts on marine mammals and their habitat.

Estimated Take

Point Blue has been conducting seabird research activities at SEFI, ANI, and PRNS for over 30 years. Under previous IHAs, Point Blue has documented the numbers of marine mammals taken by Level B harassment at each of the research stations. Take estimates are based on take reported by Point Blue in the last five years (Table 1). Takes recorded in all previous monitoring reports were based on occurrences that are consistent with Levels 2 and 3 of the three-point harassment scale (see Table 3). For all species except California sea lions, Point Blue's requested annual take was calculated as the maximum annual recorded take for each species over the last five years (2015–2019) or the authorized take from the most recent IHA, whichever was greater. For California sea lions, the proposed take is identical to the authorized take in the most recent authorization, which is less than the highest year. The recorded take of California sea lions has been decreasing over the past five years, which is why the take numbers from the highest year were not used. However, the proposed take authorization (32,623 takes by Level B harassment) is proposed in order to sufficiently account for any unexpected increases in occurrences of California sea lions such as that which occurred between 2014 and 2015, when the recorded takes went up from around 10,000 to 36,000.

A detailed description of the methods and inputs used to estimate take for most recent IHA is found in the **Federal Register** notices of the proposed and final IHAs for the 2018–2019 authorization (83 FR 20045, May 7, 2018; 83 FR 31372, July 5, 2018) but in summary, the take estimates are based on historical data from the previous five monitoring reports (2014, 2015, 2016,

2017, and 2018) to generate 95 percent confidence interval maximums (assuming normal distribution) using STATA, a general-purpose statistical computer package.

TABLE 1—REPORTED TAKE OBSERVATIONS FROM PREVIOUS IHAS

Species	Reported take observations for all activities						Authorized takes from most recent IHA	Total requested annual takes by Level B harassment
	2014	2015	2016	2017	2018	2019		
California sea lion	10,048	36,417	23,173	22,752	17,487	10,408	32,623	32,623
Northern elephant seal	145	175	119	202	85	79	239	239
Pacific harbor seal ...	284	292	175	234	229	82	304	304
Steller sea lion	59	31	32	35	5	61	43	61

In this authorization, the expected number of survey days, and marine mammal occurrence data applicable to this authorization remain unchanged from the previously issued IHA. Similarly, the stocks taken, methods of take, and types of take remain unchanged from the previously issued IHA. The only change from the most recent authorization is the proposed take numbers for Steller sea lions, which increased based on consideration of reported take numbers from past authorizations.

TABLE 2—POPULATION ABUNDANCE ESTIMATES, TOTAL PROPOSED LEVEL B TAKE, AND PERCENTAGE OF POPULATION THAT MAY BE TAKEN

Species	Stock	Stock abundance	Total proposed Level B take	Percentage of stock or population
California sea lion	U.S.	257,606	32,623	12.7
Northern elephant seal	California breeding stock	179,000	239	0.13
Harbor seal	California	30,968	304	0.98
Steller sea lion	Eastern U.S.	41,638	61	0.14

Description of Proposed Mitigation, Monitoring and Reporting Measures

The mitigation, monitoring, and reporting measures proposed here are identical to those included in the notice announcing the issuance of the 2018–2019 IHA (83 FR 31372; July 5, 2018), and the discussion of the least practicable adverse impact included in that document remains accurate. The following measures are proposed for inclusion in this IHA:

To reduce the potential for disturbance from acoustic and visual stimuli associated with survey activities Point Blue will implement the following mitigation measures for marine mammals:

(1) Slow approach to beaches for boat landings to avoid stampede, provide animals opportunity to enter water, and avoid vessel strikes;

(2) Observe a site from a distance, using binoculars if necessary, to detect any marine mammals prior to approach to determine if mitigation is required (*i.e.,* site surveys will not be conducted if fur seals are present; if other pinnipeds are present, researchers will approach with caution, walking slowly, quietly, and close to the ground to avoid surprising any hauled-out individuals and to reduce flushing/stampeding of individuals);

(3) Avoid pinnipeds along access ways to sites by locating and taking a different access way. Researchers will keep a safe distance from and not approach any marine mammal while conducting research, unless it is absolutely necessary to flush a marine mammal in order to continue conducting research (*i.e.,* if a site cannot be accessed or sampled due to the presence of pinnipeds);

(4) Cease or delay visits if the number of takes that have been authorized are met, if a species for which takes were not authorized is observed (*e.g.,* northern fur seals (*Callorhinus ursinus*) and Guadalupe fur seals (*Arctocephalus townsendi*)), or if pups are present;

(5) Monitor for offshore predators and do not approach hauled out pinnipeds if great white sharks (*Carcharodon carcharias*) or killer whales (*Orcinus orca*) are present. If Point Blue and/or its designees see pinniped predators in the area, they must not disturb the pinnipeds until the area is free of predators;

(6) Keep voices hushed and bodies low to the ground in the visual presence of pinnipeds;

(7) Conduct seabird observations at North Landing on SEFI in an observation blind, shielded from the view of hauled out pinnipeds;

(8) Crawl slowly to access seabird nest boxes on ANI if pinnipeds are within view;

(9) Coordinate research visits to intertidal areas of SEFI (to reduce potential take) and coordinate research activities for ANI to minimize the number of trips to the island; and

(10) Require that beach landings on ANI only occur after any pinnipeds that might be present on the landing beach have entered the water.

Point Blue will contribute to the knowledge of pinnipeds in California by noting observations of: (1) Unusual behaviors, numbers, or distributions of pinnipeds, such that any potential follow-up research can be conducted by the appropriate personnel; (2) tag-bearing pinnipeds or carcasses, allowing transmittal of the information to appropriate agencies and personnel; and (3) rare or unusual species of marine mammals for agency follow-up.

Required monitoring protocols for Point Blue will include the following:

(1) Record of date, time, and location (or closest point of ingress) of each visit to the research site;

(2) Composition of the marine mammals sighted, such as species, gender, and life history stage (*e.g.,* adult, sub-adult, pup);

(3) Information on the numbers (by species) of marine mammals observed during the activities;

(4) Estimated number of marine mammals (by species) that may have been harassed during the activities;

(5) Behavioral responses or modifications of behaviors that may be attributed to the specific activities and a description of the specific activities occurring during that time (*e.g.,* pedestrian approach, vessel approach); and

(6) Information on the weather, including the tidal state and horizontal visibility.

The lead biologist will serve as an observer to record incidental take. For consistency, any reactions by pinnipeds to researchers will be recorded according to a three-point scale shown in Table 3. Note that only observations of disturbance noted in Levels 2 and 3 should be recorded as takes.

TABLE 3—LEVELS OF PINNIPED BEHAVIORAL DISTURBANCE

Level	Type of response	Definition
1	Alert	Seal head orientation or brief movement in response to disturbance, which may include turning head towards the disturbance, craning head and neck while holding the body rigid in a u-shaped position, changing from a lying to a sitting position, or brief movement of less than twice the animal's body length.
2*	Movement	Movements in response to the source of disturbance, ranging from short withdrawals at least twice the animal's body length to longer retreats over the beach, or if already moving a change of direction of greater than 90 degrees.
3*	Flush	All retreats (flushes) to the water.

*Only observations of disturbance Levels 2 and 3 are recorded as takes.

This information must be incorporated into a monitoring report for NMFS. The monitoring report will cover the period from January 1, 2020 through December 31, 2020. NMFS requires that Point Blue submit annual monitoring report data on a calendar year schedule, regardless of the current IHA's initiation or expiration dates. This ensures that data from all consecutive months will be collected and, therefore, can be analyzed to estimate authorized take for future IHA's regardless of the existing IHA's issuance date. Point Blue will submit a draft monitoring report for the 2020 activities to NMFS Office of Protected Resources by April 1, 2021. A final report will be prepared and submitted within 30 days following resolution of any comments on the draft report from NMFS. If no comments are received from NMFS, the draft monitoring report will be considered to be the final report.

Point Blue must also submit a draft monitoring report covering the period from January 1, 2021 through the date of expiration of this authorization. This report will be due 90 days after the expiration of this authorization. A final report must be prepared and submitted within 30 days following resolution of any comments on the draft report from NMFS. If no comments are received from NMFS, the draft monitoring report will be considered to be the final report. The reports must contain the informational elements described above, at minimum.

Point Blue must also report observations of unusual pinniped behaviors, numbers, or distributions and tag-bearing carcasses to the NMFS West Coast Regional Office.

If at any time the specified activity clearly causes the take of a marine mammal in a manner prohibited by this IHA, such as an injury (Level A harassment), serious injury, or mortality, Point Blue will immediately cease the specified activities and report the incident to the NMFS Office of Protected Resources, and the NMFS West Coast Regional Stranding Coordinator. The report must include the following information:

(1) Time and date of the incident;

(2) Description of the incident;

(3) Environmental conditions (*e.g.,* wind speed and direction, Beaufort sea state, cloud cover, and visibility);

(4) Description of all marine mammal observations in the 24 hours preceding the incident;

(5) Species identification or description of the animal(s) involved;

(6) Fate of the animal(s); and

(7) Photographs or video footage of the animal(s).

Activities must not resume until NMFS is able to review the circumstances of the prohibited take. NMFS will work with Point Blue to determine what measures are necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. Point Blue may not resume the activities until notified by NMFS.

In the event that an injured or dead marine mammal is discovered and it is determined that the cause of the injury or death is unknown and the death is relatively recent (*e.g.,* in less than a moderate state of decomposition), Point Blue must immediately report the incident to the Office of Protected Resources, NMFS, and the West Coast Regional Stranding Coordinator, NMFS. The report must include the same information required in the report on unauthorized take. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with Point Blue to determine whether additional mitigation measures or modifications to the activities are appropriate.

In the event that an injured or dead marine mammal is discovered and it is determined that the injury or death is not associated with or related to the activities covered by the IHA (*e.g.,* previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), Point Blue must report the incident to the Office of Protected Resources, NMFS, and the West Coast Regional Stranding Coordinator, NMFS, within 24 hours of the discovery. Point Blue must provide photographs, video footage, or other documentation of the stranded animal sighting to NMFS. Activities may continue while NMFS reviews the circumstances of the incident.

Preliminary Determinations

The seabird research and monitoring activities proposed by Point Blue, the method of taking, and the effects of the action are identical to those analyzed in the 2018–2019 IHA, as is the planned frequency of research site visits within the authorization period. The potential effects of Point Blue's activities are limited to Level B harassment in the form of behavioral disturbance. In analyzing the effects of the activity in the initial IHA, NMFS determined that

Point Blue's activities would have a negligible impact on the affected species or stocks and that the authorized take numbers of each species or stock were small relative to the relevant stocks (*e.g.,* less than 13 percent for all stocks). The numbers of California sea lions, harbor seals, and northern elephant seals proposed to be taken are identical to those authorized in the 2018–2019 IHA, while the numbers of Steller sea lions proposed to be taken have increased slightly. However, the increased numbers of Steller sea lions result in only minor increased percentage of stock proposed to be taken (*e.g.,* from 0.10 to 0.14 percent of the Eastern U.S. stock of Steller sea lions) and NMFS has preliminarily determined that the proposed take is still considered small relative to the relevant stock abundances. The mitigation measures and monitoring and reporting requirements as described above are identical to the initial IHA.

NMFS has preliminarily concluded that there is no new information suggesting that our analysis or findings should change from those reached for the initial IHA. This includes consideration of the estimated abundance of the California sea lion stock decreasing slightly and the increased estimated take of Steller sea lions. Based on the information contained here and in the referenced documents, NMFS has preliminarily 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 proposed authorized takes will have a negligible impact on the affected marine mammal species or stocks; (3) the proposed authorized takes represent small numbers of marine mammals relative to the affected stock abundances; and (4) Point Blue'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, and (5) appropriate monitoring and reporting requirements are included.

Endangered Species Act (ESA)

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. No incidental take of ESA-listed species is authorized or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to Point Blue for conducting seabird research and monitoring activities in central California for a period of one year from the date of issuance, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed IHA can be found at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.*

Request for Public Comments

We request comment on our analyses (included in both this document and the referenced documents supporting the 2018–2019 IHA), the proposed authorization, and any other aspect of this notice of proposed IHA for the proposed seabird research and monitoring activities. Please include with your comments any supporting data or literature citations to help inform our final decision on the request for MMPA authorization.

Dated: August 21, 2020.

Donna S. Wieting,

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

[FR Doc. 2020–18970 Filed 8–27–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA405]

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's Spiny Dogfish Monitoring Committee will hold a public meeting to review annual specifications and management measures, and make any appropriate recommendations.

DATES: The meeting will be held Monday, September 14, 2020, from 1 p.m. to 4 p.m.

ADDRESSES: The meeting will be held via webinar; the webinar link is: *http://mafmc.adobeconnect.com/spinydogmc-2020/.*

Council address: Mid-Atlantic Fishery Management Council, 800 N. State St., Suite 201, Dover, DE 19901; telephone: (302) 674–2331.

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D. Executive Director, Mid-Atlantic Fishery Management Council; telephone: (302) 526–5255. The Council's website, *www.mafmc.org* also has details on the proposed agenda, webinar access, and any briefing materials.

SUPPLEMENTARY INFORMATION:

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to M. Jan Saunders, (302) 526–5251, at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 25, 2020.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2020–18965 Filed 8–27–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA403]

South Atlantic Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold meetings of the following: Snapper Grouper Committee; Southeast Data, Assessment and Review (SEDAR) Committee; Dolphin Wahoo Committee; and Executive Committee (partially Closed Session). The meeting week will also include a formal public comment session and a meeting of the Full Council (with a partially Closed Session). Due to public health concerns associated with COVID–19 and current travel restrictions, the meeting originally planned for Charleston, SC will be held via webinar.

DATES: The Council meeting will be held from 9 a.m. on Monday, September

14, 2020 until 5 p.m. on Thursday, September 17, 2020.

ADDRESSES: The meetings will be held via webinar. Webinar registration is required. Details are included in **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, SAFMC; phone: (843) 302–8440 or toll free: (866) SAFMC–10; fax: (843) 769–4520; email: *kim.iverson@safmc.net.*

SUPPLEMENTARY INFORMATION: Meeting information, including agendas, overviews, and briefing book materials will be posted on the Council's website at: *http://safmc.net/safmc-meetings/council-meetings/.* Webinar registration links for each meeting day will also be available from the Council's website.

Public comment: Written comments may be directed to John Carmichael, Executive Director, South Atlantic Fishery Management Council (see **ADDRESSES**) or electronically via the Council's website at *http://safmc.net/safmc-meetings/council-meetings/.* Comments received by close of business the Monday before the meeting (9/7/20) will be compiled, posted to the website as part of the meeting materials, and included in the administrative record; please use the Council's online form available from the website. For written comments received after the Monday before the meeting must use the Council's online form available from the website. Comments will automatically be posted to the website and available for Council consideration. Comments received prior to 9 a.m. on Thursday, September 17, 2020 will be a part of the meeting administrative record.

The items of discussion in the individual meeting agendas are as follows:

Full Council Sessions

Council Session I—Monday, September 14, 2020, 9 a.m. until 12 p.m. (Closed Session); Council Session II—Monday, September 14, 2020, 1:30 p.m. until 5 p.m. and Tuesday, September 15, 2020, 9 a.m. until 11 a.m.; and Council Session III—Thursday, September 17, 2020 from 1:30 p.m. until 5 p.m.

Council Session I, Monday September 14, 2020, 9 a.m. Until 12 p.m. (Closed Session)

1. The Council will recommend applicants for open advisory panel seats.

2. The Council will recommend appointees for SEDAR stock assessment projects.

3. A legal briefing on litigation will also be held if needed.

Council Session II, Monday, September 14, 2020, 1:30 p.m. Until 5 p.m. and Tuesday, September 15, 2020 From 9 a.m. Until 11 a.m.

1. Newly appointed Council members will be sworn in.

2. The Council will develop a response to the President's Executive Order on Promoting American Seafood Competitiveness and Economic Growth.

3. Council members will receive an update from NOAA Fisheries on recent emergency action requests to increase the bag limit for King Mackerel and the commercial trip limit for Vermilion Snapper and consider requesting additional emergency actions.

4. The Council will receive a report from NOAA Fisheries on the Standardized Bycatch Reporting Methodology.

5. The Council will review sector allocation alternatives and recommend how to proceed.

Snapper Grouper Committee, Tuesday, September 15, 2020, 11 a.m. Until 12 p.m. and 1:30 p.m. Until 4:30 p.m.

1. The Committee will receive an update from NOAA Fisheries on the status of amendments under review

2. The Committee will review the 2020 South Atlantic Red Snapper Season.

3. The Committee will review an options paper for modernizing the Wreckfish Individual Transferable Quota (ITQ) Program and consider approval for public scoping.

4. The Committee will review potential management measures to end overfishing and revise the rebuilding plan for Red Porgy and provide direction to staff.

5. The Committee will provide topics for consideration during the November 2020 meeting of the Snapper Grouper Advisory Panel.

SEDAR Committee, Tuesday, September 15, 2020, 4:30 p.m. Until 5 p.m.

1. The Committee will review the SEDAR Statement of Works for assessments that will begin in 2023 and approve for Council consideration.

2. The Committee will receive an update from the SEDAR Steering Committee on the Research Track and Operational Assessment Process and consider recommendations.

Dolphin Wahoo Committee, Wednesday, September 16, 2020, 9 a.m. Until 3:45 p.m.

1. The Committee will review draft Amendment 10 to the Dolphin Wahoo Fishery Management Plan (FMP) with actions that currently address: Revisions to recreational data and catch level recommendations, redefining Optimum Yield in the dolphin fishery, modifications to accountability measures, and other management revisions to the dolphin and wahoo fisheries. The Committee will review the draft Amendment and provide direction to staff.

2. The Committee will review draft Amendment 12 to the Dolphin Wahoo FMP with measures to add bullet mackerel and frigate mackerel as Ecosystem Component species to the Dolphin Wahoo FMP and consider final approval of the amendment for Secretarial review.

3. The Committee will receive a presentation on recent tagging studies conducted through the Dolphinfish Research Program.

4. The Committee will provide recommendations for management topics to be considered at the October meeting of the Dolphin Wahoo Advisory Panel.

Formal Public Comment, Wednesday, September 16, 2020, 4 p.m.—Public comment will be accepted via webinar on items on the Council meeting agenda scheduled to be approved for Secretarial Review: Amendment 12 to the Dolphin Wahoo Fishery Management Plan (Bullet and Frigate Mackerel as Ecosystem Component Species). Public comment will also be accepted on all other agenda items. The Council Chair, based on the number of individuals wishing to comment, will determine the amount of time provided to each commenter.

Executive Committee, Thursday, September 17, 2020, 9 a.m. Until 12 p.m. (Partially Closed Session)

Closed Session

1. The Committee will review the compositions of its Scientific and Statistical Committee and its Outreach and Communications Advisory Panel and provide recommendations for Council consideration.

2. The Committee will also review the Council's Sexual Harassment identification and prevention efforts.

Open Session

1. The Committee will review new travel forms and the Council's Priorities Work Schedule and provide recommendations as needed.

Council Session III, Thursday, September 17, 2020, 1:30 p.m. Until 5 p.m.

The Full Council Session III will begin with the Call to Order, adoption of the agenda, approval of minutes, and Council elections.

The Council will receive a staff report from the Executive Director, and updates on Outreach and Communications efforts, the Council's Citizen Science Program, and Atlantic coast climate change scenario planning.

NOAA Fisheries Southeast Fisheries Science Center staff will provide reports on the status of commercial electronic logbooks and pandemic response impacts on surveys and fishery monitoring.

NOAA Fisheries Southeast Regional Office staff will provide an update on the status of the For-Hire Electronic Reporting Amendment and a report on Protected Resources.

The Council will receive reports from the following committees: Snapper Grouper; SEDAR; Dolphin Wahoo; and Executive. The Council will also address advisory panel and SEDAR appointments.

The Council will receive agency and liaison reports, discuss other business and upcoming meetings, and take action as necessary.

Documents regarding these issues are available from the Council office (see **ADDRESSES**).

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the Council office (see **ADDRESSES**) 5 days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 25, 2020.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2020–18964 Filed 8–27–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA373]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Office of Naval Research Arctic Research Activities

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

ACTION: Notice; issuance of Renewal incidental harassment authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA), as amended, notification is hereby given that NMFS has issued a Renewal incidental harassment authorization (IHA) to the U.S. Navy's Office of Naval Research (ONR) to harass marine mammals incidental to Arctic Research Activities in the Beaufort and Chukchi Seas.

DATES: This Renewal IHA is valid from September 10, 2020 through September 9, 2021.

FOR FURTHER INFORMATION CONTACT: Amy Fowler, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the original application, Renewal request, and supporting documents (including NMFS **Federal Register** notices of the original proposed and final authorizations, and the previous IHA), as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

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

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to here as ''mitigation measures''). Monitoring and reporting of such takings are also required. The meaning of key terms such as ''take,'' ''harassment,'' and ''negligible impact'' can be found in section 3 of the MMPA (16 U.S.C. 1362) and the agency's regulations at 50 CFR 216.103.

NMFS' regulations implementing the MMPA at 50 CFR 216.107(e) indicate that IHAs may be renewed for additional periods of time not to exceed one year for each reauthorization. In the notice of proposed IHA for the initial authorization, NMFS described the circumstances under which we would consider issuing a Renewal for this activity, and requested public comment on a potential Renewal under those circumstances. Specifically, on a case-by-case basis, NMFS may issue a one-time one-year Renewal IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical, or nearly identical, activities as described in the Description of the Specified Activities and Anticipated Impacts section of this notice is planned or (2) the activities as described in the Specified Activities section of this notice would not be completed by the time the IHA expires and a Renewal would allow for completion of the activities beyond that described in the Dates and Duration section of the notice of proposed IHA for the initial authorization, provided all of the following conditions are met:

- A request for renewal is received no later than 60 days prior to the needed Renewal IHA effective date (recognizing that the Renewal IHA expiration date cannot extend beyond one year from expiration of the initial IHA).
- The request for renewal must include the following:

(1) An explanation that the activities to be conducted under the requested Renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the activities, or

include changes so minor (*e.g.,* reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take).

(2) A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

Upon review of the request for Renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

An additional public comment period of 15 days (for a total of 45 days), with direct notice by email, phone, or postal service to commenters on the initial IHA, is provided to allow for any additional comments on the proposed Renewal. A description of the Renewal process may be found on our website at: *www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-harassment-authorization-renewals.*

The NDAA (Pub. L. 108–136) removed the ''small numbers'' and ''specified geographical region'' limitations indicated above and amended the definition of ''harassment'' as it applies to a ''military readiness activity.'' The activity for which incidental take of marine mammals is being requested addressed here qualifies as a military readiness activity.

History of Request

On September 9, 2019, NMFS issued an IHA to ONR to take marine mammals incidental to Arctic Research Activities in the Beaufort and Chukchi Seas (84 FR 50007; September 24, 2019), effective from September 10, 2019 through September 9, 2020. On May 12, 2020, NMFS received an application for the Renewal of that initial IHA. As described in the application for Renewal, the activities for which incidental take is requested are identical to those covered in the initial authorization. As required, the applicant also provided a preliminary monitoring report (available at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-military-readiness-activities*) which confirms that the applicant has implemented the required mitigation and monitoring, and which also shows that no impacts of a scale or nature not previously analyzed or authorized have occurred as a result of the activities conducted.

Description of the Specified Activities and Anticipated Impacts

ONR plans to continue its Arctic Research Activities for a third year, conducting activities identical to those analyzed in the initial IHA. In 2018, ONR began a three-year project involving several scientific objectives that support the Arctic and Global Prediction Program, as well as the Ocean Acoustics Program and the Naval Research Laboratory, for which ONR is the parent command. Specifically, the project includes the Stratified Ocean Dynamics of the Arctic (SODA), Arctic Mobile Observing System (AMOS), Ocean Acoustics field work (including the Coordinated Arctic Active Tomography Experiment (CAATEX)), and Naval Research Laboratory experiments in the Beaufort and Chukchi Seas. These experiments involve deployment of moored and ice-tethered active acoustic sources, primarily from the U.S Coast Guard Cutter (CGC) HEALY. The CGC HEALY may be required to perform icebreaking to access the northernmost portion of the Survey Area. Underwater sound from the acoustic sources and icebreaking may result in behavioral harassment of marine mammals.

Detailed Description of the Activity

A total of 12 moored acoustic navigation sources were planned to be deployed and operate through the duration of the three-year project. Of those, seven moored navigation sources were deployed in 2018 and an additional navigation source was deployed in 2019, along with a very-low frequency source (30 hertz) in the northernmost portion of the Survey Area. These acoustic sources are deployed and left behind to transmit intermittently throughout the year. The acoustic sources deployed during the 2018 and 2019 scientific cruises would continue to operate through the course of this IHA Renewal and the remaining moored and drifting sources are also planned to be deployed in 2020, such that the acoustic transmissions from September 2020 through September 2021 would be identical to those analyzed in the initial IHA.

As described in the notice of proposed IHA for the initial authorization (84 FR 37240; July 31, 2019), CGC HEALY may also be required to perform icebreaking to deploy the acoustic sources in deep water. No icebreaking was required in the 2019 research cruise, but as in the initial IHA, ONR estimates up to six hours of icebreaking per day over 16 days may occur (*e.g.,* eight days during the fall 2020 equipment deployment cruise and eight days during the fall 2021 equipment retrieval cruise).

A detailed description of the scientific research program conducted by ONR is found in the notice of proposed IHA for the initial authorization (84 FR 37240; July 31, 2019). The location, timing, and nature of the activities, including the acoustic sources planned for use, are identical to those described in the previous notice. This IHA Renewal is effective for one year past the expiration of the initial IHA (*i.e.,* from September 10, 2020 through September 9, 2021).

Description of Marine Mammals

A description of the marine mammals in the area of the activities for which authorization of take is proposed here, including information on abundance, status, distribution, and hearing, may be found in the notice of the proposed IHA (84 FR 37240; July 31, 2019). NMFS has reviewed the monitoring report from the initial IHA, recent draft Stock Assessment Reports (SARs), information on relevant Unusual Mortality Events (UMEs), and other scientific literature, and determined that neither this nor any other new information affects which species or stock have the potential to be affected or the pertinent information in the Description of the Marine Mammals in the Area of Specified Activities section contained in the supporting documents for the initial IHA.

Ice Seals UME

Since June 1, 2018, elevated strandings of ringed seals, bearded seals, and spotted seals (*Phoca largha*) have occurred in the Bering and Chukchi Seas. This event has been declared a UME. A UME is defined under the MMPA as a stranding that is unexpected; involves a significant die-off of any marine mammal population; and demands immediate response. From June 1, 2018 to February 9, 2020, there have been 278 dead seals reported, with 112 stranding in 2018, 165 in 2019, and one in 2020, which is nearly five times the average number of strandings of about 29 seals annually. All age classes of seals have been reported stranded, and a subset of seals have been sampled for genetics and harmful algal bloom exposure, with a few having histopathology collected. Results are pending, and the cause of the UME remains unknown.

There was a previous UME involving ice seals from 2011 to 2016, which was most active in 2011–2012. A minimum of 657 seals were affected. The UME

investigation determined that some of the clinical signs were due to an abnormal molt, but a definitive cause of death for the UME was never determined. The number of stranded ice seals involved in this UME, and their physical characteristics, is not at all similar to the 2011–2016 UME, as the seals in 2018–2020 have not been exhibiting hair loss or skin lesions, which were a primary finding in the 2011–2016 UME. The investigation into the cause of the most recent UME is ongoing. More detailed information is available at: *https://www.fisheries.noaa.gov/national/marine-life-distress/2018-2019-ice-seal-unusual-mortality-event-alaska.*

Potential Effects on Marine Mammals and Their Habitat

A description of the potential effects of the specified activity on marine mammals and their habitat for the activities for which take is authorized here may be found in the notice of the proposed IHA for the initial authorization (84 FR 37240; July 31, 2019). NMFS has reviewed the monitoring data from the initial IHA, recent draft SARs, information on relevant UMEs, other scientific literature, and the public comments, and determined that neither this nor any other new information affects our initial analysis of impacts on marine mammals and their habitat.

Estimated Take

A detailed description of the methods and inputs used to estimate take for the specified activity are found in the notices of the proposed and final IHAs for the initial authorization (84 FR 37240, July 31, 2019; 84 FR 50007, September 24, 2019). Specifically, the source levels, days of operation, and marine mammal density and occurrence data applicable to this authorization remain unchanged from the previously issued IHA. Similarly, the stocks taken, methods of take, and types of take remain unchanged from the previously issued IHA, as do the number of authorized takes, which are indicated below in Table 1.

TABLE 1—AUTHORIZED TAKE OF MARINE MAMMALS AND PERCENT OF STOCKS TAKEN

Species	Density estimate within study area (animals per square km) [a]	Level B harassment from deployed sources	Level B harassment from icebreaking	Level A harassment	Total authorized take	Percentage of stock taken
Beluga Whale (Beaufort Sea Stock)	0.0087	331	32	0	363	0.92
Beluga Whale (Eastern Chukchi Sea stock)	0.0087	178	18	0	196	0.94
Bearded Seal	0.0332	0	0	0	[b] 5	<0.01
Ringed Seal	0.3760	6,773	1,072	0	7,845	2.17

[a] Kaschner *et al.* (2006); Kaschner (2004).
[b] Quantitative modeling yielded zero takes of bearded seals. However, in an abundance of caution, we are proposing to authorize five takes of bearded seals by Level B harassment.

Description of Mitigation, Monitoring and Reporting Measures

The mitigation, monitoring, and reporting measures included as requirements in this authorization are identical to those included in the **Federal Register** notice announcing the issuance of the initial IHA (84 FR 50007; September 24, 2019), and the discussion of the least practicable adverse impact included in that document remains accurate. The following measures are required for this Renewal:

Mitigation Measures

Ships operated by or for the Navy have personnel assigned to stand watch at all times, day and night, when moving through the water. While in transit, ships must use extreme caution and proceed at a safe speed such that the ship can take proper and effective action to avoid a collision with any marine mammal and can be stopped within a distance appropriate to the prevailing circumstances and conditions.

During navigational source deployments, visual observation must start 30 minutes prior to and continue throughout the deployment within an exclusion zone of 55 meters (m; 180 feet (ft), roughly one ship length) around the deployed mooring. Deployment must stop if a marine mammal is visually detected within the exclusion zone. Deployment will re-commence if any one of the following conditions are met: (1) The animal is observed exiting the exclusion zone, (2) the animal is thought to have exited the exclusion zone based on its course and speed, or (3) the exclusion zone has been clear from any additional sightings for a period of 15 minutes for pinnipeds and 30 minutes for cetaceans. Visual monitoring must continue through 30 minutes following the deployment of sources.

Once deployed, the spiral wave beacon would transmit for five days. The ship will maintain position near the moored source and must monitor the surrounding area for marine mammals. Transmission must cease if a marine mammal enters a 55-m (180 ft) exclusion zone. Transmission will re-commence if any one of the following conditions are met: (1) The animal is observed exiting the exclusion zone, (2) the animal is thought to have exited the exclusion zone based on its course and speed and relative motion between the animal and the source, or (3) the exclusion zone has been clear from any additional sightings for a period of 15 minutes for pinnipeds and 30 minutes for cetaceans. The spiral wave beacon source must only transmit during daylight hours.

Ships must avoid approaching marine mammals head on and must maneuver to maintain an exclusion zone of 1,500 ft (457 m) around observed mysticete whales, and 600 ft (183 m) around all other marine mammals, provided it is safe to do so in ice free waters.

With the exception of the spiral wave beacon, moored/drifting sources are left in place and cannot be turned off until the following year during ice free months. Once they are programmed they will operate at the specified pulse lengths and duty cycles until they are either turned off the following year or there is failure of the battery and are not able to operate. Due to the ice covered nature of the Arctic is in not possible to recover the sources or interfere with their transmit operations in the middle of the deployment.

These requirements do not apply if a vessel's safety is at risk, such as when a change of course would create an imminent and serious threat to safety, person, vessel, or aircraft, and to the

extent vessels are restricted in their ability to maneuver. No further action is necessary if a marine mammal other than a whale continues to approach the vessel after there has already been one maneuver and/or speed change to avoid the animal. Avoidance measures should continue for any observed whale in order to maintain an exclusion zone of 1,500 ft (457 m).

All personnel conducting on-ice experiments, as well as all aircraft operating in the study area, are required to maintain a separation distance of 1,000 ft (305 m) from any sighted marine mammal.

Monitoring Measures

While underway, the ships (including non-Navy ships operating on behalf of the Navy) utilizing active acoustics must have at least one watch person during activities. Watch personnel undertake extensive training in accordance with the U.S. Navy Lookout Training Handbook or civilian equivalent, including on the job instruction and a formal Personal Qualification Standard program (or equivalent program for supporting contractors or civilians), to certify that they have demonstrated all necessary skills (such as detection and reporting of floating or partially submerged objects). Additionally, watch personnel have taken the Navy's Marine Species Awareness Training. Their duties may be performed in conjunction with other job responsibilities, such as navigating the ship or supervising other personnel. While on watch, personnel employ visual search techniques, including the use of binoculars, using a scanning method in accordance with the U.S. Navy Lookout Training Handbook or civilian equivalent. A primary duty of watch personnel is to detect and report all objects and disturbances sighted in the water that may be indicative of a threat to the ship and its crew, such as debris, or surface disturbance. Per safety requirements, watch personnel also report any marine mammals sighted that have the potential to be in the direct path of the ship as a standard collision avoidance procedure.

The U.S. Navy has coordinated with NMFS to develop an overarching program plan in which specific monitoring would occur. This plan is called the Integrated Comprehensive Monitoring Program (ICMP) (Navy 2011). The ICMP has been developed in direct response to Navy permitting requirements established through various environmental compliance efforts. As a framework document, the ICMP applies by regulation to those activities on ranges and operating areas for which the Navy is seeking or has sought incidental take authorizations. The ICMP is intended to coordinate monitoring efforts across all regions and to allocate the most appropriate level and type of effort based on a set of standardized research goals, and in acknowledgement of regional scientific value and resource availability.

The ICMP is focused on Navy training and testing ranges where the majority of Navy activities occur regularly as those areas have the greatest potential for being impacted. ONR's Arctic Research Activities in comparison is a less intensive test with little human activity present in the Arctic. Human presence is limited to a minimal amount of days for source operations and source deployments, in contrast to the large majority (>95 percent) of time that the sources will be left behind and operate autonomously. Therefore, a dedicated monitoring project is not warranted. However, ONR will record all observations of marine mammals, including the marine mammal's location (latitude and longitude), behavior, and distance from project activities, including icebreaking.

Reporting Measures

The Navy is committed to documenting and reporting relevant aspects of research and testing activities to verify implementation of mitigation, comply with permits, and improve future environmental assessments. If any injury or death of a marine mammal is observed during the 2020–21 Arctic Research Activities, the Navy must immediately halt the activity and report the incident to the Office of Protected Resources, NMFS, and the Alaska Regional Stranding Coordinator, NMFS. The following information must be provided:

- Time, date, and location of the discovery;
- Species identification (if known) or description of the animal(s) involved;
- Condition of the animal(s) (including carcass condition if the animal is dead);
- Observed behaviors of the animal(s), if alive;
- If available, photographs or video footage of the animal(s); and
- General circumstances under which the animal(s) was discovered (*e.g.,* during use of towed acoustic sources, deployment of moored or drifting sources, during on-ice experiments, or by transiting vessel).

ONR must provide NMFS with a draft exercise monitoring report within 90 days of the conclusion of the proposed activity. The draft exercise monitoring report must include data regarding acoustic source use and any mammal sightings or detection must be documented. The report must include the estimated number of marine mammals taken during the activity. The report must also include information on the number of shutdowns recorded. If no comments are received from NMFS within 30 days of submission of the draft final report, the draft final report will constitute the final report. If comments are received, a final report must be submitted within 30 days after receipt of comments.

Public Comments

A notice of NMFS' proposal to issue a Renewal IHA to ONR was published in the **Federal Register** on July 10, 2020 (85 FR 41560). That notice either described, or referenced descriptions of, ONR's activity, the marine mammal species that may be affected by the activity, the anticipated effects on marine mammals and their habitat, proposed amount and manner of take, and proposed mitigation, monitoring and reporting measures. NMFS received a comment letter from the Marine Mammal Commission (Commission). The comments and our responses are summarized below.

Comment 1: The Commission noted that ONR did not stipulate the type and number of sources that would transmit or how many days of icebreaking could occur in 2020–2021 in their Renewal request. The Commission stated that without that information, NMFS cannot judge whether the activities proposed to occur in 2020–2021 are identical to or are a subset of those that were conducted in 2019–2020, whether the estimated numbers of marine mammals taken in 2019–2020 were within the authorized limits, and whether the original determinations would still be valid for the 2020–2021 IHA Renewal. Thus, the Commission recommended NMFS deny ONR's request for IHA Renewal as submitted.

Response: NMFS appreciates the Commission's comment regarding the information provided in ONR's Renewal request. Although that information was not provided in the Renewal request letter itself, ONR informed NMFS that the activities planned for 2020–2021 would be identical to those analyzed in the 2019–2020 IHA and . provided the information discussed in the *Detailed Description of the Activity* section of this notice. Additionally, although no marine mammals were directly observed during any source deployment in 2019, ONR provided an estimate of the number of marine mammals that may have been exposed based on the number of sources deployed and operational during 2019–2020. Eight of 21 possible

acoustic sources were in use, thus ONR estimated 8/21 (38.1 percent) of total calculated takes from acoustic sources occurred during the 2019–2020 IHA, for a total of 194 belugas (from either stock) and 2,580 ringed seals. No bearded seal takes were modeled using the Navy Acoustic Effects Model (NAEMO), but out of an abundance of caution, NMFS authorized five takes of bearded seals by Level B harassment in the event bearded seals were observed during source deployment. No bearded seals were observed in 2019, therefore no takes likely occurred.

Based on the information provided by the applicant, NMFS has determined that the estimated numbers of marine mammals taken in 2019–2020 were within the authorized limits, the original determinations are still valid for the 2020–2021 IHA Renewal, and an IHA Renewal is appropriate for ONR's activities. NMFS is consistently working on refining protocols for processing IHA Renewals, and will ensure that future Renewal requests include all information necessary for our determinations prior to publication of the proposed Renewal.

Comment 2: The Commission recommends that NMFS refrain from issuing renewals for any authorization and instead use its abbreviated **Federal Register** notice process.

Response: In prior responses to comments about IHA Renewals (*e.g.,* 84 FR 52464; October 02, 2019), NMFS has explained how the Renewal process, as implemented, is consistent with the statutory requirements contained in section 101(a)(5)(D) of the MMPA and, therefore, we plan to continue to issue qualifying Renewals when the requirements outlined on our website are met. Thus, NMFS agrees with the Commission's recommendation that we should not issue a renewal for any authorization unless it is consistent with the procedural requirements specified in section 101(a)(5)(D)(iii) of the MMPA.

Additionally, regarding the recommendation to use abbreviated notices, we agree that they are a useful tool by which to increase efficiency in conjunction with the use of Renewals, but we disagree that their use alone would equally fulfill NMFS' goal to maximize efficiency and provide regulatory certainty for applicants, with no reduction in protections for marine mammals. The Renewal process, with its narrowly described qualifying actions, specific issuance criteria, and additional 15-day comment period, allows for NMFS to broadly commit to a 60-day processing time. This commitment, which would not be possible in the absence of this narrow definition and the 15-day additional comment period, provides both a meaningfully shortened processing time and regulatory certainty for planning purposes. Increasing the comment period for Renewals to 30 days would increase processing time by 25% and is unnecessary, given the legal sufficiency of the process as it stands, as described above, and no additional protections for marine mammals that would result. NMFS uses abbreviated notices when proposed actions do not qualify for Renewals, but still allow for reliance upon previous documentation and analyses. These abbreviated notice projects, which deviate from the narrow qualifications of a Renewal, require some additional time for the analyst to appropriately review the small changes from the initial IHA and further necessitate the 30-day public review required for a new IHA. NMFS has evaluated the use of both the Renewal and abbreviated notice processes, as well as the associated workload for each, and determined that using both of these processes provides maximum efficiency for the agency and applicants, regulatory certainty, and appropriate protections for marine mammals consistent with the statutory standards. Using the abbreviated notice process, however, is unnecessary and unwarranted for projects that meet the narrow qualifications for a Renewal IHA.

As previously noted, we have found that the Renewal process is consistent with the statutory requirements of the MMPA and, further, promotes NMFS' goals of improving conservation of marine mammals and increasing efficiency in the MMPA compliance process. Therefore, we intend to continue implementing the Renewal process.

National Environmental Policy Act

In 2018, the U.S. Navy prepared an Environmental Assessment analyzing the project. Prior to issuing the IHA for the first year of this project, we reviewed the 2018 EA and the public comments received, determined that a separate NEPA analysis was not necessary, and subsequently adopted the document and issued our own Finding of No Significant Impact in support of the issuance of an IHA. In 2019, the U.S. Navy prepared a supplemental EA. Prior to issuing the IHA in 2019, we reviewed the supplemental EA and the public comments received, determined that a separate NEPA analysis was not necessary, and subsequently adopted the document and issued our own Finding of No Significant Impact in support of the issuance of an IHA.

We have reviewed ONR's application for a renewed IHA for ongoing Arctic Research Activities from September 2020 to September 2021 and the 2019 IHA monitoring report. Based on that review, we have determined that the proposed action is identical to that considered in the previous IHA. In addition, no significant new circumstances or information relevant to environmental concerns have been identified. Thus, we have determined that the preparation of a new or supplemental NEPA document is not necessary.

Determinations

The action of this Renewal IHA, ONR's Arctic Research Activities, are identical to the activities analyzed in the initial IHA. Based on the analysis detailed in the notices of the initial authorization of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the monitoring and mitigation measures, NMFS found that the total marine mammal take from the activity would have a negligible impact on all affected marine mammal species and stocks.

There is an ongoing UME for ice seals, including ringed and bearded seals. Elevated strandings have occurred in the Bering and Chukchi Seas since June 2018. Though elevated numbers of seals have stranded during this UME, this event does not provide cause for concern regarding population-level impacts, as the population abundance estimates for each of the affected species number in the hundreds of thousands. ONR's Arctic Research Activities Study Area is in the Beaufort and Chukchi Seas, well north and east of the primary area where seals have stranded along the western coast of Alaska (see map of strandings at: *https://www.fisheries.noaa.gov/national/marine-life-distress/2018-2019-ice-seal-unusual-mortality-event-alaska*). The location of ONR's Arctic Research Activities, combined with the low-level potential effects on marine mammals, suggest that the proposed activities are not expected to contribute to, or combine with, the ongoing UME in a manner that would lead to impacts on reproduction or survivorship of any individuals. Therefore, NMFS has determined that there is no new information suggesting that our analysis or findings should change from those reached for the initial IHA.

NMFS has concluded that there is no new information suggesting that our analysis or findings should change from

those reached for the initial IHA. Based on the information and analysis 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; (4) ONR'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; and (5) appropriate monitoring and reporting requirements are included.

Endangered Species Act

Section 7(a)(2) of the Endangered Species Act (ESA) 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 Alaska Regional Office (AKR), whenever we propose to authorize take for endangered or threatened species.

The effects of this Federal action were adequately analyzed in NMFS' Biological Opinion for the ONR Arctic Research Activities 2018–2021, dated August 27, 2019, which concluded that the take NMFS proposes to authorize through this IHA would not jeopardize the continued existence of any endangered or threatened species or destroy or adversely modify any designated critical habitat.

Renewal

NMFS has issued a Renewal IHA to ONR for the take of marine mammals incidental to conducting Arctic Research Activities in the Beaufort and Chukchi Seas from September 10, 2020 through September 9, 2021.

Dated: August 21, 2020.

Donna S. Wieting,

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

[FR Doc. 2020–18971 Filed 8–27–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA425]

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The North Pacific Fishery Management Council (Council) Crab Plan Team will meet September 14, 2020 through September 17, 2020.

DATES: The meeting will be held on Monday, September 14, 2020 through Wednesday September 16, 2020 from 8 a.m. to 4 p.m., and from 8 a.m. to 11 a.m. on Thursday, September 17, 2020 Alaska Time.

ADDRESSES: The meeting will be a web conference. Join online through the link at *https://npfmc.adobeconnect.com/cptsept2020/.*

Council address: North Pacific Fishery Management Council, 1007 W 3rd Ave., Anchorage, AK 99501–2252; telephone: (907) 271–2809. Instructions for attending the meeting via video conference are given under **SUPPLEMENTARY INFORMATION**, below.

FOR FURTHER INFORMATION CONTACT: Jim Armstrong, Council staff; phone: (907) 271–2809; email: *james.armstrong@noaa.gov.* For technical support please contact our admin Council staff, email: *npfmc.admin@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Agenda

Monday, September 14, 2020 through Thursday, September 17, 2020

The agenda will include: (a) Final 2020 stock assessments for Eastern Bering Sea snow crab, Bristol Bay red king crab, Eastern Bering Sea Tanner crab, Pribilof Islands red king crab, and Saint Matthew Island blue king crab; (b) stock assessment modeling scenarios for Norton Sound red king crab; (c) other discussions including survey contingency plans for 2021, catch and bycatch updates, a discussion about crab stock boundaries, the crab ecosystem status report, the ecosystem and socioeconomic profiles for Bristol Bay red king crab and Saint Matthew blue king crab, prohibited species catch of crab in groundfish fisheries, and (d) planning for future meetings. The agenda is subject to change, and the latest version will be posted at *https://meetings.npfmc.org/Meeting/Details/1623* prior to the meeting, along with meeting materials.

Connection Information

You can attend the meeting online using a computer, tablet, or smart phone; or by phone only. Connection information will be posted online at: *https://meetings.npfmc.org/Meeting/Details/1623.*

Public Comment

Public comment letters will be accepted and should be submitted electronically to *https://meetings.npfmc.org/Meeting/Details/1623.*

Special Accommodations

The meeting is accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Shannon Gleason at (907) 903–3107 at least 7 working days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 25, 2020.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2020–18968 Filed 8–27–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA379]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to National Wildlife Refuge Complex Research, Monitoring, and Maintenance Activities in Massachusetts

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

ACTION: Notice; issuance of Renewal incidental harassment authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA), as amended, notification is hereby given that NMFS has issued a Renewal incidental harassment authorization (IHA) to the U.S. Fish and Wildlife Service (USFWS) to incidentally harass marine mammals incidental to conducting biological research, monitoring, and maintenance at the Eastern Massachusetts (MA) National Wildlife Refuge Complex (Complex).

DATES: This Renewal IHA is valid from August 14, 2020 through June 11, 2021.

FOR FURTHER INFORMATION CONTACT: Amy Fowler, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the original application, Renewal request, and supporting documents (including NMFS **Federal Register** notices of the original proposed and final authorizations, and the previous IHA), as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

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

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to here as ''mitigation measures''). Monitoring and reporting of such takings are also required. The meaning of key terms such as ''take,'' ''harassment,'' and ''negligible impact'' can be found in section 3 of the MMPA (16 U.S.C. 1362) and the agency's regulations at 50 CFR 216.103.

NMFS' regulations implementing the MMPA at 50 CFR 216.107(e) indicate that IHAs may be renewed for additional periods of time not to exceed one year for each reauthorization. In the notice of proposed IHA for the initial authorization, NMFS described the circumstances under which we would consider issuing a Renewal for this activity, and requested public comment on a potential Renewal under those circumstances. Specifically, on a case-by-case basis, NMFS may issue a one-time one-year Renewal IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical or nearly identical, or nearly identical, activities as described in the Specified Activities section of this notice is planned or (2) the activities as described in the Specified Activities section of this notice would not be completed by the time the IHA expires and a Renewal would allow for completion of the activities beyond that described in the Dates and Duration section of this notice, provided all of the following conditions are met:

- A request for Renewal is received no later than 60 days prior to the needed Renewal IHA effective date (recognizing that the Renewal IHA expiration date cannot extend beyond one year from expiration of the initial IHA);
- The request for Renewal must include the following:

(1) An explanation that the activities to be conducted under the requested Renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.,* reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take); and

(2) A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

Upon review of the request for Renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

An additional public comment period of 15 days (for a total of 45 days), with direct notice by email, phone, or postal service to commenters on the initial IHA, is provided to allow for any additional comments on the proposed Renewal. A description of the Renewal process may be found on our website at: *www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-harassment-authorization-renewals.*

History of Request

On June 12, 2019, NMFS issued an IHA to the USFWS to take marine mammals incidental to research, monitoring, and maintenance activities within the Complex (84 FR 32415; July 8, 2019), effective from June 12, 2019 through June 11, 2020. On May 22, 2020, NMFS received an application for the Renewal of that initial IHA. As described in the application for Renewal, the activities for which incidental take is requested are identical to those covered in the initial authorization. As required, the applicant also provided a preliminary monitoring report (available at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-research-and-other-activities*) which confirms that the applicant has implemented the required mitigation and monitoring, and which also shows that no impacts of a scale or nature not previously analyzed or authorized have occurred as a result of the activities conducted.

NMFS has previously issued two additional IHAs to the USFWS for similar activities (82 FR 3738, January 12, 2017; 83 FR 19236, May 2, 2018).

Description of the Specified Activities and Anticipated Impacts

The Complex is comprised of eight refuges, including its three coastal refuges: Monomoy National Wildlife Refuge (NWR), Nantucket NWR, and Nomans Land Island (Nomans) NWR in eastern MA. The USFWS conducts ongoing biological tasks for refuge purposes at the Complex. The 2017 and 2018 IHAs covered shorebird and seabird nest monitoring and research, roseate tern (*Sterna dougallii*) staging counts and resighting, red knot (*Calidris canutus*) stopover study, northeastern beach tiger beetle (*Cicindela dorsalis*) census, and coastal shoreline change survey at Monomoy, Nantucket, and Nomans NWRs. Under the 2019 IHA (the initial IHA), the USFWS conducted identical seabird and shorebird research and monitoring activities, and also conducted New England cottontail (*Sylvilagus transitionalis*) reintroduction on Nomans NWR and protection of seal haulout areas at Nantucket NWR.

As in the initial authorization, NMFS anticipates that take, by Level B harassment only, of gray seals (*Halichoerus grypus atlantica*) and harbor seals (*Phoca vitulina concolor*) could result from the specified activities (84 FR 32415; July 8, 2019).

Detailed Description of the Activity

A detailed description of the USFWS proposed seabird and shorebird research and monitoring activities can be found in the **Federal Register** notice of proposed IHA for the 2018 IHA (83 FR 9483; March 6, 2018). A detailed description of the New England cottontail reintroduction and seal haulout protection activities can be found in the **Federal Register** notice of proposed IHA for the initial (2019) IHA (84 FR 18259, April 30, 2019). The locations (as described in the Specific Geographic Region section of the initial IHA), timing, amount, and nature of the specified activities are identical to those described in the previous notices.

The IHA Renewal is effective from August 14, 2020 through June 11, 2021.

Description of Marine Mammals

A description of the marine mammals in the area of the activities for which take is authorized, including information on abundance, status, distribution, and hearing, may be found in the **Federal Register** notice of the proposed IHA for the 2018 IHA (83 FR 9483; March 6, 2018). Summary information is available in the **Federal Register** notices of the proposed and final initial authorization (84 FR 18259, April 30, 2019; 84 FR 32415, July 8, 2019). NMFS has reviewed the monitoring data from the initial IHA, recent draft Stock Assessment Reports, information on relevant Unusual Mortality Events, and other scientific literature, and determined that neither this nor any other new information affects which species or stocks have the potential to be affected or the pertinent information in the Description of the Marine Mammals in the Area of Specified Activities contained in the supporting documents for the initial IHA.

Potential Effects on Marine Mammals and Their Habitat

A description of the potential effects of the specified activity on marine mammals and their habitat for the activities for which take is authorized here may be found in the **Federal Register** notice of the proposed IHA for the 2018 IHA (83 FR 9483; March 6, 2018). Summary information is available in the **Federal Register** notices of the proposed and final initial authorization (84 FR 18259, April 30, 2019; 84 FR 32415, July 8, 2019). NMFS has reviewed the monitoring data from the initial IHA, recent draft Stock Assessment Reports, information on relevant Unusual Mortality Events, and other scientific literature, and determined that neither this nor any other new information affects our initial analysis of impacts on marine mammals and their habitat.

Estimated Take

A detailed description of the methods and inputs used to estimate authorized take is found in the **Federal Register** notice of the proposed IHA for the 2018 IHA (83 FR 9483; March 6, 2018). Summary information is available in the **Federal Register** notices of the proposed and final initial authorization (84 FR 18259, April 30, 2019; 84 FR 32415, July 8, 2019). All estimated take is expected to be in the form of Level B harassment. The methods of estimating take for this IHA Renewal are identical to those used in the initial IHA (*i.e.,* by multiplying the maximum number of seals estimated to be present at each location by the number of events at each location that may result in disturbance). Specifically, the frequency of activities and marine mammal occurrence applicable to this authorization remain unchanged from the previously issued IHA (see Table 1). Similarly, the stocks taken, methods of take, and types of take remain unchanged from the previously issued IHA, as do the number of takes, which are indicated below in Table 2.

The total estimated gray seal takes are presented in Table 1.

TABLE 1—ESTIMATED NUMBER OF GRAY SEAL TAKES (BY LEVEL B HARASSMENT) PER ACTIVITY AT MONOMOY, NANTUCKET, AND NOMANS NWRS

Activity	Takes per event	Events per activity	Total takes
Shorebird and Seabird Monitoring & Research.	1000 (Monomoy), 50 (Nantucket), 10 (Nomans).	34 (Monomoy), 8 (Nantucket), 3 (Nomans).	34,430
Roseate Tern Staging Counts & Resighting.	10 (Monomoy), 10 (Nantucket)	6 (Monomoy), 4 (Nantucket)	100
Red Knot Stopover Study	250 (Monomoy), 150 (Cape Cod)	5 (Monomoy), 5 (Cape Cod)	2,000
Northeastern Beach Tiger Beetle Census	750 (Monomoy)	3 (Monomoy)	2,250
Coastal Shoreline Change Survey	500 (Monomoy)	1 (Monomoy)	500
New England Cottontail Introduction	10 (Nomans)	20 (Nomans)	200
Seal Haulout Protection	25 (Nantucket)	10 (Nantucket)	250
Total takes			39,730

Estimated take of harbor seals was estimated using methods identical to the initial IHA (*i.e.,* by estimating five percent of gray seal takes). Total authorized takes of gray seals and harbor seals are shown in Table 2.

TABLE 2—TOTAL AUTHORIZED TAKE OF MARINE MAMMALS, RELATIVE TO POPULATION SIZE

Species	Authorized take by Level B harassment	Stock abundance	Percent (comparison of instances of take to stock abundance)
Gray seal	39,730	[a] 27,131 [b] (451,131)	146 (8.81)
Harbor seal	1,987	75,834	2.62

[a] Abundance in U.S. waters (Hayes *et al.,* 2018).
[b] Overall Western North Atlantic stock abundance (Hayes *et al.,* 2018).

Based on the stock abundance estimate presented in the 2017 Stock Assessment Report, the proposed take number of gray seals exceeds the number of gray seals in U.S. waters (Table 2; Hayes *et al.,* 2018). However, actual take may be slightly less if animals decide to haul out at a different location for the day or if animals are foraging at the time of the survey activities. The number of individual seals taken is also assumed to be less than the take estimate since these species show high philopatry (Waring *et al.,* 2016; Wood *et al.,* 2011). We expect the take numbers to represent the number of exposures (*i.e.,* instances of take), but assume that the same seals may be behaviorally harassed over multiple days, and the likely number of individual seals that may be harassed would be less. In addition, this project occurs in a small portion of the overall range of the Northwest Atlantic population of gray seals. While there is evidence of haulout site philopatry, resights of tagged and branded animals and satellite tracks of tagged animals show movement of individuals between the United States and Canada (Puryear *et al.,* 2016). The percentage of time that individuals are resident in U.S. waters is unknown (NMFS 2017). Genetic evidence provides a high degree of certainty that the Western North Atlantic stock of gray seals is a single stock (Boskovic *et al.,* 1996; Wood *et al.,* 2011). Thus, although the U.S. stock estimate is only 27,131, the overall stock abundance of animals in United States and Canadian waters is 451,131. The gray seal take estimate for this project represents less than 9 percent of the overall Western North Atlantic stock abundance (Table 2) if every separate instance of take were assumed to accrue to a different individual, and because this is not the case, the percentage is likely significantly lower.

Description of Mitigation, Monitoring and Reporting Measures

The mitigation, monitoring, and reporting measures included as requirements in this authorization are identical to those included in the **Federal Register** notice announcing the issuance of the initial IHA (84 FR 32414; July 8, 2020), and the discussion of the least practicable adverse impact included in that notice remains accurate. The following measures are required in this authorization:

Time and Frequency

The USFWS must conduct all planned research and monitoring activities between April 1 and November 30, outside of the seasons of highest seal abundance and pupping at the Complex. Closure of beaches used by seals may occur year-round at Nantucket NWR.

Vessel Approach and Timing Techniques

The USFWS must ensure that its vessels approach beaches with pinniped haulouts so as to not disturb marine mammals as is most practical. To the extent possible, the vessel must approach the beaches in a slow and controlled approach, as far away as possibly from haulouts to prevent or minimize flushing. Staff must also avoid or proceed cautiously when operating boats in the direct path of swimming seals that may be present in the area.

Avoidance of Acoustic Impacts From Cannon Nets

Cannon nets have a measured source level (SL) of 128 decibels (dB) at one meter (m) (estimated based on a measurement of 98.4 dB at 30 m; L. Niles, pers. comm., December 2016); however, the sound pressure level (SPL) is expected to be less than the thresholds for airborne pinniped disturbance (*e.g.,* 90 dB for harbor seals, and 100 dB for all other pinnipeds) at 80 yards (73 meters) from the source. The USFWS must stay at least 100 m from all pinnipeds if cannon nets are to be used for research purposes.

Avoidance of Visual and Acoustic Contact With People

The USFWS must instruct its members and research staff to avoid making unnecessary noise and not allow themselves to be seen by pinnipeds whenever practicable. USFWS staff must stay at least 50 yards (46 meters) from hauled out pinnipeds, unless it is absolutely necessary to approach seals closer, or potentially flush a seal, in order to continue conducting endangered species conservation work. When disturbance is unavoidable, staff must work quickly and efficiently to minimize the length of disturbance. Researchers and staff must proceed in a slow and controlled manner, which allows for the seals to slowly flush into the water. Staff must also maintain a quiet working atmosphere, avoiding loud noises, and using hushed voices in the presence of hauled out pinnipeds. Pathways of approach to the desired study or nesting site must be chosen to minimize seal disturbance if an activity event may result in the disturbance of seals. USFWS staff must scan the surrounding waters near the haulouts, and if predators (*i.e.,* sharks) are seen, seals must not be flushed by USFWS staff.

Marine Mammal Monitoring

The USFWS must monitor seals as project activities are conducted. Monitoring requirements include documenting species counts, numbers of observed disturbances, and descriptions of the disturbance behaviors during the research activities, including location, date, and time of the event. In addition, the USFWS must record observations regarding the number and species of any marine mammals either observed in the water or hauled out. Behavior of seals must be recorded on a three point scale: 1 = alert reaction, not considered harassment; 2 = moving at least two body lengths, or change in direction greater than 90 degrees; 3 = flushing (Table 3). USFWS staff must also record and report all observations of sick, injured, or entangled marine mammals on Monomoy NWR to the International Fund for Animal Welfare (IFAW) marine mammal rescue team, and must report to NOAA if injured seals are found at Nantucket NWR and Nomans NWR. Tagged or marked marine mammals must also be recorded and reported to the appropriate research organization or Federal agency, as well as any rare or unusual species of marine mammal. Photographs must be taken when possible. This information must be incorporated into a report for NMFS at the end of the season. The USFWS must also coordinate with any university, state, or Federal researchers to attain additional data or observations that may be useful for monitoring marine mammal usage at the activity sites.

TABLE 3—LEVELS OF PINNIPED BEHAVIORAL DISTURBANCE

Level	Type of response	Definition
1	Alert	Seal head orientation or brief movement in response to disturbance, which may include turning head towards the disturbance, craning head and neck while holding the body rigid in a u-shaped position, changing from a lying to a sitting position, or brief movement of less than twice the animal's body length.

TABLE 3—LEVELS OF PINNIPED BEHAVIORAL DISTURBANCE—Continued

Level	Type of response	Definition
2*	Movement	Movements in response to the source of disturbance, ranging from short withdrawals at least twice the animal's body length to longer retreats over the beach, or if already moving a change of direction of greater than 90 degrees.
3*	Flush	All retreats (flushes) to the water.

*Only observations of disturbance Levels 2 and 3 are recorded as takes.

If at any time injury, serious injury, or mortality of the species for which take is authorized should occur, or if take of any kind of other marine mammal occurs, and such action may be a result of the USFWS's activities, the USFWS must suspend activities and contact NMFS immediately to determine how best to proceed to ensure that another injury or death does not occur and to ensure that the applicant remains in compliance with the MMPA.

Reporting

The USFWS must submit a draft report to NMFS Office of Protected Resources no later than 90 days after the expiration of this authorization. The report must include a summary of the information gathered pursuant to the monitoring requirements set forth in the IHA as well as the raw sightings data. The USFWS must submit a final report to NMFS within 30 days after receiving comments from NMFS on the draft report. If the USFWS receives no comments from NMFS on the draft report, NMFS will consider the draft report to be the final report.

Public Comments

A notice of NMFS' proposal to issue a Renewal IHA to the USFWS was published in the **Federal Register** on July 15, 2020 (85 FR 42832). That notice either described, or referenced descriptions of, the USFWS's activity, the marine mammal species that may be affected by the activity, the anticipated effects on marine mammals and their habitat, proposed amount and manner of take, and proposed mitigation, monitoring and reporting measures. NMFS received a comment letter from the Marine Mammal Commission (Commission). The comments and our responses are summarized below.

Comment 1: The Commission noted that the USFWS used an outdated disturbance scale in their 2019 IHA monitoring report and that some of the information the USFWS was required to collect (sections 5(b) and 5 (c)(i–v) in the IHA) was not required to be included in the monitoring report. Therefore, the Commission recommended that NMFS (1) include its disturbance scale in the final authorization Renewal consistent with conditions 5(c)(i) to (iv) in the 2019 authorization Renewal for Point Blue and ensure FWS is aware of the changes to the disturbance scale, (2) include all the information that FWS would be required to collect under 5(b) and 5(c)(i) to (v) as specific reporting requirements in section 6(b) of the final authorization Renewal, and (3) include the requirement for FWS to provide the raw sightings data in section 6(b) of the final IHA Renewal.

Response: NMFS agrees with the Commission's recommendations to include the disturbance scale in the IHA and ensure the USFWS uses the correct scale in their monitoring efforts. NMFS also agrees with the Commission's recommendation to revise the authorization text such that the reporting requirements align with the monitoring requirements. The USFWS has previously voluntarily provided raw sightings data spreadsheets as appendices in their monitoring report, but NMFS has agreed to include this requirement in section 6(b) of the IHA Renewal.

Comment 2: The Commission recommends that NMFS refrain from issuing Renewals for any authorization and instead use its abbreviated **Federal Register** notice process.

Response: In prior responses to comments about IHA Renewals (*e.g.,* 84 FR 52464; October 02, 2019), NMFS has explained how the Renewal process, as implemented, is consistent with the statutory requirements contained in section 101(a)(5)(D) of the MMPA and, therefore, we plan to continue to issue qualifying Renewals when the requirements outlined on our website are met. Thus, NMFS agrees with the Commission's recommendation that we should not issue a Renewal for any authorization unless it is consistent with the procedural requirements specified in section 101(a)(5)(D)(iii) of the MMPA.

Additionally, regarding the recommendation to use abbreviated notices, we agree that they are a useful tool by which to increase efficiency in conjunction with the use of Renewals, but we disagree that their use alone would equally fulfill NMFS' goal to maximize efficiency and provide regulatory certainty for applicants, with no reduction in protections for marine mammals. The Renewal process, with its narrowly described qualifying actions, specific issuance criteria, and additional 15-day comment period, allows for NMFS to broadly commit to a 60-day processing time. This commitment, which would not be possible in the absence of this narrow definition and the 15-day additional comment period, provides both a meaningfully shortened processing time and regulatory certainty for planning purposes. Increasing the comment period for Renewals to 30 days would increase processing time by 25% and is unnecessary, given the legal sufficiency of the process as it stands, as described above, and no additional protections for marine mammals that would result. NMFS uses abbreviated notices when proposed actions do not qualify for Renewals, but still allow for reliance upon previous documentation and analyses. These abbreviated notice projects, which deviate from the narrow qualifications of a Renewal, require some additional time for the analyst to appropriately review the small changes from the initial IHA and further necessitate the 30-day public review required for a new IHA. NMFS has evaluated the use of both the Renewal and abbreviated notice processes, as well as the associated workload for each, and determined that using both of these processes provides maximum efficiency for the agency and applicants, regulatory certainty, and appropriate protections for marine mammals consistent with the statutory standards. Using the abbreviated notice process, however, is unnecessary and unwarranted for projects that meet the narrow qualifications for a Renewal IHA.

As previously noted, we have found that the Renewal process is consistent with the statutory requirements of the MMPA and, further, promotes NMFS' goals of improving conservation of marine mammals and increasing efficiency in the MMPA compliance process. Therefore, we intend to continue implementing the Renewal process.

National Environmental Policy Act

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

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. Accordingly, NMFS has determined that the issuance of the proposed IHA Renewal qualifies to be categorically excluded from further NEPA review.

Determinations

The seabird and shorebird research and monitoring activities planned by the USFWS are identical to those analyzed in the initial IHA, as are the expected number of days of activity, the method of taking, and the effects of the action. The potential effects of the USFWS's activities are limited to Level B harassment in the form of behavioral disturbance. In analyzing the effects of the activities in the initial IHA, NMFS determined that the USFWS's activities would have a negligible impact on the affected species or stocks and that the authorized take numbers of each species or stock were small relative to the relevant stocks (*e.g.,* less than 9 percent of all stocks). The numbers of marine mammals authorized to be taken are identical to those authorized in the initial IHA. The mitigation measures and monitoring requirements as described above also are identical to the initial IHA, and NMFS has clarified the reporting requirements to align with the monitoring data the USFWS is required to collect.

NMFS has concluded that there is no new information suggesting that our analysis or findings should change from those reached for the initial IHA. Based on the information and analysis 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; (4) USFWS'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; and (5) appropriate monitoring and reporting requirements are included.

Endangered Species Act

No incidental take of ESA-listed species is proposed for authorization or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

Renewal

NMFS has issued a Renewal IHA to the USFWS for the take of marine mammals incidental to conducting research and monitoring activities at the Complex from August 14, 202 through June 11, 2021.

Dated: August 17, 2020.

Donna S. Wieting,

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

[FR Doc. 2020–18961 Filed 8–27–20; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and Deletions from the Procurement List.

SUMMARY: This action adds services to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes products and services from the Procurement List previously furnished by such agencies.

DATES: *Date added to and deleted from the Procurement List:* September 27, 2020.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 715, Arlington, Virginia, 22202–4149.

FOR FURTHER INFORMATION CONTACT: Michael R. Jurkowski, Telephone: (703) 603–2117, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Additions

On 7/17/2020, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed additions to the Procurement List. This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51–2.3.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action will result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the services proposed for addition to the Procurement List.

End of Certification

Accordingly, the following services are added to the Procurement List:

Service

Service Type: 4PL Support Services
Mandatory for: Naval Base Ventura County, Port Hueneme, CA
Mandatory Source of Supply: The Lighthouse for the Blind, Inc. (Seattle Lighthouse), Seattle, WA
Contracting Activity: FEDERAL ACQUISITION SERVICE, GSA/FAS

Deletions

On 7/24/2020, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed deletions from the Procurement List. This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51–2.3.

After consideration of the relevant matter presented, the Committee has determined that the products and services listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the products and services deleted from the Procurement List.

End of Certification

Accordingly, the following products and services are deleted from the Procurement List:

Products

NSN(s)—Product Name(s):
8415–01–587–9853—Drawers, Underwear, Midweight Fire Retardant, FREE, Army, Desert Sand, XSS
8415–01–587–9855—Drawers, Underwear, Midweight Fire Retardant, FREE, Army, Desert Sand, XSR
8415–01–587–9858—Drawers, Underwear, Midweight Fire Retardant, FREE, Army, Desert Sand, XSL
8415–01–587–9863—Drawers, Underwear, Midweight Fire Retardant, FREE, Army, Desert Sand, SS
8415–01–587–9866—Drawers, Underwear, Midweight Fire Retardant, FREE, Army, Desert Sand, SR
8415–01–588–0254—Drawers, Underwear, Midweight Fire Retardant, FREE, Army, Desert Sand, SL
8415–01–588–0259—Drawers, Underwear, Midweight Fire Retardant, FREE, Army, Desert Sand, MS
8415–01–588–0261—Drawers, Underwear, Midweight Fire Retardant, FREE, Army, Desert Sand, MR
8415–01–588–0269—Drawers, Underwear, Midweight Fire Retardant, FREE, Army, Desert Sand, ML
8415–01–588–0270—Drawers, Underwear, Midweight Fire Retardant, FREE, Army, Desert Sand, LS
8415–01–588–0273—Drawers, Underwear, Midweight Fire Retardant, FREE, Army, Desert Sand, LR
8415–01–588–0283—Drawers, Underwear, Midweight Fire Retardant, FREE, Army, Desert Sand, LL
8415–01–588–0290—Drawers, Underwear, Midweight Fire Retardant, FREE, Army, Desert Sand, XLS
8415–01–588–0292—Drawers, Underwear, Midweight Fire Retardant, FREE, Army, Desert Sand, XLR
8415–01–588–0300—Drawers, Underwear, Midweight Fire Retardant, FREE, Army, Desert Sand, XLL
8415–01–588–0308—Drawers, Underwear, Midweight Fire Retardant, FREE, Army, Desert Sand, XXLS
8415–01–588–0313—Drawers, Underwear, Midweight Fire Retardant, FREE, Army, Desert Sand, XXLR
8415–01–588–0315—Drawers, Underwear, Midweight Fire Retardant, FREE, Army, Desert Sand, XXLL
Mandatory Source of Supply: New Horizons Rehabilitation Services, Inc., Auburn Hills, MI
Contracting Activity: W6QK ACC–APG NATICK, NATICK, MA

NSN(s)—Product Name(s):
8415–01–548–7187—Shirt, Combat, Advanced, Foliage Green, X-Small
8415–01–548–7201—Shirt, Combat, Advanced, Foliage Green, Small
8415–01–548–7206—Shirt, Combat, Advanced, Foliage Green, Medium
8415–01–548–7209—Shirt, Combat, Advanced, Foliage Green, Large
8415–01–548–7215—Shirt, Combat, Advanced, Foliage Green, XX-Large
8415–01–548–7232—Shirt, Combat, Advanced, Foliage Green, X-Large
8415–01–548–7236—Shirt, Combat, Advanced, Foliage Green, XXX-Large
Mandatory Source of Supply: Alphapointe, Kansas City, MO; Goodwill Industries of South Florida, Inc., Miami, FL; Mount Rogers Community Services Board, Wytheville, VA; San Antonio Lighthouse for the Blind, San Antonio, TX; Southeastern Kentucky Rehabilitation Industries, Inc., Corbin, KY; Winston-Salem Industries for the Blind, Inc., Winston-Salem, NC
Contracting Activity: W6QK ACC–APG NATICK, NATICK, MA

NSN(s)—Product Name(s):
8415–01–580–4831—Shirt, Combat, Flame Resistant, OEF Camouflage, X-Small
8415–01–580–4836—Shirt, Combat, Flame Resistant, OEF Camouflage, Small
8415–01–580–4853—Shirt, Combat, Flame Resistant, OEF Camouflage, Medium
8415–01–580–4856—Shirt, Combat, Flame Resistant, OEF Camouflage, Large
8415–01–580–4863—Shirt, Combat, Flame Resistant, OEF Camouflage, X-Large
8415–01–580–4865—Shirt, Combat, Flame Resistant, OEF Camouflage, XX-Large
8415–01–580–4870—Shirt, Combat, Flame Resistant, OEF Camouflage, XXX-Large
Mandatory Source of Supply: Alphapointe, Kansas City, MO; Goodwill Industries of South Florida, Inc., Miami, FL; Mount Rogers Community Services Board, Wytheville, VA; San Antonio Lighthouse for the Blind, San Antonio, TX; Southeastern Kentucky Rehabilitation Industries, Inc., Corbin, KY; Winston-Salem Industries for the Blind, Inc., Winston-Salem, NC
Contracting Activity: W6QK ACC–APG NATICK, NATICK, MA

NSN(s)—Product Name(s):
MR 1013—Set, Dustpan and Broom, Long Handle
Mandatory Source of Supply: LC Industries, Inc., Durham, NC
Contracting Activity: DEFENSE COMMISSARY AGENCY, FORT LEE, VA

NSN(s)—Product Name(s):
MR 388—Lint Roller
MR 389—Lint Roller Refill
Mandatory Source of Supply: Alphapointe, Kansas City, MO
Contracting Activity: Military Resale-Defense Commissary Agency

NSN(s)—Product Name(s):
MR 1011—Mini Duster, Chenille Microfiber, Red
Mandatory Source of Supply: Industries for the Blind and Visually Impaired, Inc., West Allis, WI
Contracting Activity: Military Resale-Defense Commissary Agency

Services

Service Type: Base Supply Center
Mandatory for: US Air Force, Elmendorf AFB, Joint Base Elmendorf-Richardson, AK
Mandatory Source of Supply: RLCB, Inc., Raleigh, NC
Contracting Activity: FEDERAL ACQUISITION SERVICE, GSA/FAS

Service Type: Recycling Service
Mandatory for: Scott Air Force Base (Basewide): 375th CONS/LGC 201 E. Winters Street, Bldg 50, Scott AFB, IL
Mandatory Source of Supply: Challenge Unlimited, Inc., Alton, IL
Contracting Activity: DEPT OF THE AIR FORCE, FA4407 375 CONS LGC

Service Type: Grounds Maintenance
Mandatory for: DC Air National Guard, Andrews AFB, MD
Mandatory Source of Supply: Melwood Horticultural Training Center, Inc., Upper Marlboro, MD
Contracting Activity: DEPT OF THE AIR FORCE, FA7014 AFDW PK

Michael R. Jurkowski,

Deputy Director, Business & PL Operations.

[FR Doc. 2020–19021 Filed 8–27–20; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed deletions from the procurement list.

SUMMARY: The Committee is proposing to delete services on the Procurement List furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: Comments must be received on or before: September 27, 2020.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 715, Arlington, Virginia, 22202–4149.

FOR FURTHER INFORMATION CONTACT: For further information or to submit

comments contact: Michael R. Jurkowski, Telephone: (703) 603–2117, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Deletions

The following services are proposed for deletion from the Procurement List:

Service

Service Type: Janitorial/Custodial
Mandatory for: Social Security Administration Building: Main and Second, Joplin, MO
Contracting Activity: GENERAL SERVICES ADMINISTRATION, FPDS AGENCY COORDINATOR

Michael R. Jurkowski,

Deputy Director, Business & PL Operations.

[FR Doc. 2020–19020 Filed 8–27–20; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 20–32]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Arms sales notice.

SUMMARY: The Department of Defense is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT: Karma Job at *karma.d.job.civ@mail.mil* or (703) 697–8976.

SUPPLEMENTARY INFORMATION: This 36(b)(1) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 20–32 with attached Policy Justification and Sensitivity of Technology.

Dated: August 24, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, SUITE 101
ARLINGTON, VA 22202-5408

JUL 2 8 2020

The Honorable Nancy Pelosi
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 20-32 concerning the Army's proposed Letter(s) of Offer and Acceptance to the Government of Kuwait for defense articles and services estimated to cost $59.6 million. After this letter is delivered to your office, we plan to issue a news release to notify the public of this proposed sale.

Sincerely,

Charles W. Hooper
Lieutenant General, USA
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology
4. Regional Balance (Classified document provided under separate cover)

BILLING CODE 5001–06–C

Transmittal No. 20–32

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Government of Kuwait

(ii) *Total Estimated Value:*

Major Defense Equipment *.	$ 52.0 million
Other	*$ 7.6 million*
Total	$ 59.6 million

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:*

Major Defense Equipment (MDE):

Ten thousand two hundred sixty (10,260) 120MM M865 Target Practice Cone Stabilized Discarding Sabot Tracer (TPCSDS–T) Cartridges

Nine thousand eight hundred ten (9,810) 120MM M1002 Target Practice Multipurpose Tracer (TPMP–T) Cartridges

Non-MDE: Two hundred fifteen thousand (215,000) 50 Caliber, 4 Ball, 1 Tracer Cartridges; six hundred thousand (600,000) 7.62MM 4 Ball, M80/1 Tracer, M62 Linked Cartridges; containers; munitions; support and test equipment; integration and test support; spare and repair parts; U.S. Government and contractor engineering, technical and logistics support services; and other related elements of logistical and program support.

(iv) *Military Department:* KU–B–UXE

(v) *Prior Related Cases, if any:* None

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* None

(viii) *Date Report Delivered to Congress:* July 28, 2020

*As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Kuwait—M1A2K Training Ammunition

The Government of Kuwait has requested to buy ten thousand two hundred sixty (10,260) 120MM M865 Target Practice Cone Stabilized Discarding Sabot Tracer (TPCSDS–T) Cartridges and nine thousand eight hundred ten (9,810) 120MM M1002 Target Practice Multipurpose Tracer (TPMP–T) Cartridges. Also included are two hundred fifteen thousand (215,000) 50 Caliber, 4 Ball, 1 Tracer Cartridges; six hundred thousand (600,000) 7.62MM 4 Ball, M80/1 Tracer, M62 Linked Cartridges; containers; munitions; support and test equipment; integration and test support; spare and repair parts; U.S. Government and contractor engineering, technical and logistics support services; and other related elements of logistical and program support. The estimated total cost is $59.6 million.

The proposed sale will support the foreign policy and national security of the United States by helping to improve the security of a Major Non-NATO Ally that is an important force for political stability and economic progress in the Middle East.

The proposed sale will improve Kuwait's capability to meet current and future threats by enabling continued employment of the M1A2 Abrams main battle tank and supporting modernization of the country's tank fleet. The training ammunition will be used to qualify Kuwait's M1A2 tanks, which will enhance Kuwait's ability to protect border regions and key land-based infrastructure. Kuwait will have no difficulty absorbing these training rounds into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractor will be BAE Systems, York, PA. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to Kuwait.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 20–32

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology:*

1. The 120MM M865 Target Practice Cone Stabilized Discarding Sabot Tracer (TPCSDS–T) Cartridge is a training round for the M1A2K Abrams tank.

2. The 120MM M1002 Target Practice Multipurpose Tracer (TPMP–T) Cartridge is a training round for the M1A2K Abrams tank.

3. The highest level of classification of defense articles, components, and services included in this potential sale is UNCLASSIFIED.

4. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures that might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

5. A determination has been made that the Government of Kuwait can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

6. All defense articles and services listed in this transmittal have been authorized for release and export to the Government of Kuwait.

[FR Doc. 2020–18960 Filed 8–27–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 20–27]

Arms Sales Notification

Correction

In notice document 2020–18478, beginning on page 52097, in the issue of Monday, August 24, 2020 the incorrect graphic was inadvertently published in error. The correct graphic for Transmittal No. 20–27 is corrected to appear as set forth below.

BILLING CODE 1301–00–D

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, SUITE 101
ARLINGTON, VA 22202-5408

July 6, 2020

The Honorable Nancy Pelosi
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 20-27 concerning the Navy's proposed Letter(s) of Offer and Acceptance to the Government of Indonesia for defense articles and services estimated to cost $2.0 billion. After this letter is delivered to your office, we plan to issue a news release to notify the public of this proposed sale.

Sincerely,

Charles W. Hooper
Lieutenant General, USA
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

[FR Doc. C1–2020–18478 Filed 8–27–20; 8:45 am]
BILLING CODE 1301–00–C

DEPARTMENT OF DEFENSE

Office of the Secretary

Charter Renewal of Department of Defense Federal Advisory Committees

AGENCY: Department of Defense (DoD).

ACTION: Renewal of Federal Advisory Committee.

SUMMARY: The DoD is publishing this notice to announce that it is renewing the charter for the Board of Visitors, National Defense University (''the Board'').

FOR FURTHER INFORMATION CONTACT: Jim Freeman, Advisory Committee Management Officer for the Department of Defense, 703–692–5952.

SUPPLEMENTARY INFORMATION: The Board's charter is being renewed in accordance with the Federal Advisory Committee Act (FACA) (5 U.S.C., Appendix) and 41 CFR 102–3.50(d). The charter and contact information for the Board's Designated Federal Officer (DFO) are found at *https://www.facadatabase.gov/FACA/apex/FACAPublicAgencyNavigation.*

The Board provides independent advice and recommendations on the overall management and governance of the National Defense University (NDU) in achieving its mission to educate joint warfighters in critical thinking and the creative application of military power to inform national strategy and globally integrated operations, under conditions of disruptive change, in order to conduct war. The Board provides independent advice and recommendations on accreditation compliance, organizational management, strategic planning, resource management, and other matters of interest to the NDU in fulfilling its mission. Additionally, the Board provides an assessment of University leadership, fulfilling essential Middle States Accreditation compliance.

The Board shall be composed of no more than 12 members, appointed in accordance with DoD policies and procedures. The members shall be eminent authorities in the fields of defense, management, leadership, academia, national military strategy or joint planning at all levels of war, joint doctrine, joint command and control, or joint requirements and development. Board members who are not full-time or permanent part-time Federal civilian officers, employees, or active duty members of the Armed Forces will be appointed as experts or consultants, pursuant to 5 U.S.C. 3109, to serve as special government employee members. Board members who are full-time or permanent part-time Federal civilian officers, employees, or active duty members of the Armed Forces will be

appointed pursuant to 41 CFR 102–3.130(a), to serve as regular government employee members.

All members of the Board are appointed to provide advice on the basis of their best judgment without representing any particular point of view and in a manner that is free from conflict of interest. Except for reimbursement of official Board-related travel and per diem, members serve without compensation.

The public or interested organizations may submit written statements to the Board membership about the Board's mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meeting of the Board. All written statements shall be submitted to the DFO for the Board, and this individual will ensure that the written statements are provided to the membership for their consideration.

Dated: August 24, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2020–18969 Filed 8–27–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 20–40]

Arms Sales Notification

Correction

In notice document 2020–18479, beginning on page 52104, in the issue of Monday, August 24, 2020 the incorrect graphic was inadvertently published in error. The correct graphic for Transmittal No. 20–40 is corrected to appear as set forth below.

BILLING CODE 1301–00–D

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, SUITE 101
ARLINGTON, VA 22202-5408

July 6, 2020

The Honorable Nancy Pelosi
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 20-40 concerning the Navy's proposed Letter(s) of Offer and Acceptance to the Government of France for defense articles and services estimated to cost $2 billion. After this letter is delivered to your office, we plan to issue a news release to notify the public of this proposed sale.

Sincerely,

Charles W. Hooper
Lieutenant General, USA
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

[FR Doc. C1–2020–18479 Filed 8–27–20; 8:45 am]

BILLING CODE 1301–00–C

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Sunshine Act Meetings

TIME AND DATE: 1:00 p.m., August 26, 2020.

PLACE: This meeting was held via teleconference.

STATUS: Closed. The Board invoked the exemption described in 5 U.S.C. 552b(c)(6) and 10 CFR 1704.4(f). The Board has determined that it was necessary to close this meeting to the public since an open meeting would have likely disclosed information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy.

MATTERS TO BE CONSIDERED: At this meeting, members of the Board evaluated applicants for the position of Executive Director of Operations.

CONTACT PERSON FOR MORE INFORMATION: Tara Tadlock, Director of Board Operations, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW, Suite 700, Washington, DC 20004–2901, (800) 788–4016. This is a toll-free number.

Dated: August 26, 2020.

Bruce Hamilton,

Chairman.

[FR Doc. 2020–19119 Filed 8–26–20; 4:15 pm]

BILLING CODE 3670–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2020–SCC–0043]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Borrower Defense to Loan Repayment Universal Form

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before September 28, 2020.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection request by selecting ''Department of Education'' under ''Currently Under Review,'' then check ''Only Show ICR for Public Comment'' checkbox.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Beth Grebeldinger, 202–377–4018.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Borrower Defense to Loan Repayment Universal Form.

OMB Control Number: 1845–NEW.

Type of Review: A new information collection.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 96,000.

Total Estimated Number of Annual Burden Hours: 48,000.

Abstract: The Department of Education (the Department) amends the William D. Ford Federal Direct Loan (Direct Loan) Program regulations issued under the Higher Education Act of 1965, as amended (HEA), to implement changes made to the regulations in § 685.206(e)—Borrower responsibilities and defenses. These final regulations are a result of negotiated rulemaking and will add a new requirement to the current regulations. These final regulations require the collection of this information from borrowers who believe they qualify for a borrower defense to repayment discharge, as permitted under Section 455(h) of the Higher Education Act of 1965, as amended. The regulations provide, among other things, for the Secretary to discharge a borrower's Direct Loan based on the loan in question being disbursed after July 1, 2020. The Department is attaching a list of elements that we are proposing be included on a revised Application for Borrower Defense to Loan Repayment form (Universal Borrower Defense Application). This revised form will be based on the current Universal Borrower Defense Application, OMB control number 1845–0146, and will facilitate processing claims from all borrowers who believe that they have a valid borrower defense claim.

Dated: August 25, 2020.

Kate Mullan,

PRA Coordinator, Strategic Collections and Clearance Governance and Strategy Division Office of Chief Data Officer Office of Planning, Evaluation and Policy Development.

[FR Doc. 2020–19029 Filed 8–27–20; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

National Nuclear Security Administration

Surplus Plutonium Disposition

AGENCY: National Nuclear Security Administration, Department of Energy.

ACTION: Amended record of decision.

SUMMARY: The Department of Energy's National Nuclear Security Administration (DOE/NNSA) is announcing this amendment to the April 2003 Amended Record of Decision (AROD) for the *Final Surplus Plutonium Disposition Environmental Impact Statement* (Final SPD EIS) (DOE/EIS–0283). In this AROD, DOE/NNSA is announcing its decision to use the dilute and dispose method to disposition up to 7.1 MT of non-pit plutonium as contact handled transuranic (CH–TRU) waste at the Waste Isolation Pilot Plant (WIPP). This AROD changes the disposition pathway for a portion of the 34 MT of surplus plutonium DOE/NNSA previously announced and decided in 2003 to fabricate into mixed oxide (MOX) fuel. DOE/NNSA prepared a *Supplement Analysis (SA) for Disposition of Additional Non-Pit Surplus Plutonium* (DOE/EIS–0283–SA–4, August 2020) to inform this decision.

FOR FURTHER INFORMATION CONTACT: For information on NEPA for the Surplus Plutonium Disposition Program, please contact Mrs. Paloma E. Richard, Office

of Material Disposition NEPA Document Manager, National Nuclear Security Administration, telephone (202) 586–2777, or by email to *Paloma.Richard@nnsa.doe.gov.*

For information on DOE/NNSA's NEPA process, please contact Ms. Amy Miller, NEPA Compliance Officer, National Nuclear Security Administration, Office of General Counsel, Telephone (505) 845–5090, or by email to *amy.miller@nnsa.doe.gov.* This Amended ROD, the SA for Disposition of Additional Non-Pit Plutonium, and related documents are available on the internet at *http://energy.gov/nepa.*

SUPPLEMENTARY INFORMATION:

Background

On April 19, 2002, DOE/NNSA issued a **Federal Register** notice that announced an AROD (67 FR 19432) for the SPD EIS (DOE/EIS–0283, November 1999). DOE/NNSA decided, among other things, to cancel the immobilization portion of the plutonium disposition strategy. A subsequent AROD (68 FR 20134) issued in April 2003 concluded that DOE/NNSA would dispose of 34 MT using only the MOX Fuel Alternative.

In April 2015, DOE/NNSA issued the *Surplus Plutonium Disposition Supplemental Environmental Impact Statement* (SPD SEIS, DOE/EIS–0283–S2). In the SPD SEIS, DOE/NNSA evaluated the environmental impacts of alternatives to disposition 13.1 metric tons (MT) of surplus plutonium, comprised of 7.1 MT of pit plutonium and 6 MT of non-pit plutonium. None of this material had a designated disposition pathway. DOE/NNSA analyzed the potential environmental impacts for the No Action Alternative and four action alternatives: (1) Immobilization at Savannah River Site (SRS) (Immobilization to Defense Waste Processing Facility [DWPF] Alternative); (2) fabrication into MOX fuel at SRS with subsequent irradiation in one or more domestic commercial nuclear power reactors (MOX Fuel Alternative); (3) vitrification with high-level radioactive waste (HLW) at SRS (H-Canyon/HB-Line and DWPF Alternative); and, (4) disposal as CH–TRU waste at WIPP, a geologic repository for disposal of TRU waste generated by atomic energy defense activities (WIPP Disposal Alternative). These alternatives are composed of a combination of pit disassembly and conversion options and plutonium disposition alternatives.

On December 24, 2015 (80 FR 80348), DOE/NNSA announced that its preferred alternative for disposition of the 6 MT of non-pit plutonium was preparation at SRS near Aiken, South Carolina, for disposal at WIPP near Carlsbad, New Mexico, using the WIPP Disposal Alternative (also known as the dilute and dispose method or plutonium downblending). DOE/NNSA did not state a preferred alternative for dispositioning the 7.1 MT of pit plutonium or the options for pit disassembly and conversion. In its April 5, 2016, ROD (81 FR 19588), DOE/NNSA announced its decision to implement the preferred alternative: to use existing SRS facilities to prepare 6 MT of non-pit plutonium as CH–TRU waste for disposal at WIPP. In the 2016 ROD, DOE/NNSA stated that it would install and operate new gloveboxes in K-Area or HB-Line to prepare surplus plutonium for disposition. DOE/NNSA resumed the process of preparing this plutonium for disposition on September 30, 2016 in K-Area. At that time, DOE/NNSA did not change its previous decisions to disposition 34 MT of surplus plutonium.

Supplement Analysis

In accordance with DOE Regulations implementing the *National Environmental Policy Act* (NEPA) at 10 CFR 1021.314, DOE/NNSA prepared an SA to consider if the proposal to prepare and dispose of additional non-pit plutonium [1] (rather than the pit plutonium described in the 2015 SPD SEIS) using the WIPP Disposal Alternative represented new information relevant to environmental concerns. In the SA, DOE/NNSA reviewed the analysis found in the 2015 SPD SEIS for preparing 13.1 MT of surplus plutonium for disposition using the WIPP alternative.

Included in the SPD SEIS analysis were 6 MT of non-pit plutonium and 7.1 MT of pit plutonium. For both sets of material, plutonium must be in an oxide form so it can be downblended with adulterant to inhibit plutonium recovery and meet the WIPP waste acceptance criteria for CH–TRU waste. After characterization and certification activities of the downblended plutonium, waste containers would be staged, loaded into approved shipping containers, and transported for disposal at the WIPP facility. Aside from the initial step of disassembling pits, the remaining steps leading to disposal of this material at the WIPP facility are the same for both pit and non-pit plutonium. The analysis in the SPD SEIS was based on using either Los Alamos National Laboratory (LANL) (PF–4 facility) or SRS (K-Area facilities) for pit disassembly and oxide conversion activities, and K-Area facilities at SRS for downblending and characterization, to achieve the analyzed production rate. Given that the process steps and facilities would be the same as (or fewer than) those assessed for processing 7.1 MT of pit plutonium, DOE/NNSA concluded that the impacts of the proposed preparation of an additional 7.1 MT of non-pit plutonium for disposal as CH–TRU waste at WIPP had been addressed in the 2015 SPD SEIS, and that no additional NEPA review was required.

Amended Decision

DOE/NNSA is amending its previous decision (68 FR 20134). DOE/NNSA has decided to dispose of an additional 7.1 MT of non-pit plutonium CH–TRU waste at WIPP using the WIPP Disposal Alternative, rather than using this non-pit plutonium to manufacture MOX fuel. The process will be the same as described for the 6 MT of non-pit plutonium DOE/NNSA previously decided (81 FR 19588) to dispose of at WIPP using the WIPP Disposal Alternative. Conversion to oxide may be performed at either LANL or at SRS. Using facilities in K-Area at SRS, DOE/NNSA will prepare up to an additional 7.1 MT of non-pit plutonium, totaling up to 13.1 MT of non-pit plutonium, for disposal at WIPP.

The plutonium oxide containers will be opened in K-Area gloveboxes. Plutonium oxide will be repackaged into suitable containers, mixed/blended with adulterant, and loaded into a criticality control overpack (CCO).[2] The adulterant will inhibit plutonium recovery. To increase processing capacity for downblending, DOE/NNSA will rely on the existing single glovebox and the installation and operation of additional gloveboxes, which DOE/NNSA analyzed for processing 6 MT in the SPD SEIS. This will allow DOE/NNSA to prepare more plutonium in a shorter time for disposition, thereby accelerating removal of plutonium from the state of South Carolina. Loaded CCOs will be characterized and staged for WIPP disposal in E-Area or K-Area at SRS using non-destructive assay, digital radiography, and headspace gas

[1] The 7.1 MT of non-pit plutonium that is the subject of this decision is currently in non-pit form and does not require pit disassembly. However, some of this material may have been in the form of pits prior to this decision being announced, and disassembly for those pits was covered under prior NEPA analysis (*see* 63 FR 44851; 73 FR 55833).

[2] DOE/NNSA plans to move towards the use of the CCO containers in lieu of the POC to maximize the amount of plutonium that can be packaged in each container, thereby reducing the number of shipments and the number of disposal containers emplaced at WIPP.

sampling. Waste packages containing surplus plutonium CH–TRU waste that have been characterized and confirmed to meet the WIPP waste acceptance criteria will be placed in the queue of waste to be shipped to WIPP. The packages will be shipped to WIPP in approved shipping containers.

Basis for Decision

Implementing this decision will allow DOE/NNSA to continue dispositioning surplus weapons-usable plutonium in furtherance of the policies of the United States to ensure that such surplus plutonium is no longer in a form suitable for use in a nuclear weapon, and to accelerate removal of defense plutonium from the State of South Carolina.

In making this decision, DOE/NNSA considered potential environmental impacts of construction and operations, current and future mission needs, availability of capabilities and resources, technical and security considerations, and the need to comply with legislation regarding removal of defense plutonium from South Carolina. Using the WIPP Disposal Alternative to disposition up to 7.1 MT of non-pit plutonium allows DOE/NNSA to take advantage of existing facilities, infrastructure, and expertise at LANL, SRS, and WIPP. The decision builds on the existing capabilities, infrastructure, and skilled workforce trained in safe operation of nuclear facilities. Downblending for disposal at WIPP is a proven process that is ongoing for the 6 MT of surplus non-pit plutonium DOE/NNSA decided to process through SRS and dispose of using this method (81 FR 19588).

In addition, final disposition of this 7.1 MT of surplus plutonium will avoid long-term impacts, risks, and costs associated with continued secure storage.

Signing Authority

This document of the Department of Energy was signed on August 21, 2020, by Lisa E. Gordon-Hagerty, Under Secretary for Nuclear Security and Administrator, NNSA, 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 August 25, 2020.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2020–19023 Filed 8–27–20; 8:45 am]

BILLING CODE 6450–01–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: RP20–1108–000.

Applicants: Southern Natural Gas Company, L.L.C.

Description: § 4(d) Rate Filing: Fuel Retention Rates—Winter 2020 to be effective 10/1/2020.

Filed Date: 8/20/20.

Accession Number: 20200820–5016.

Comments Due: 5 p.m. ET 9/1/20.

Docket Numbers: RP20–1109–000.

Applicants: Colorado Interstate Gas Company, L.L.C.

Description: Compliance filing Penalties Assessed Compliance Filing to be effective N/A.

Filed Date: 8/20/20.

Accession Number: 20200820–5023.

Comments Due: 5 p.m. ET 9/1/20.

Docket Numbers: RP20–1110–000.

Applicants: Kern River Gas Transmission Company.

Description: § 4(d) Rate Filing: 2020 Mesquite Meter and UT/NV Pool to be effective 9/22/2020.

Filed Date: 8/20/20.

Accession Number: 20200820–5043.

Comments Due: 5 p.m. ET 9/1/20.

Docket Numbers: RP20–1111–000.

Applicants: Transcontinental Gas Pipe Line Company, LLC.

Description: § 4(d) Rate Filing: GT&C Section 49—Bid Evaluation to be effective 9/20/2020.

Filed Date: 8/20/20.

Accession Number: 20200820–5046.

Comments Due: 5 p.m. ET 9/1/20.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by 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: August 21, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–18919 Filed 8–27–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER20–2694–000]

Icon 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 Icon 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 September 10, 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: August 21, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–18923 Filed 8–27–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC20–88–000.

Applicants: Tonopah Solar Energy, LLC.

Description: Supplement to August 12, 2020 Application for Authorization Under Section 203 of the Federal Power Act, et al. of Tonopah Solar Energy, LLC.

Filed Date: 8/21/20.

Accession Number: 20200821–5234.

Comments Due: 5 p.m. ET 9/2/20.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER19–2858–003.

Applicants: East Coast Power Linden Holding, L.L.C.

Description: Compliance filing: Interim Rate Compliance Filing to be effective 9/1/2020.

Filed Date: 8/24/20.

Accession Number: 20200824–5133.

Comments Due: 5 p.m. ET 9/14/20.

Docket Numbers: ER20–1837–001.

Applicants: Duke Energy Carolinas, LLC.

Description: Compliance filing: Amendment to Joint OATT Order 864 Compliance Filing to be effective 1/27/2020.

Filed Date: 8/24/20.

Accession Number: 20200824–5000.

Comments Due: 5 p.m. ET 9/14/20.

Docket Numbers: ER20–2289–002.

Applicants: Southwest Power Pool, Inc.

Description: Tariff Amendment: 3704 Union Electric/Evergy Missouri West/MISO Int Agr-2nd Am to be effective 8/30/2020.

Filed Date: 8/24/20.

Accession Number: 20200824–5032.

Comments Due: 5 p.m. ET 9/14/20.

Docket Numbers: ER20–2414–000; ER20–2415–000.

Applicants: Moss Landing Energy Storage 1, LLC, Moss Landing Energy Storage 2, LLC.

Description: Supplement to July 14, 2020 Moss Landing Energy Storage 1, LLC, et al. tariff filings.

Filed Date: 8/17/20.

Accession Number: 20200817–5246.

Comments Due: 5 p.m. ET 8/27/20.

Docket Numbers: ER20–2717–000.

Applicants: Crossing Trails Wind Power Project LLC.

Description: Baseline eTariff Filing: Market-Based Rate Application to be effective 10/21/2020.

Filed Date: 8/21/20.

Accession Number: 20200821–5145.

Comments Due: 5 p.m. ET 9/11/20.

Docket Numbers: ER20–2718–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original ISA, Service Agreement No. 5732; Queue No. AC1–208 to be effective 7/22/2020.

Filed Date: 8/21/20.

Accession Number: 20200821–5148.

Comments Due: 5 p.m. ET 9/11/20.

Docket Numbers: ER20–2719–000.

Applicants: Ringer Hill Wind, LLC.

Description: § 205(d) Rate Filing: Reactive Power Rate Schedule to be effective 8/22/2020.

Filed Date: 8/21/20.

Accession Number: 20200821–5164.

Comments Due: 5 p.m. ET 9/11/20.

Docket Numbers: ER20–2721–000.

Applicants: Smoky Mountain Transmission LLC.

Description: § 205(d) Rate Filing: Filing of Interconnection and Transmission Service Agreement to be effective 10/24/2020.

Filed Date: 8/24/20.

Accession Number: 20200824–5150.

Comments Due: 5 p.m. ET 9/14/20.

Docket Numbers: ER20–2722–000.

Applicants: CO Buffalo Flats, LLC.

Description: Baseline eTariff Filing: CO Buffalo Flats, LLC Market-Based Rate Tariff to be effective 8/25/2020.

Filed Date: 8/24/20.

Accession Number: 20200824–5175.

Comments Due: 5 p.m. ET 9/14/20.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by 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: August 24, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–18998 Filed 8–27–20; 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: RP19–741–003.

Applicants: ANR Pipeline Company.

Description: Compliance filing ANR 2019 Fuel Compliance Filing—Refund Proposal to be effective 11/1/2020.

Filed Date: 8/21/20.

Accession Number: 20200821–5062.

Comments Due: 5 p.m. ET 9/2/20.

Docket Numbers: RP20–1112–000.

Applicants: Equitrans, L.P.

Description: § 4(d) Rate Filing: Negotiated Rate Agreement—Range 08/22/2020 to be effective 8/22/2020.

Filed Date: 8/21/20.

Accession Number: 20200821–5067.

Comments Due: 5 p.m. ET 9/2/20.

Docket Numbers: RP20–1113–000.

Applicants: Rockies Express Pipeline LLC.

Description: Compliance filing REX Termination of Ultra Service Agreements.

Filed Date: 8/21/20.

Accession Number: 20200821–5138.

Comments Due: 5 p.m. ET 9/2/20.

Docket Numbers: RP20–1114–000.

Applicants: Midship Pipeline Company, LLC.

Description: § 4(d) Rate Filing: Non-Conforming/Neg Rate Agreement—Gulfport Energy to be effective 10/1/2020.

Filed Date: 8/21/20.

Accession Number: 20200821–5174.

Comments Due: 5 p.m. ET 9/2/20.

Docket Numbers: RP20–1114–000.

Applicants: Midship Pipeline Company, LLC.

Description: § 4(d) Rate Filing: Non-Conforming/Neg Rate Agreement—Gulfport Energy to be effective 10/1/2020.

Filed Date: 8/21/20.

Accession Number: 20200821–5175.

Comments Due: 5 p.m. ET 9/2/20.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by 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: August 24, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–18999 Filed 8–27–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC20–24–000]

Commission Information Collection Activities (FERC–725A(1C); Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of extension information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the extension to the information collection, FERC–725A(1C) (Mandatory Reliability Standards for Bulk-Power System: Reliability Standard TOP–001–4) which will be submitted to the Office of Management and Budget (OMB) for a review of the information collection requirements.

DATES: Comments on the collection of information are due October 27, 2020.

ADDRESSES: Please submit a copy of your comments to the Commission (identified by Docket No. IC20–24–000) by one of the following methods:

- *eFiling at Commission's Website: http://www.ferc.gov/docs-filing/efiling.asp.*
- *U.S. Postal Service Mail:* Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.
- Effective 7/1/2020, delivery of filings other than by eFiling or the U.S. Postal Service should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov.* For user assistance contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free), or (202) 502–8659 for TTY.

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov/docs-filing/docs-filing.asp.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* telephone at (202) 502–8663.

SUPPLEMENTARY INFORMATION: *Title:* FERC–725A(1C) (Mandatory Reliability Standards for Bulk-Power System: Reliability Standard TOP–001–4)

OMB Control No.: 1902–0298.

Type of Request: Extension to the information collection, with no changes to the reporting and recordkeeping requirements.

Abstract: In a petition dated March 6, 2017, the North American Electric Reliability Corporation (NERC) requested Commission approval for proposed Reliability Standard TOP–001–4 (Transmission Operations). NERC stated that the proposed Reliability Standards address the Commission directives in Order No. 817 related to: (i) Transmission operator monitoring of non-bulk electric system (BES) facilities; (ii) redundancy and diverse routing of transmission operator, balancing authority, and reliability coordinator data exchange capabilities; and (iii) testing of alternative or less frequently used data exchange capabilities. In an order on April 17, 2017,[1] the implementation of Reliability Standard TOP–001–4 and the retirement of Reliability Standard TOP–001–3 was approved.

Type of Respondents: Transmission Operators (TOP) and Balancing Authorities (BA).

Estimate of Annual Burden:[2] The Commission estimates the annual public reporting burden and cost as follows.

[1] The Delegated Letter Order is available in the Commission's eLibrary at *https://elibrary.ferc.gov/idmws/common/OpenNat.asp?fileID=14560616.*

[2] Burden is defined as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, refer to 5 Code of Federal Regulations 1320.3.

Information collection requirements	Number of respondents & type of entity [3] (1)	Annual Number of responses per respondent (2)	Total Number of responses (1) * (2) = (3)	Average burden hours & cost per response ($) (4) [4]	Total annual burden hours & total annual cost ($) (3) * (4) = (5)
FERC–725A(1C) TOP–001–4 [5]					
Reporting (R10, R20, & R21), ongoing	321 (TOP)	1	321	3 hrs.; $210.57	963 hrs.; $67,592.97.
Recordkeeping, ongoing	321 (TOP)	1	321	2 hrs.; $82.06	642 hrs.; $26,341.26.
TOP Sub-Totals				5 hrs.; $292.63	1,605 hrs.; $93,934.23.
Reporting (R23 & R24), ongoing	97 (BA)	1	97	2 hrs.; $140.38	194 hrs.; $13,616.86.
Recordkeeping, ongoing	97 (BA)	1	97	4 hrs.; $164.12	388 hrs.; $15,919.64.
BA Sub-Totals				6hrs.; $304.50	582 hrs.; $29,536.50.
FERC–725A(1C) ongoing total					2,187 hrs.; $123,470.73.

[3] Our estimates are based on the NERC Compliance Registry of 7/17/2020, which indicates there are 321 entities registered as TOPs and 97 entities registered as BAs within the United States. One entity may be registered as having several roles.

[4] The hourly cost figures, for salary plus benefits, for the reliability standards are based on Bureau of Labor Statistics (BLS) information (at *http://www.bls.gov/oes/current/naics2_22.htm*), as of May 2019. For reporting requirements, an electrical engineer (code 17–2071) is $70.19/hour; for the recordkeeping requirements, an information and record clerk (code 43–4199) is $41.03/hour.

[5] Requirement R21 (applicable to TOPs in ongoing yrs.) covers quarterly testing and associated reporting and recordkeeping requirements. Requirement R24 (applicable to BAs in ongoing yrs.) covers quarterly testing and associated engineering and recordkeeping requirements.

Comments: Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: August 24, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–18914 Filed 8–27–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER20–2700–000]

Deuel Harvest 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 Deuel Harvest 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 September 10, 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: August 21, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–18913 Filed 8–27–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP20–50–000; Docket No. CP20–51–000]

Tennessee Gas Pipeline Company, LLC, Southern Natural Gas Company, LLC; Notice of Availability of the Environmental Assessment for the Proposed Evangeline Pass Expansion Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) for the Evangeline Pass Expansion Project, proposed by Tennessee Gas Pipeline

Company, LLC (Tennessee) and Southern Natural Gas Company, LLC (SNG) in the above-referenced dockets.

Tennessee requests authorization to construct and operate a total of approximately 13 miles of 36-inch-diameter looping pipeline: [1] Yscloskey Toca Lateral Loop (about 9 miles) in St. Bernard Parish, Louisiana and Grand Bayou Loop (about 4 miles) in Plaquemines Parish, Louisiana. Additionally, Tennessee requests authorization to construct and operate a new 23,470 horsepower (hp) compressor station (Compressor Station [CS] 529) in St. Bernard Parish, Louisiana.

SNG requests authorization to construct and operate a new 22,220 hp compressor station (Rose Hill CS) in Clarke County, Mississippi and three new meter stations: Rose Hill Receipt Meter Station (MS) in Clarke County, Mississippi, MEP Receipt MS in Smith County, Mississippi, and Toca Delivery MS in St. Bernard Parish, Louisiana. SNG is also requesting authorization to abandon the new capacity by lease to Tennessee.

The proposed projects, collectively known as the Evangeline Pass Expansion Project, would provide up to 1,100,000 dekatherms per day to the Venture Global Gator Express Pipeline interconnect for feed gas for the Plaquemines Liquified Natural Gas Terminal in Plaquemines Parish, Louisiana.

The EA assesses the potential environmental effects of the construction and operation of the projects in accordance with the requirements of the National Environmental Policy Act. The FERC staff concludes that approval of the proposed projects, with appropriate mitigating measures, would not constitute a major federal action significantly affecting the quality of the human environment.

The Commission mailed a copy of the *Notice of Availability* to federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American tribes; potentially affected landowners and other interested individuals and groups; and newspapers and libraries in the project area. The EA is only available in electronic format. It may be viewed and downloaded from the FERC's website (*www.ferc.gov*), on the natural gas environmental documents page (*https://www.ferc.gov/industries-data/natural-gas/environment/environmental-documents*). In addition, the EA may be accessed by using the eLibrary link on the FERC's website. Click on the eLibrary link (*https://www.ferc.gov/ferc-online/elibrary/overview*), select General Search and enter the docket number in the Docket Number field, excluding the last three digits (*i.e.* CP20–50 or CP20–51). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

The EA is not a decision document. It presents Commission staff's independent analysis of the environmental issues for the Commission to consider when addressing the merits of issues raised in this proceeding. Any person wishing to comment on the EA may do so. Your comments should focus on the EA's disclosure and discussion of potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that the Commission has the opportunity to consider your comments prior to making its decision on this project, it is important that we receive your comments in Washington, DC on or before 5:00pm Eastern Time on September 23, 2020.

For your convenience, there are three methods you can use to file your comments with the Commission. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or *FercOnlineSupport@ferc.gov.* Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the *eComment* feature on the Commission's website (*www.ferc.gov*) under the link to *FERC Online.* This is an easy method for submitting brief, text-only comments on a project;

(2) You can also file your comments electronically using the *eFiling* feature on the Commission's website (*www.ferc.gov*) under the link to *FERC Online.* With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on *eRegister.* You must select the type of filing you are making. If you are filing a comment on a particular project, please select Comment on a Filing; or

(3) You can file a paper copy of your comments by mailing them to the Commission. Be sure to reference the project docket number (CP20–50–000 or CP20–51–000) on your letter. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Filing environmental comments will not give you intervenor status, but you do not need intervenor status to have your comments considered. Only intervenors have the right to seek rehearing or judicial review of the Commission's decision. At this point in this proceeding, the timeframe for filing timely intervention requests has expired. Any person seeking to become a party to the proceeding must file a motion to intervene out-of-time pursuant to Rule 214(b)(3) and (d) of the Commission's Rules of Practice and Procedures (18 CFR 385.214(b)(3) and (d)) and show good cause why the time limitation should be waived. Motions to intervene are more fully described at *https://www.ferc.gov/ferc-online/ferc-online/how-guides.*

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website (*www.ferc.gov*) using the *eLibrary* link. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *https://www.ferc.gov/ferc-online/overview* to register for eSubscription.

Dated: August 24, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–18993 Filed 8–27–20; 8:45 am]

BILLING CODE 6717–01–P

[1] A pipeline loop is a segment of pipe constructed parallel to an existing pipeline to increase capacity.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Order on Intent To Revoke Market-Based Rate Authority

	Docket Nos.
Electric Quarterly Reports	ER02–2001–020
ResCom Energy LLC	ER12–1296–000
PowerOne Corporation	ER14–209–001
Capital Energy LLC	ER14–2232–001
HIC Energy, LLC	ER15–2473–000
Veritas Energy Group, LLC	ER17–1751–000
Iridium Energy, LLC	ER18–777–000

1. Section 205 of the Federal Power Act (FPA), 16 U.S.C. 824d (2018), and 18 CFR part 35 (2019), require, among other things, that all rates, terms, and conditions for jurisdictional services be filed with the Commission. In Order No. 2001, the Commission revised its public utility filing requirements and established a requirement for public utilities, including power marketers, to file Electric Quarterly Reports.[1]

2. The Commission requires sellers with market-based rate authorization to file Electric Quarterly Reports summarizing contractual and transaction information related to their market-based power sales as a condition for retaining that authorization.[2] Commission staff's review of the Electric Quarterly Reports indicates that the following six public utilities with market-based rate authorization have failed to file their Electric Quarterly Reports: ResCom Energy LLC, PowerOne Corporation, Capital Energy LLC, HIC Energy, LLC, Veritas Energy Group, LLC, and Iridium Energy, LLC. This order notifies these public utilities that their market-based rate authorizations will be revoked unless they comply with the Commission's requirements within fifteen days of the date of issuance of this order.

3. In Order No. 2001, the Commission stated that,

[i]f a public utility fails to file a[n] Electric Quarterly Report (without an appropriate request for extension), or fails to report an agreement in a report, that public utility may forfeit its market-based rate authority and may be required to file a new application for market-based rate authority if it wishes to resume making sales at market-based rates.[3]

4. The Commission further stated that,

[o]nce this rule becomes effective, the requirement to comply with this rule will supersede the conditions in public utilities' market-based rate authorizations, and failure to comply with the requirements of this rule will subject public utilities to the same consequences they would face for not satisfying the conditions in their rate authorizations, including possible revocation of their authority to make wholesale power sales at market-based rates.[4]

5. Pursuant to these requirements, the Commission has revoked the market-based rate tariffs of market-based rate sellers that failed to submit their Electric Quarterly Reports.[5]

6. Sellers must file Electric Quarterly Reports consistent with the procedures set forth in Order Nos. 2001, 768,[6] and 770.[7] The exact filing dates for Electric Quarterly Reports are prescribed in 18 CFR 35.10b (2019). As noted above, Commission staff's review of the Electric Quarterly Reports for the period up to the first quarter of 2020 identified six public utilities with market-based rate authorization that failed to file Electric Quarterly Reports. Commission staff contacted or attempted to contact these entities to remind them of their regulatory obligations. Despite these reminders, the public utilities listed in the caption of this order have not met these obligations. Accordingly, this order notifies these public utilities that their market-based rate authorizations will be revoked unless they comply with the Commission's requirements within fifteen days of the issuance of this order.

7. In the event that any of the above-captioned market-based rate sellers have already filed their Electric Quarterly Reports in compliance with the Commission's requirements, those sellers' inclusion herein is inadvertent. Such market-based rate sellers are directed, within fifteen days of the date of issuance of this order, to make a filing with the Commission identifying themselves and providing details about their prior filings that establish that they complied with the Commission's Electric Quarterly Report filing requirements.

8. If any of the above-captioned market-based rate sellers do not wish to continue having market-based rate authority, they may file a notice of cancellation with the Commission pursuant to section 205 of the FPA to cancel their market-based rate tariff.

The Commission orders:

(A) Within 15 days of the date of issuance of this order, each public utility listed in the caption of this order shall file with the Commission all delinquent Electric Quarterly Reports. If a public utility subject to this order fails to make the filings required in this order, the Commission will revoke that public utility's market-based rate authorization and will terminate its electric market-based rate tariff. The Secretary is hereby directed, upon expiration of the filing deadline in this order, to promptly issue a notice, effective on the date of issuance, listing the public utilities whose tariffs have been revoked for failure to comply with the requirements of this order and the Commission's Electric Quarterly Report filing requirements.

(B) The Secretary is hereby directed to publish this order in the **Federal Register**.

By the Commission.

Issued: August 24, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–18992 Filed 8–27–20; 8:45 am]

BILLING CODE 6717–01–P

[1] *Revised Public Utility Filing Requirements,* Order No. 2001, 99 FERC ¶ 61,107, *reh'g denied,* Order No. 2001–A, 100 FERC ¶ 61,074, *reh'g denied,* Order No. 2001–B, 100 FERC ¶ 61,342, *order directing filing,* Order No. 2001–C, 101 FERC ¶ 61,314 (2002), *order directing filing,* Order No. 2001–D, 102 FERC ¶ 61,334, *order refining filing requirements,* Order No. 2001–E, 105 FERC ¶ 61,352 (2003), *order on clarification,* Order No. 2001–F, 106 FERC ¶ 61,060 (2004), *order revising filing requirements,* Order No. 2001–G, 120 FERC ¶ 61,270, *order on reh'g and clarification,* Order No. 2001–H, 121 FERC ¶ 61,289 (2007), *order revising filing requirements,* Order No. 2001–I, FERC Stats. 125 FERC ¶ 61,103 (2008). *See also Filing Requirements for Electric Utility Service Agreements,* 155 FERC ¶ 61,280, *order on reh'g and clarification,* 157 FERC ¶ 61,180 (2016) (clarifying Electric Quarterly Reports reporting requirements and updating Data Dictionary).

[2] *See Refinements to Policies and Procedures for Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities,* Order No. 816, 153 FERC ¶ 61,065 (2015), *order on reh'g,* Order No. 816–A, 155 FERC ¶ 61,188 (2016); *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities,* Order No. 697, 119 FERC ¶ 61,295, at P 3, *clarified,* 121 FERC ¶ 61,260 (2007), *order on reh'g,* Order No. 697–A, 123 FERC ¶ 61,055, *clarified,* 124 FERC ¶ 61,055, *order on reh'g,* Order No. 697–B, 125 FERC ¶ 61,326 (2008), *order on reh'g,* Order No. 697–C, 127 FERC ¶ 61,284 (2009), *order on reh'g,* Order No. 697–D, 130 FERC ¶ 61,206 (2010), *aff'd sub nom. Mont. Consumer Counsel* v. *FERC,* 659 F.3d 910 (9th Cir. 2011).

[3] Order No. 2001, 99 FERC ¶ 61,107 at P 222.

[4] *Id.* P 223.

[5] *See, e.g., Electric Quarterly Reports,* 82 FR 60,976 (Dec. 26, 2017); *Electric Quarterly Reports,* 80 FR 58,243 (Sep. 28, 2015); *Electric Quarterly Reports,* 79 FR 65,651 (Nov. 5, 2014).

[6] *Electricity Market Transparency Provisions of Section 220 of the Federal Power Act,* Order No. 768, 140 FERC ¶ 61,232 (2012), *order on reh'g,* Order No. 768–A, 143 FERC ¶ 61,054 (2013), *order on reh'g,* Order No. 768–B, 150 FERC ¶ 61,075 (2015).

[7] *Revisions to Electric Quarterly Report Filing Process,* Order No. 770, 141 FERC ¶ 61,120 (2012).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC20–23–000]

Commission Information Collection Activities (FERC–725R); Comment Request

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the information collection FERC–725R (Mandatory Reliability Standards: BAL Reliability Standards) and will be submitting the information collection to the Office of Management and Budget (OMB) for review.

DATES: Comments on the collection of information are due October 27, 2020.

ADDRESSES: A copy of the comments should be submitted to the Commission, in Docket No. IC20–23–000, by one of the following methods:

- *eFiling at Commission's Website: http://www.ferc.gov/docs-filing/efiling.asp.*
- *U.S. Postal Service Mail:* Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.
- Effective 7/1/2020, delivery of filings other than by eFiling or the U.S. Postal Service should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Instructions:

All submissions must be formatted and filed in accordance with submission guidelines at *http://www.ferc.gov.* For user assistance, contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free).

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov/docs-filing/docs-filing.asp.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* and telephone at (202) 502–8663.

SUPPLEMENTARY INFORMATION:

Title: FERC–725R, Mandatory Reliability Standards: BAL Reliability Standards.[1]

OMB Control No.: 1902–0268

Type of Request: Three-year renewal request for the FERC–725R information collection requirements, with no changes to the reporting and recordkeeping requirements.

Abstract:

On August 8, 2005, Congress enacted into law the Electricity Modernization Act of 2005, which is Title XII, Subtitle A, of the Energy Policy Act of 2005 (EPAct 2005).[2] EPAct 2005 added a new section 215 to the FPA, which required a Commission-certified Electric Reliability Organization (ERO) to develop mandatory and enforceable Reliability Standards, which are subject to Commission review and approval. Once approved, the Reliability Standard may be enforced by the ERO subject to Commission oversight, or the Commission can independently enforce Reliability Standards.[3]

On February 3, 2006, the Commission issued Order No. 672, implementing section 215 of the FPA.[4] Pursuant to Order No. 672, the Commission certified one organization, North American Electric Reliability Corporation (NERC), as the ERO.[5] The Reliability Standards developed by the ERO and approved by the Commission apply to users, owners and operators of the Bulk-Power System as set forth in each Reliability Standard.

FERC–725R includes the following nation-wide Reliability Standards:[6]

- BAL–001–2,[7] Real Power Balancing Control Performance.

Reliability Standard BAL–001–2 is designed to ensure that applicable entities balance generation and load by maintaining system frequency within narrow bounds around a scheduled value, and it improves reliability by adding a frequency component to the measurement of a Balancing Authority's Area Control Error (ACE).[8]

- BAL–002–3,[9] Disturbance Control Standard—Contingency Reserve for Recovery from a Balancing Contingency Event.

This standard ensures that a responsible entity, either a balancing authority or reserve sharing group, is able to recover from system contingencies by deploying adequate reserves to return their Area Control Error to defined values and replacing the capacity and energy lost due to generation or transmission equipment outages.

- BAL–003–1,[10] Frequency Response and Frequency Bias Setting.

This standard requires sufficient Frequency Response from the Balancing Authority (BA) to maintain Interconnection Frequency within predefined bounds by arresting frequency deviations and supporting frequency until the frequency is restored to its scheduled value. It also ensures that balancing authority's Frequency Bias Setting is accurately calculated to match its actual Frequency Response. It provides consistent methods for measuring Frequency Response and determining the Frequency Bias Setting. Each balancing authority reports its previous year Frequency Response Measure and Frequency Bias Setting to NERC via FRS (Frequency Response Survey) Form 1. The information provided on the FRS Form 1 is based on events which qualify for analyses; NERC identifies between 20 to 35 events in each Interconnection for calculating the Frequency Response Measure and Frequency Bias Setting.

- BAL–005–1,[11] Balancing Authority Control.

This standard establishes requirements for acquiring data necessary to calculate Reporting Area Control Error (Reporting ACE). The standard also specifies a minimum periodicity, accuracy, and availability requirement for acquisition of the data

[1] In Docket No. RD20–9–000, Reliability Standard BAL–003–2 is being considered for approval. (A Notice requesting comments on the changes proposed in Docket No. RD20–9–000 is posted in eLibrary at *https://elibrary.ferc.gov/idmws/common/OpenNat.asp?fileID=15605347.*) Those changes are addressed separately in Docket No. RD20–9–000 and are not addressed in this notice in Docket No. IC20–23–000.

[2] Energy Policy Act of 2005, Public Law 109–58, Title XII, Subtitle A, 119 Stat. 594, 941 (codified at 16 U.S.C. 824*o*).

[3] 16 U.S.C. 824*o*(e)(3).

[4] *Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval, and Enforcement of Electric Reliability Standards,* Order No. 672, FERC Stats. & Regs. 31,204, *order on reh'g,* Order No. 672–A, FERC Stats. & Regs. 31,212 (2006).

[5] *North American Electric Reliability Corp.,* 116 FERC 61,062, *order on reh'g and compliance,* 117 FERC 61,126 (2006), *order on compliance,* 118 FERC 61,190, *order on reh'g,* 119 FERC 61,046 (2007), *aff'd sub nom. Alcoa Inc.* v. *FERC,* 564 F.3d 1342 (D.C. Cir. 2009).

[6] There are also regional BAL Reliability Standards. They are not included in FERC–725R and are not discussed here. The regional BAL Reliability Standards are covered under other OMB Control Nos.

[7] It was approved in Docket No. RM14–10.

[8] Area Control Error is the instantaneous difference between a Balancing Authority's net actual and scheduled interchange, taking into accounts the effects of Frequency Bias, correction for meter error, and Automatic Time Error Correction (ATEC), if operating in the ATEC mode. ATEC is only applicable to Balancing Authorities in the Western Interconnection. NERC Glossary.

[9] It was approved in Docket No. RD18–7.

[10] It was approved in Docket No. RM13–11; the current version is Reliability Standard BAL–003–1.1.

[11] It was approved in Docket No. RM16–13.

and for providing the information to the System Operator. It requires balancing authorities to maintain minimum levels of annual availability of 99.5% for each balancing authority system for calculating Reporting ACE.

Type of Respondent: Balancing Authorities, Response Sharing Group, and Frequency Response Sharing Group.

Estimate of Annual Burden:[12] Our estimate of the number of respondents affected is based on the NERC Compliance Registry as of July 17, 2020.[13] According to the Compliance Registry, NERC has registered 97 Balancing Authorities (BA), 11 Response Sharing Groups (RSG), and 1 Frequency Response Sharing Group (FRSG) within the United States, as noted. The burden estimates reflect the number of affected entities for each standard. Estimates for the average annual burden and cost[14] follow.

FERC–725R

Function	Number & type of respondents (1)	Number of annual responses per respondent (2)	Total No. of annual responses (1) × (2) = (3)	Average burden hours & cost ($) per response (4)	Total annual burden hours & total annual cost ($) (3) × (4) = (5)
BAL–001–2					
BA Reporting Requirements	97	1	97	8 hrs.; $561.52	776 hrs.; $54,467.44.
BA Recordkeeping Requirements	97	1	97	4 hrs.; $164.12	388 hrs.; $15,919.64.
BAL–002–3					
BA & RSG Reporting Requirements	108	1	108	8 hrs.; $561.52	864 hrs.; $60,644.16.
BA & RSG Recordkeeping Requirements	108	1	108	4 hrs.; $164.12	432 hrs.; $17,724.96.
BAL–003–1.1					
BA & FRSG Reporting Requirements	98	28	2,744	8 hrs.; $561.52	21,952 hrs.; $1,540,810.88.
BA & FRSG Recordkeeping Requirements	98	1	98	2 hrs.; $82.06	196 hrs.; $8,041.88.
BAL–005–1					
BA Reporting Requirements	97	1	97	1 hr.; $70.19	97 hrs.; $6,808.43.
BA Recordkeeping Requirements	97	1	97	1 hr.; $41.03	97 hrs.; $3,979.91.
SUB-TOTAL FOR REPORTING REQUIREMENTS					23,689 hrs.; $1,662,730.91.
SUB-TOTAL FOR RECORDKEEPING REQUIREMENTS.					1,113 hrs.; $45,666.39.
TOTAL FOR FERC–725R (rounded)					24,802 hrs.; $1,708,397.

Comments: Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: August 21, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–18915 Filed 8–27–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1852–037; ER10–1852–035.

Applicants: Florida Power & Light Company.

Description: Supplement to February 27, 2020 and May 19, 2020 Notification of Change in Status of Florida Power & Light Company.

Filed Date: 8/20/20.

Accession Number: 20200820–5152.

Comments Due: 5 p.m. ET 9/10/20.

Docket Numbers: ER18–1150–003.

Applicants: Northwest Ohio Wind, LLC.

Description: Updated Market Power Analysis for the Northeast Region of Northwest Ohio Wind, LLC.

Filed Date: 8/21/20.

Accession Number: 20200821–5068.

Comments Due: 5 p.m. ET 9/11/20.

Docket Numbers: ER20–936–000.

Applicants: Entergy Arkansas, LLC.

Description: Entergy Arkansas, LLC. submits tariff filing per 35.19a(b): Refund Report_Arkansas Nuclear One Unit 2 to be effective N/A.

[12] Burden is defined as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a federal agency. See 5 CFR 1320 for additional information on the definition of information collection burden.

[13] NERC Compliance Registry (July 17, 2020), *available at https://www.nerc.com/pa/comp/Registration%20and%20Certification%20DL/NERC_Compliance_Registry_Matrix_Excel.xlsx.*

[14] The hourly cost estimates are based on wage data from the Bureau of Labor Statistics for May 2019 (at *https://www.bls.gov/oes/current/naics2_22.htm*) and benefits data for Dec. 2019 (issued March 2020, at *https://www.bls.gov/news.release/ecec.nr0.htm*). The hourly costs (for wages and benefits) are for: Electrical Engineer (Occupation code 17–2071), $70.19; and Information and Record Clerk (Occupation code 43–4199), $41.03.

Filed Date: 8/21/20.
Accession Number: 20200821–5126.
Comments Due: 5 p.m. ET 9/11/20.

Docket Numbers: ER20–1453–002.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Tariff Amendment: 2020–08–21_Amendment to Schedule 17 Revisions to be effective 6/1/2020.
Filed Date: 8/21/20.
Accession Number: 20200821–5098.
Comments Due: 5 p.m. ET 9/11/20.

Docket Numbers: ER20–1722–000.
Applicants: Spring Valley Wind LLC.
Description: Second Supplement to April 30, 2020 Notice of Change in Status of the Pattern MBR Entities.
Filed Date: 8/20/20.
Accession Number: 20200820–5160.
Comments Due: 5 p.m. ET 9/10/20.

Docket Numbers: ER20–1974–001.
Applicants: Duke Energy Carolinas, LLC.
Description: Compliance filing: DEC-Lockhart Compliance Filing (July 30, 2020 Order) to be effective 6/1/2020.
Filed Date: 8/20/20.
Accession Number: 20200820–5115.
Comments Due: 5 p.m. ET 9/10/20.

Docket Numbers: ER20–2603–000; ER20–2597–000.
Applicants: Skeleton Creek Wind, LLC, Soldier Creek Wind, LLC.
Description: Amendment to August 3, 2020, et al. Skeleton Creek Wind, LLC, et al. tariff filings.
Filed Date: 8/19/20.
Accession Number: 20200819–5111.
Comments Due: 5 p.m. ET 8/31/20.

Docket Numbers: ER20–2709–000.
Applicants: Idaho Power Company.
Description: § 205(d) Rate Filing: Revised Market Rate Power Sale Tariff to be effective 10/29/2020.
Filed Date: 8/20/20.
Accession Number: 20200820–5110.
Comments Due: 5 p.m. ET 9/10/20.

Docket Numbers: ER20–2710–000.
Applicants: Duke Energy Florida, LLC.
Description: § 205(d) Rate Filing: DEF—Reimbursement Agreement to be effective 11/1/2020.
Filed Date: 8/20/20.
Accession Number: 20200820–5123.
Comments Due: 5 p.m. ET 9/10/20.

Docket Numbers: ER20–2711–000.
Applicants: Midcontinent Independent System Operator, Inc., Northern States Power Company, a Minnesota corporation.
Description: § 205(d) Rate Filing: 2020–08–20_SA 2692 Big Stone South-Brookings 1st Rev T–T IA (NSP–OTP) to be effective 8/22/2020.
Filed Date: 8/21/20.
Accession Number: 20200821–5031.
Comments Due: 5 p.m. ET 9/11/20.

Docket Numbers: ER20–2712–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: City Utilities of Springfield, Missouri revisions to Formula Rate and Protocols to be effective 11/1/2020.
Filed Date: 8/21/20.
Accession Number: 20200821–5039.
Comments Due: 5 p.m. ET 9/11/20.

Docket Numbers: ER20–2713–000.
Applicants: El Paso Electric Company.
Description: § 205(d) Rate Filing: Service Agreement No. 328, Amended LGIA with TEP to be effective 8/18/2020.
Filed Date: 8/21/20.
Accession Number: 20200821–5116.
Comments Due: 5 p.m. ET 9/11/20.

Docket Numbers: ER20–2714–000.
Applicants: Headwaters Wind Farm II LLC.
Description: Baseline eTariff Filing: Market-Based Rate Application to be effective 8/22/2020.
Filed Date: 8/21/20.
Accession Number: 20200821–5118.
Comments Due: 5 p.m. ET 9/11/20.

Docket Numbers: ER20–2715–000.
Applicants: Stored Solar, LLC.
Description: Baseline eTariff Filing: baseline new to be effective 8/24/2020.
Filed Date: 8/21/20.
Accession Number: 20200821–5119.
Comments Due: 5 p.m. ET 9/11/20.

Docket Numbers: ER20–2716–000.
Applicants: Duke Energy Carolinas, LLC.
Description: § 205(d) Rate Filing: DEC–WCU—Revisions to Rate Schedule No. 338 to be effective 6/1/2020.
Filed Date: 8/21/20.
Accession Number: 20200821–5123.
Comments Due: 5 p.m. ET 9/11/20.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES20–53–000.
Applicants: Montana-Dakota Utilities Co.
Description: Application Under Section 204 of the Federal Power Act for Authorization to Issue Securities, et al. of Montana-Dakota Utilities Co.
Filed Date: 8/21/20.
Accession Number: 20200821–5069.
Comments Due: 5 p.m. ET 9/11/20.

Take notice that the Commission received the following qualifying facility filings:

Docket Numbers: QF20–1298–000.
Applicants: Architect of the Capitol.
Description: Form 556 of Architect of the Capitol.
Filed Date: 8/20/20.
Accession Number: 20200820–5158.
Comments Due: Non-Applicable.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by 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: August 21, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–18924 Filed 8–27–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER20–2704–000]

Contrail Wind Project, 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 Contrail Wind Project, 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 September 10, 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: August 21, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–18911 Filed 8–27–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER20–2702–000]

Crescent Wind 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 Crescent Wind 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 September 10, 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: August 21, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–18916 Filed 8–27–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER20–2694–000]

Icon 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 Icon 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 September 10, 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: August 21, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–18920 Filed 8–27–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER20–2714–000]

Wind Farm II LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Wind Farm II LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is September 14, 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: August 24, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–19000 Filed 8–27–20; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2020–0049; FRL–10013–87]

Pesticide Product Registration; Receipt of Applications for New Active Ingredients (July 2020)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received applications to register pesticide products containing active ingredients not included in any currently registered pesticide products. Pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is hereby providing notice of receipt and opportunity to comment on these applications.

DATES: Comments must be received on or before September 28, 2020.

ADDRESSES: Submit your comments, identified by docket identification (ID) number and the File Symbol of interest as shown in the body of this document, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *https://www.epa.gov/dockets/where-send-comments-epa-dockets.*

Due to the public health concerns related to COVID–19, the EPA Docket Center (EPA/DC) and Reading Room is closed to visitors with limited exceptions. The staff continues to provide remote customer service via email, phone, and webform. For the latest status information on EPA/DC services and docket access, visit *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Marietta Echeverria, Registration Division (7505P), main telephone number: (703) 305–7090, email address: *RDFRNotices@epa.gov.* The mailing address is: Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001. As part of the mailing address, include the contact person's name, division, and mail code.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *https://www.epa.gov/dockets/commenting-epa-dockets.*

II. Registration Applications

EPA has received applications to register pesticide products containing active ingredients not included in any currently registered pesticide products. Pursuant to the provisions of FIFRA section 3(c)(4) (7 U.S.C. 136a(c)(4)), EPA is hereby providing notice of receipt and opportunity to comment on these applications. Notice of receipt of these applications does not imply a decision by the Agency on these applications. For actions being evaluated under EPA's public participation process for registration actions, there will be an additional opportunity for public comment on the proposed decisions. See EPA's public participation website for additional information on this process (*http://www2.epa.gov/pesticide-registration/public-participation-process-registration-actions*).

New Active Ingredient

1. *File Symbol:* 71711–AA. *Docket ID number:* EPA–HQ–OPP–2020–0226. *Applicant:* Nichino America, Inc., 4550 Linden Hill Rd., Suite 501, Wilmington, DE 19808. *Active ingredient:* Pyraziflumid. *Product type:* Fungicide. *Proposed uses:* Bushberries (crop subgroup 13–07B), caneberries (crop subgroup 13–07A), pome fruits (crop group 11–10), small fruits vine climbing, except fuzzy kiwifruit (crop subgroup 13–07F), stone fruits (crop group 12–12), tree nuts (crop group 14–12), and turf (golf courses; residential, institutional, commercial and municipal lawns; parks; recreational areas sports and athletic fields; cemeteries; and sod farms). *Contact:* RD.

2. *File Symbol:* 71711–AL. *Docket ID number:* EPA–HQ–OPP–2020–0226. *Applicant:* Nichino America, Inc., 4550 Linden Hill Rd., Suite 501, Wilmington, DE 19808. *Active ingredient:* Pyraziflumid. *Product type:* Fungicide. *Proposed uses:* Bushberries (crop subgroup 13–07B), caneberries (crop subgroup 13–07A), pome fruits (crop group 11–10), small fruits vine climbing, except fuzzy kiwifruit (crop subgroup 13–07F), stone fruits (crop group 12–12), tree nuts (crop group 14–12), and turf (golf courses; residential, institutional, commercial and municipal lawns; parks; recreational areas sports and athletic fields; cemeteries; and sod farms). *Contact:* RD.

3. *File Symbol:* 71711–AT. *Docket ID number:* EPA–HQ–OPP–2020–0226. *Applicant:* Nichino America, Inc., 4550 Linden Hill Rd., Suite 501, Wilmington, DE 19808. *Active ingredient:* Pyraziflumid. *Product type:* Fungicide. *Proposed uses:* Bushberries (crop subgroup 13–07B), caneberries (crop subgroup 13–07A), pome fruits (crop group 11–10), small fruits vine climbing, except fuzzy kiwifruit (crop subgroup 13–07F), stone fruits (crop group 12–12), tree nuts (crop group 14–12), and turf (golf courses; residential, institutional, commercial and municipal lawns; parks; recreational areas sports and athletic fields; cemeteries; and sod farms). *Contact:* RD

Authority: 7 U.S.C. 136 *et seq.*

Dated: August 24, 2020.

Hamaad Syed,

Director, Information Technology and Resources Management Division, Office of Pesticide Programs.

[FR Doc. 2020–18954 Filed 8–27–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPA–2006–0090; FRL–10014–30–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; The National Oil and Hazardous Substances Pollution Contingency Plan Regulation, Subpart J (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), The National Oil and Hazardous Substances Pollution Contingency Plan Regulation (EPA ICR Number 1664.12, OMB Control Number 2050–0141) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through October 31, 2020. Public comments were previously requested via the **Federal Register** on November 27, 2019 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. 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.

DATES: Comments must be submitted on or before September 28, 2020.

ADDRESSES: Submit your comments to EPA, referencing Docket ID No. EPA–HQ–OPA–2006–0090, online using *www.regulations.gov* (our preferred method), or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460. EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

Submit written comments and recommendations to OMB for the proposed information collection 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: Wendy Hoffman, Regulations Implementation Division, Office of Emergency Management, Mail Code 5104A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 202–564–8794; fax number: 202–564–2620; email address: *hoffman.wendy@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the

EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: This Information Collection Request (ICR) renewal supports activities to implement the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), Subpart J (40 CFR 300.900), ''Use of Dispersants and Other Chemicals.''

The use of bioremediation agents, dispersants, surface washing agents, surface collecting agents and miscellaneous oil spill control agents in response to oil spills in U.S. waters or adjoining shorelines is governed by Subpart J of the NCP regulation (40 CFR 300.900). Subpart J requirements include criteria for listing oil spill mitigating agents on the NCP Product Schedule, hereafter referred to as the Schedule. EPA's regulation, which is codified at 40 CFR 300.00, requires that EPA prepare a schedule of ''dispersants, other chemicals, and other spill mitigating devices and substances, if any, that may be used in carrying out the NCP.'' The Schedule is required by section 311(d)(2)(G) of the Clean Water Act (CWA), as amended by the Oil Pollution Act of 1990. The Schedule is used by Federal On-Scene Coordinators (FOSCs), Regional Response Teams (RRTs), and Area Planners to identify spill mitigating agents in preparation for and response to oil spills.

Under Subpart J, manufacturers who want to add a product to the Schedule must submit technical product data to the EPA as stipulated in 40 CFR 300.915. Subpart J requires the manufacturer to conduct specific toxicity and effectiveness tests and submit the corresponding technical product data along with other detailed information to the EPA Office of Emergency Management, Office of Land and Emergency Management. The Schedule is available to Federal On-Scene Coordinators (FOSCs), Regional Response Teams (RRTs), and Area Committees for helping them select the most appropriate products to use in various spill scenarios.

As of November 2019, the Product Schedule included 105 manufacturers and 122 products (27 bioremediation agents, 19 dispersants, 17 miscellaneous oil spill control agents, two surface collecting agents, and 57 surface washing agents). EPA estimates that each year of this ICR renewal period, nine manufacturers will apply to list a total of nine products on the Schedule. Therefore, over the three-year period covered by this ICR renewal, EPA estimates an additional 27 products may be listed. Additionally, EPA estimates that eight manufacturers will submit product information to EPA to obtain a sorbent certification letter annually.

At 40 CFR 300.920(c), respondents may claim certain information in the technical product data submissions as confidential business information. EPA will handle such claims pursuant to the provisions in 40 CFR part 2, subpart B. Such information must be submitted separately from non-confidential information, clearly identified, and clearly marked ''Confidential Business Information.'' If the applicant fails to make such a claim at the time of submittal, EPA may make the information available to the public without further notice.

Forms: None.

Respondents/affected entities: Respondents include, but are not limited to, manufacturers of bioremediation agents, dispersants, surface collecting agents, surface washing agents, miscellaneous oil spill control agents, sorbents and other chemical agents and biological additives used as countermeasures against oil spills.

Respondent's obligation to respond: Required to obtain or retain a benefit (40 CFR 300.900).

Estimated number of respondents: 9 (total).

Frequency of response: Each manufacturer responds once per product submittal.

Total estimated burden: 310 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $95,400 (per year), includes $22,400 in operation & maintenance costs.

Changes in Estimates: EPA anticipates a slight decrease of five hours in the annual burden hours under this ICR renewal. EPA increased the respondent burden hours by 20 percent in response to manufacturer feedback obtained during the consultation process. However, because EPA estimates that fewer respondents will submit information to EPA to have a product listed on the Schedule, in addition to fewer sorbent manufacturers submitting products for certification, the overall annual burden estimate has decreased slightly for this ICR renewal period.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2020–19001 Filed 8–27–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10014–07–OAR]

Administration of Cross-State Air Pollution Rule Trading Program Assurance Provisions for 2019 Control Periods

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of data availability.

SUMMARY: The Environmental Protection Agency (EPA) is providing notice of the availability of data on the administration of the assurance provisions of the Cross-State Air Pollution Rule (CSAPR) trading programs for the control periods in 2019. Total emissions of nitrogen oxides (NO_X) reported by Mississippi units participating in the CSAPR NO_X Ozone Season Group 2 Trading Program during the 2019 control period exceeded the state's assurance level under the program. Data demonstrating the exceedance and EPA's final calculations of the amounts of additional allowances that the owners and operators of certain Mississippi units must surrender have been posted in a spreadsheet on EPA's website.

DATES: August 28, 2020.

FOR FURTHER INFORMATION CONTACT: Questions concerning this notice should be addressed to Garrett Powers at (202) 564–2300 or *powers.jamesg@epa.gov.*

SUPPLEMENTARY INFORMATION: The regulations for each CSAPR trading program contain ''assurance provisions'' designed to ensure that the emissions reductions required from each state covered by the program occur within the state. If the total emissions from a given state's affected units exceed the state's assurance level under the program, then two allowances must be surrendered for each ton of emissions exceeding the assurance level (in addition to the ordinary obligation to surrender one allowance for each ton of emissions). In the quarterly emissions reports covering the 2019 control period, Mississippi units participating in the CSAPR NO_X Ozone Season Group 2 Trading Program collectively reported emissions that exceed the state's assurance level under the program by 473 tons, resulting in a requirement for the surrender of 946 additional allowances.

When a state's assurance level is exceeded, responsibility for surrendering the required additional allowances is apportioned among groups of units in the state represented by ''common designated

representatives'' based on the extent to which each such group's emissions exceeded the group's share of the state's assurance level. For the CSAPR NO_X Ozone Season Group 2 Trading Program, the procedures are set forth at 40 CFR 97.802 (definitions of ''common designated representative,'' ''common designated representative's assurance level,'' and ''common designated representative's share''), 97.806(c)(2), and 97.825. Applying the procedures in the regulations for the 2019 control period for Mississippi, EPA completed calculations preliminarily indicating that responsibility for surrendering 946 additional allowances should be apportioned entirely to the group of units operated by Mississippi Power Company, all of which are represented by one common designated representative.

On May 15, 2020, EPA published a document in the **Federal Register** providing notice of the data relied on to determine the amount of the exceedance of the Mississippi assurance level and the preliminary calculations of the amounts of additional allowances that the owners and operators of certain Mississippi units must surrender as a result of the exceedance and describing the process for submitting any objections (85 FR 29445). In response to the May 15, 2020 notice, EPA received one written submission which supported EPA's proposed administration of the assurance provisions.[1] Accordingly, in this document, EPA is providing notice of the final calculations of the amounts of additional allowances that must be surrendered, which are unchanged from the preliminary calculations. Each set of owners and operators identified pursuant to this notice of the final calculations must hold the required additional allowances in an assurance account by November 2, 2020.

The data and final calculations are set forth in an Excel spreadsheet entitled ''2019_CSAPR_assurance_provision_calculations_final.xlsx'' available at *http://www.epa.gov/csapr/csapr-assurance-provision-nodas.* The spreadsheet contains data for the 2019 control period showing, for each Mississippi unit identified as affected under the CSAPR NO_X Ozone Season Group 2 Trading Program, the amount of NO_X emissions reported by the unit and the amount of CSAPR NO_X Ozone Season Group 2 allowances allocated to the unit, including any allowances allocated from a new unit set-aside. The spreadsheet also contains calculations for the 2019 control period showing the total NO_X emissions reported by all such units and the amount by which the total reported NO_X emissions exceeded the state's assurance level under the program. Finally, the spreadsheet also includes calculations for the 2019 control period showing, for each common designated representative for a group of such units in the state, the common designated representative's share of the total reported NO_X emissions, the common designated representative's share of the state's assurance level, and the amount of additional CSAPR NO_X Ozone Season Group 2 allowances that the owners and operators of the units in the group must surrender.

Authority: 40 CFR 97.825(b).

Reid P. Harvey,

Director, Clean Air Markets Division, Office of Atmospheric Programs, Office of Air and Radiation.

[FR Doc. 2020–18933 Filed 8–27–20; 8:45 am]

BILLING CODE 6560–50–P

[1] The submission also contained statements generally advocating for more stringent regulatory requirements. These additional statements are outside the scope of this ministerial action to administer the assurance provisions in the existing CSAPR regulations.

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10013–99–Region 9]

Public Water System Supervision Program Revisions for the Navajo Nation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of tentative approval.

SUMMARY: Notice is hereby given that the Navajo Nation revised its approved Public Water System Supervision (PWSS) Program under the federal Safe Drinking Water Act (SDWA) by adopting the Arsenic Rule, Consumer Confidence Report (CCR) Rule, Filter Backwash Recycling Rule (FBRR), Lead and Copper Rule—Minor Revisions (LCR–MR), and Stage 1 Disinfectants and Disinfection Byproducts (DBP) Rule. The Environmental Protection Agency (EPA) has determined that these revisions by the Navajo Nation are no less stringent than the corresponding Federal regulations and otherwise meet applicable SDWA primacy requirements. Therefore, the EPA intends to approve these revisions to the Navajo Nation's PWSS Program.

DATES: Request for a public hearing must be received on or before September 28, 2020.

ADDRESSES: Information submitted by the Navajo Nation relating to this determination are available for inspection on *http://www.navajoepa.org.* If there are issues with accessing the website, contact Yolanda Barney, Navajo PWSS Program, via telephone at (928) 871–7715; or via email at *ybarney@navajopublicwater.org.*

FOR FURTHER INFORMATION CONTACT: Bessie Lee, EPA Region 9, Drinking Water Section (WTR–4–1), 75 Hawthorne Street, San Francisco, CA 94105; via telephone at (415) 972–3776; or via email address at *lee.bessie@epa.gov.*

SUPPLEMENTARY INFORMATION:

Background. The EPA approved the Navajo Nation's original application for PWSS Program primary enforcement authority on October 23, 2000 (65 FR 66541). Primacy states such as the Navajo Nation must adopt and submit for approval to EPA all new and revised national primary drinking water regulations. Since that initial approval, EPA has worked with the Navajo Nation to review and approve various revisions to Navajo's primacy program. For the revisions covered by this action, EPA published the latest iteration of the Arsenic Rule in the **Federal Register** on January 22, 2001 (66 FR 6976) and promulgated this rule at 40 CFR part 141 Subpart G; published the CCR Rule on August 19, 1998 (63 FR 44512) and promulgated this rule at 40 CFR part 141 Subpart O; published the FBRR on June 8, 2001 (66 FR 31086) and promulgated this rule at 40 CFR part 141 Subpart P; published the LCR–MR to the 1991 Lead and Cooper Rule on January 12, 2000 (65 FR 1950) and promulgated at 40 CFR part 141 Subpart I; and published the Stage 1 DBP Rule on December 16, 1998 (63 FR 69390) and promulgated this rule at 40 CFR part 141 Subpart L. The Navajo Nation has incorporated these federal drinking water rules *by reference* into its Navajo Nation Primary Drinking Water Regulations (NNPDWRs), and therefore they parallel the federal requirements. The relevant citations to the NNPDWRs are: Part IV for the Arsenic Rule, Part XII for the CCR Rule, Part VIII for the FBRR, Part VII for the LCR–MR, and Part XI for the Stage 1 DBP Rule. These are the primacy revisions that the EPA Region 9 tentatively approves as part of the Navajo PWSS Program.

Public Process. Any interested party may request a public hearing on this determination. A request for a public hearing must be submitted by September 28, 2020, to the Regional Administrator (RA) of EPA Region 9, to the address shown above. Please note on the mailing envelope ''Request for

Public Hearing''. The RA may deny frivolous or insubstantial requests for a hearing. If a substantial request for a public hearing is made by September 28, 2020, EPA Region 9 will hold a public hearing. Any request for a public hearing shall include the following information: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) a brief statement of the requesting person's or organization's interest in the RA's determination and a brief statement of the information that the requesting person intends to submit at such hearing; and (3) the signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

If EPA Region 9 does not receive a timely and substantive request for a hearing and the RA does not elect to hold a hearing on his own motion, the determination at issue in this notice, the EPA's approval shall become final and effective on September 28, 2020, and no further public notice will be issued. EPA Region 9 will provide public notice of any public hearing held pursuant to a request submitted by an interested person or on EPA's own motion. If a public hearing is held, EPA Region 9 will issue an order either affirming or rescinding the determination. If EPA Region 9 affirms the determination, it will become effective as of the date of the order.

Authority: Section 1413 of the Safe Drinking Water Act, 42 U.S.C. 300g–2 (1996), and 40 CFR part 142 of the National Primary Drinking Water Regulations.

Dated: August 19, 2020.

John W. Busterud,

Regional Administrator, EPA Region 9.

[FR Doc. 2020–19005 Filed 8–27–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9052–5]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information 202–564–5632 or *https://www.epa.gov/nepa.*

Weekly receipt of Environmental Impact Statements (EIS).

Filed August 17, 2020, 10 a.m. EST Through August 24, 2020, 10 a.m. EST.

Pursuant to 40 CFR 1506.9.

Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *https://cdxnodengn.epa.gov/cdx-enepa-public/action/eis/search.*

EIS No. 20200172, Final, UDOT, UT, Parley's Interchange; I–80/I–215 Eastside, Contact: Naomi Kisen 801–965–4000.

Pursuant to 23 U.S.C. 139(n)(2), UDOT has issued a single FEIS and ROD. Therefore, the 30-day wait/review period under NEPA does not apply to this action.

EIS No. 20200173, Final Supplement, GSA, DC, St. Elizabeth's Master Plan Amendment 2, Review Period Ends: 09/28/2020, Contact: Paul Gyamfi 202–440–3405.

EIS No. 20200174, Draft, USDA, MT, Mid-Swan Landscape Restoration and Wildland Urban Interface Project, Comment Period Ends: 10/13/2020, Contact: Joseph Krueger 406–758–5243.

EIS No. 20200175, Second Draft Supplement, USACE, MS, Draft Supplement II (SEIS II) to the Final Environmental Impact Statement, Mississippi River and Tributaries (MR&T) Project, Mississippi River Mainline Levees and Channel Improvement of 1976 (1976 EIS), as updated and supplemented by Supplement No. 1, Mississippi River and Tributaries Project, Mississippi River Mainline Levee Enlargement and Seepage Control of 1998 (1998 SEIS), Comment Period Ends: 10/13/2020, Contact: Mike Thron 901–544–0708.

EIS No. 20200176, Final, USACE, FL, Lake Okeechobee Watershed Restoration Project, Review Period Ends: 09/28/2020, Contact: Dr. Gretchen Ehlinger 904–232–1682.

Amended Notice

EIS No. 20200067, Draft, NRC, NM, Holtec International's License Application for a Consolidated Interim Storage Facility for Spent Nuclear Fuel and High Level Waste, Comment Period Ends: 09/22/2020, Contact: Jill Caverly 301–415–7674. Revision to FR Notice Published 3/20/2020; Extending the Comment Period from 5/22/2020 to 9/22/2020.

EIS No. 20200169, Final, USAF, TX, F–35A Operational Beddown—Air Force Reserve Command, Review Period Ends: 09/21/2020, Contact: Mr. Hamid Kamalpour 210–925–2738. Revision to FR Notice Published 08/21/2020; Correction to Lead Agency Contact Phone Number from 210–925–273 to 210–925–2738.

Dated: August 25, 2020.

Candi Schaedle,

Acting Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2020–18984 Filed 8–27–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–R05–OAR–2014–0280; FRL–10013–84–Region 5]

Clean Air Act Operating Permit Program; Notice of Issuance of Title V Federal Operating Permit to Veolia ES Technical Solutions, LLC

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final action.

SUMMARY: This notice announces that the Environmental Protection Agency issued a final permit decision under Title V of the Clean Air Act (CAA) to Veolia ES Technical Solutions, LLC (Veolia) for the operation of Veolia's Sauget, Illinois, hazardous waste treatment, storage and disposal facility.

DATES: EPA issued Title V Permit to Operate No. V–IL–1716300103–2014–10 to Veolia on June 17, 2019 under 40 CFR part 71. EPA issued the final permit decision as to the contested portions of this permit on August 10, 2020. Pursuant to section 307(b)(1) of the CAA, judicial review of EPA's final permit decision, to the extent it is available, may be sought by filing a petition for review in the United States Court of Appeals for the Seventh Circuit by October 27, 2020.

FOR FURTHER INFORMATION CONTACT: David Ogulei, Environmental Engineer, Air Permits Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–0987, *Ogulei.david@epa.gov.*

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

I. How can I get copies of this document and other related information?

Docket. EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2014–0280. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at

the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID 19. We recommend that you telephone David Ogulei, Environmental Engineer, at (312) 353–0987 before visiting the Region 5 office.

II. What is the background information?

The 1990 amendments to the CAA established a comprehensive air quality permit program under the authority of Title V of the CAA. Title V requires certain facilities that emit large amounts of air pollution, or that meet other specified criteria, to obtain an operating permit, known as a Title V permit, after the source has begun to operate. This permit is an enforceable compilation of all enforceable terms, conditions and limitations that are applicable to the source and is designed to improve compliance by clarifying what facilities must do to control air pollution. EPA regulations implementing Title V are codified at 40 CFR part 71 for permits issued by EPA or its delegatees and at 40 CFR part 70 for permits issued by states and local agencies pursuant to approved programs. A Title V permit is valid for no more than five years and may be renewed in five-year term increments.

EPA issued the initial Title V permit to Veolia on September 12, 2008 pursuant to 40 CFR part 71. Veolia operates a hazardous waste treatment, storage and disposal facility in Sauget, Illinois. At the facility, containers and bulk shipments of hazardous and solid wastes are received, analyzed and transferred to temporary storage facilities, processed and incinerated in one of three combustion units.

On June 17, 2019, EPA renewed Veolia's Title V permit for a new five-year term. *See* Title V Permit to Operate No. V–IL–1716300103–2014–10, Docket ID. EPAR05OAR2014–0280 to Veolia on June 17, 2019 under 40 CFR part 71. By its own terms, and consistent with 40 CFR 71.11(i)(2), most provisions of the renewal permit became effective on July 18, 2019.

On July 17, 2019, the American Bottom Conservancy petitioned the EPA's Environmental Appeals Board (EAB) to review certain terms and conditions of the June 2019 Title V permit. Consequently, consistent with 40 CFR 71.11(i)(2)(ii), the effective date of the contested terms and conditions of the permit was delayed. On July 21, 2020, the EAB denied the petition for review. *See In re Veolia ES Technical Solutions, L.L.C.,* CAA Appeal No. 19–01 (EAB, July 21, 2020), 18 E.A.D. (Order Denying Review).

Following the EAB's action, pursuant to 40 CFR 71.11(l)(5)(i), EPA issued a final permit decision as to the contested portions of the permit on August 10, 2020. All contested conditions of Title V Permit No. V–IL–1716300103–2014–10, as issued by EPA on June 17, 2019, were therefore final and effective as of August 10, 2020. Except as provided in the permit, the final Title V permit will expire on July 18, 2024.

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

Dated: August 24, 2020.

Kurt Thiede,

Regional Administrator, Region 5.

[FR Doc. 2020–18956 Filed 8–27–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10013–97–Region 4]

Public Water System Supervision Program Revision for the Commonwealth of Kentucky

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intended approval.

SUMMARY: Notice is hereby given that the Commonwealth of Kentucky is revising its approved Public Water System Supervision Program. Kentucky has adopted drinking water regulations for the Interim Enhanced Surface Water Treatment Rule, Lead and Copper Rule Minor Revisions, Filter Backwash Recycling Rule, and Revised Total Coliform Rule. The Environmental Protection Agency (EPA) has determined that Kentucky's regulations are no less stringent than these federal rules and the revisions otherwise meet applicable Safe Drinking Water Act requirements. Therefore, the EPA intends to approve these revisions to the Commonwealth of Kentucky's Public Water System Supervision Program.

DATES: Any interested person may request a public hearing. A request for a public hearing must be submitted by September 28, 2020, to the Regional Administrator at the following address: U.S. Environmental Protection Agency, Region 4, Atlanta Federal Center, 61 Forsyth Street SW, Atlanta, Georgia 30303. The Regional Administrator may deny frivolous or insubstantial requests for a hearing. However, if a substantial request for a public hearing is made by September 28, 2020, a public hearing will be held. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on her own motion, this determination shall become final and effective on September 28, 2020. Any request for a public hearing shall include the following information: The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; a brief statement of the requesting person's interest in the Regional Administrator's determination and a brief statement of the information that the requesting person intends to submit at such hearing; and the signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: Documents relating to this determination are available for inspection between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday (excluding legal holidays), at the following location: The main lobby of the Kentucky Energy and Environment Cabinet (KEEC), 300 Sower Boulevard, Frankfort, Kentucky 40601. Due to COVID–19, those intending to view documents at this location should contact Ms. Alicia Jacobs, KEEC, by telephone at (502) 782–6987 at least 30 minutes prior to arriving at KEEC to coordinate viewing. Documents relating to the determination are also available online at *https://eec.ky.gov/Environmental-Protection/Water/Pages/Water-Public-Notices-and-Hearings.aspx* for inspection.

FOR FURTHER INFORMATION CONTACT: Dale Froneberger, EPA Region 4, Safe Drinking Water Branch, by mail at the Atlanta street address given above, by telephone at (404) 562–9446, or by email at *froneberger.dale@epa.gov.*

SUPPLEMENTARY INFORMATION: The Commonwealth of Kentucky has submitted requests that the EPA approve revisions to the Commonwealth's Safe Drinking Water Act Public Water System Supervision Program to include the authority to implement and enforce the Interim Enhanced Surface Water Treatment Rule, Lead and Copper Rule Minor Revisions, Filter Backwash Recycling Rule, and Revised Total Coliform Rule. For the requests to be approved, the EPA must find the commonwealth regulations codified at Title 401 KAR chapter 8 to be no less stringent than the federal rules codified at 40 CFR part 141. The EPA reviewed Kentucky's applications using the federal statutory provisions (Section 1413 of the Safe Drinking Water Act), federal regulations

(at 40 CFR parts 141 and 142), commonwealth regulations, commonwealth policies and procedures for implementing the rules, regulatory crosswalks, and the EPA regulatory guidance to determine whether the requests for revision are approvable. The EPA determined that the Kentucky regulations are no less stringent than the corresponding federal rules and the revisions otherwise meet applicable Safe Drinking Water Act requirements. Therefore, the EPA intends to approve these revisions. If the EPA does not receive a timely and appropriate request for a hearing and the Regional Administrator does not elect to hold a hearing on her own motion, this approval shall become final and effective on September 28, 2020.

Authority: Section 1413 of the Safe Drinking Water Act, as amended (1996), and 40 CFR part 142.

Dated: August 21, 2020.

Mary Walker,

Regional Administrator, Region 4.

[FR Doc. 2020–18935 Filed 8–27–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2019–0581; FRL–10011–03–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Standards for Pesticide Containers and Containment (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR) Standards for Pesticide Containers and Containment'' (EPA ICR Number 1632.06 and OMB Control Number 2070–0133) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (PRA). This is a proposed extension of the ICR, which is currently approved through October 31, 2020. Public comments were previously requested via the **Federal Register** on December 3, 2019 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. 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.

DATES: Additional comments may be submitted on or before September 28, 2020.

ADDRESSES: Submit your comments to EPA referencing Docket ID No. HQ–OPP–2019–0581, online using *http://www.regulations.gov* (our preferred method) or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460. EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

Submit written comments and recommendations to OMB for the proposed information collection 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: Carolyn Siu, Field External Affairs Division (7506P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: Insert (703) 347–0159; email address: *siu.carolyn@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: This ICR covers the information collection activities associated with the pesticide container design and residue removal requirements and containment structure requirements. With respect to the container design and residue removal requirements, the information collection activities are associated with the requirement that businesses subject to the container regulations (pesticide registrants) and repackaging regulations (pesticide registrants and refillers) maintain records of test data, cleaning procedures, certain data when a container is refilled, and other supporting information. These records are subject to both call-in by EPA and on-site inspection by EPA and its representatives. EPA has not established a regular schedule for the collection of these records, and there is no reporting. With respect to the containment structure requirements, the information collection activities are associated with the requirement that businesses subject to the containment structure regulations maintain records of the: (1) Monthly inspection and maintenance of each containment structure and all stationary bulk containers; (2) Duration over which non-stationary bulk containers holding pesticide and not protected by a secondary containment unit remain at the same location; and (3) Construction date of the containment structure. The businesses subject to the containment structure regulations include agrichemical retailers and refilling establishments, custom blenders and commercial applicators of agricultural pesticides. The records have to be maintained by the owners and operators of such businesses and made available to inspectors to ensure that businesses are in compliance with containment requirements. These inspections are generally conducted by the states, which enforce FIFRA regulations through cooperative agreements with EPA.

Form Numbers: None.

Respondents/Affected Entities: Pesticide registrants and businesses who formulate pesticide products or pesticide formulation intermediates (NAICS code 325320), farm supply wholesalers (NAICS code 422910), swimming pool applicators (NAICS code 561790, 453998 and 235990), and agricultural (aerial and ground) commercial applicators (NAICS code 115112).

Respondent's obligation to respond: Mandatory under sections 3, 8, 19, 25 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136f, 136q, and 136w).

Estimated number of respondents: 23,586 (total).

Frequency of response: On occasion.

Total estimated burden: 180,763 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated costs: $ 9,033,656 (per year), includes $335,900 annualized capital or operation & maintenance costs.

Changes in the estimates: There is an increase of 11,103 hours in the total estimated respondent burden compared with that identified in the ICR currently

approved by OMB. This increase is in response to comments received from respondents, including a comment that the development and storage of documentation associated with the DOT (Department of Transportation) authorized packaging are not included. This change is an adjustment.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2020–18904 Filed 8–27–20; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK OF THE UNITED STATES

[Public Notice: EIB–2020–0007]

Proposal To Adopt the 2010 Small Business Jobs Act Interim Rule as an Alternative Size Standard for Defining a Small Business for Export-Import Bank Programs

AGENCY: Export-Import Bank of the United States.

ACTION: Final notice; notification of Small Business Administration approval.

SUMMARY: This document announces that the U.S. Small Business Administration (SBA) has approved the request by the Export-Import Bank of the United States (EXIM Bank) to adopt the Interim Rule (as defined below) set forth in Section 1116 of the Small Business Jobs Act of 2010 (the Jobs Act) as an alternative size standard for defining a small business concern for all of EXIM Bank's programs. The Jobs Act mandated that until the SBA establishes a permanent tangible net worth and net income based alternative size standard, SBA shall use the following alternative size standard for applicants for business loans Section 7(a) of the Small Business Act (7(a) Loan Program) and applicants for development company loans under Title V of the Small Business Investment Act of 1958 (504 Loan Program) in addition to the use of industry based size standards: Not more than $15 million in tangible net worth and not more than $5 million in average net income after Federal income taxes (Interim Rule). The SBA currently uses the Interim Rule for its 7(a) and 504 Loan Programs to determine size eligibility for an applicant if such applicant does not meet the size standards that it has established for individual industries as defined under the North American Industry Classification System (NAICS). The SBA's approval of EXIM Bank's proposal permits EXIM Bank to use the Interim Rule as an alternative size standard for identifying small business concerns participating in all EXIM Bank programs as follows: First by using the industry based size standards and then by applying the Interim Rule, if such participant does not qualify as a small business concern under the industry based size standards.

DATES: This announcement is made as of August 28, 2020.

FOR FURTHER INFORMATION CONTACT: James Burrows, Senior Vice President, Office of Small Business, Export-Import Bank of the United States, at *james.burrows@exim.gov* or 202–565–3801.

SUPPLEMENTARY INFORMATION:

1. Pursuant to SBA's regulations, specifically 13 CFR 121.901–.904, EXIM Bank consulted with the SBA regarding the proposal to adopt the Interim Rule to define a small business concern for purposes of EXIM Bank programs. On November 22, 2016, EXIM Bank published a notice and requested for comments regarding the proposal in the **Federal Register** (81 FR 83836). EXIM Bank did not receive any comments.

2. By letter dated August 21, 2020, the SBA Administrator approved EXIM Bank's request to adopt the Interim Rule as an alternative size standard in addition to the use of industry-based size standards subject to republication of such standard in the **Federal Register**.

3. EXIM Bank will apply the Interim Rule as an alternative size standard in addition to using size standards established by SBA for individual industries to determine whether or not participants of EXIM Bank programs can be categorized as small business concerns.

Joyce B. Stone,

Assistant Corporate Secretary.

[FR Doc. 2020–18981 Filed 8–27–20; 8:45 am]

BILLING CODE 6690–01–P

EXPORT-IMPORT BANK OF THE UNITED STATES

Sunshine Act Meeting

Notice of an Open Meeting of the Board of Directors of the Export-Import Bank of the United States

TIME AND DATE: Tuesday, September 8, 2020 at 10:00 a.m.

PLACE: The meeting will be held via Teleconference.

STATUS: The meeting will be open to public observation by teleconference.

MATTER TO BE CONSIDERED:

Item Number 1—Small Business Update;

Item Number 2a—Renewal of the Guarantee and Credit Agreement between EXIM and PEFCO;

Item Number 2b—Amendment to the Standard Operating Procedures between EXIM and PEFCO;

Item Number 2c—PEFCO Secured Note Authorization for FY2021; and

Item Number 2d—Funder Guarantee for Supply Chain Finance Guarantee Program.

CONTACT PERSON FOR MORE INFORMATION: Members of the public who wish to attend the meeting should contact Joyce Stone at *joyce.stone@exim.gov* or 202–257–4086 by close of business Thursday, September 3, 2020. Individuals will be given call-in information.

Joyce B. Stone,

Assistant Corporate Secretary.

[FR Doc. 2020–19058 Filed 8–26–20; 11:15 am]

BILLING CODE 6690–01–P

FEDERAL MARITIME COMMISSION

[Docket No. 20–14]

Intermodal Motor Carriers Conference, American Trucking Associations, Inc., Complainant v. Ocean Carrier Equipment Management Association Inc., Consolidated Chassis Management, LLC, CMA CGM S.A., COSCO SHIPPING Lines Co. Ltd., Evergreen Line Joint Service Agreement, FMC No. 011982, Hapag-Lloyd AG, HMM Co. Ltd., Maersk A/S, MSC Mediterranean Shipping Company S.A., Ocean Network Express Pte. Ltd., Wan Hai Lines Ltd., Yang Ming Marine Transport Corp., and Zim Integrated Shipping Services, Respondents; Notice of Filing of Complaint and Assignment

Served: August 24, 2020.

Notice is given that a complaint has been filed with the Federal Maritime Commission (Commission) by the Intermodal Motor Carriers Conference (IMCC) of the American Trucking Associations, Inc. (ATA), hereinafter ''Complainant'', against the Ocean Carrier Equipment Management Association Inc. (OCEMA), Consolidated Chassis Management, LLC (CCM), CMA CGM S.A., COSCO SHIPPING Lines Co. Ltd., Evergreen Line Joint Service Agreement, (FMC No. 011982), Hapag-Lloyd AG, HMM Co. Ltd., Maersk A/S, MSC Mediterranean Shipping Company S.A., Ocean Network Express Pte. Ltd., Wan Hai Lines Ltd., Yang Ming Marine Transport Corp., and Zim Integrated Shipping Services, hereinafter ''Respondents''.

Complainant states they are ''a conference of the American Trucking Associations, Inc.'' and ''include ATA member companies engaged in intermodal transportation of property, including the interchange of chassis with respect to receipt and return of the containers of respondent ocean carriers.'' Complainants state that Respondents include: OCEMA, ''an association of major U.S. and foreign flag international common carriers; CCM, that operates a ''chassis provision model'' for members; and those ocean carriers and a carrier agreement, named in the case caption, which are each members of OCEMA and/or CCM.

Complainant alleges that Respondents ''have adopted and imposed unjust and unreasonable regulations and engaged in unjust and unreasonable practices by requiring the use of OCEMA member default chassis providers, and denying motor carriers their right to select the chassis provider for merchant haulage movements, all in violation of 46 U.S.C. 41102(c).'' Complainant seeks cease and desist orders and other relief.

The full text of the complaint can be found in the Commission's Electronic Reading Room at *https://www2.fmc.gov/readingroom/proceeding/20-14/*.

This proceeding has been assigned to Office of Administrative Law Judges. The initial decision of the presiding office in this proceeding shall be issued by August 24, 2021, and the final decision of the Commission shall be issued by March 10, 2022.

Rachel Dickon,

Secretary.

[FR Doc. 2020–18974 Filed 8–27–20; 8:45 am]

BILLING CODE 6730–02–P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Privacy Act of 1974; System of Records

AGENCY: Federal Retirement Thrift Investment Board (FRTIB).

ACTION: Notice of a Modified System of Records.

SUMMARY: Pursuant to the Privacy Act of 1974, the Federal Retirement Thrift Investment Board (FRTIB) proposes to modify an existing system of records. Records contained in this system are used to manage Thrift Savings Plan (TSP) accounts, including ensuring the integrity of the Plan, recording activity concerning the TSP account of each Plan participant, communicating with the participant, spouse, former spouse, and beneficiary concerning the account, ensuring that he or she receives a correct payment from the Plan.

DATES: This system will become effective upon its publication *in today's* **Federal Register***,* with the exception of the routine uses which will be effective on September 28, 2020. FRTIB invites written comments on the routine uses and other aspects of this system of records. Submit any comments by September 28, 2020.

ADDRESSES: You may submit written comments to FRTIB by any one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the website instructions for submitting comments.
- *Fax:* 202–942–1676.
- *Mail or Hand Delivery:* Office of General Counsel, Federal Retirement Thrift Investment Board, 77 K Street NE, Suite 1000, Washington, DC 20002.

FOR FURTHER INFORMATION CONTACT: Megan Grumbine, General Counsel and Senior Agency Official for Privacy, Federal Retirement Thrift Investment Board, Office of General Counsel, 77 K Street NE, Suite 1000, Washington, DC 20002, (202) 942–1600. For access to any of the FRTIB's systems of records, contact Amanda Haas, FOIA Officer, Office of General Counsel, at the above address and phone number.

SUPPLEMENTARY INFORMATION: This notice serves to update and modify FRTIB–1 to include the following updates:

Update to the Authority for Maintenance of the System: The FRTIB is modifying the Authority for the Maintenance of the System to include the Thrift Savings Plan Enhancement Act of 2009, which requires the FRTIB to submit an annual report to Congress on the operations of the Thrift Savings Plan. This report must include demographic information on participants.

Update to System Manager: The FRTIB is modifying the System Manager to the Director of the Office of Participant Services. The FRTIB is also including a contact number for the System Manager.

Update to Purpose of the System: The FRTIB is modifying the Purpose of the System to include compliance with the reporting requirements of the Thrift Savings Plan Enhancement Act of 2009. Information derived from those reports and within the system may also be used to inform educational and outreach efforts of the FRTIB.

Update to Categories of Records: The FRTIB is modifying the Categories of Records to include documents used to verify participant and beneficiary identity, including U.S. passport, driver's license, or other Federal or state-issued verification documents. The collection of these documents is for the specific purpose of removing administrative holds on a TSP account, thus ensuring the security and integrity of TSP accounts. Changes are also being made to include collection of demographic data on TSP participants, in order to comply with reporting requirements of the Thrift Savings Plan Enhancement Act. The FRTIB is also adding TSP account number, TSP PIN, and death certificates for participants as pertaining to beneficiaries to the Categories of Records.

Update to Routine Uses: On May 22, 2007, OMB issued Memorandum M–07–16, *Safeguarding Against and Responding to the Breach of Personally Identifiable Information,* to the heads of all executive departments and agencies. OMB required agencies publish a routine use for their systems of records specifically applying to the disclosure of information in connection with response and remedial efforts in the event of a breach of personally identifiable information. FRTIB published a notice in the **Federal Register**, 80 FR 43428 (July 22, 2015), creating new general routine uses, including one pertaining to breach mitigation and notification, as required by OMB M–07–16.

On January 3, 2017, OMB issued Memorandum M–17–12, *Preparing for and Responding to a Breach of Personally Identifiable Information,* to the heads of all executive departments and agencies. OMB M–17–12 rescinds and replaces OMB M–07–16 and updates agency routine use requirements for responding to a breach. Specifically, OMB M–17–12 requires all Senior Agency Officials for Privacy to ensure that their agency's System of Records Notices include a routine use for the disclosure of information necessary to respond to a breach of the agency's personally identifiable information. Additionally, OMB M–17–12 requires agencies to add a routine use to ensure that agencies are able to disclose records in their systems of records that may reasonably be needed by another agency in responding to a breach. To satisfy the routine use requirements in OMB M–17–12, FRTIB is issuing this notice in the **Federal Register**.

Pursuant to OMB M–17–12, this notice: (1) Rescinds the breach response routine use published at 80 FR 43428 (July 22, 2015); (2) revises the breach response routine use for the FRTIB system of records, listed below; and (3) adds a new routine use to ensure that

the agency can assist another agency in responding to a confirmed or suspected breach, as appropriate. The routine uses have been renumbered to incorporate the changes in these routine uses.

The FRTIB is also modifying a routine use covering sharing for the purposes of maintaining health or safety of an individual to allow for sharing with local and state agencies in the event of a reasonable and credible threat to an individual's health or safety.

Update to Policies and Practices for Retrieval of Records: The FRTIB is modifying the Policies and Practices for Retrieval of Records to include TSP Account Number.

Updates to Policies and Practices for Retention and Disposal of Records: The FRTIB is modifying the Policies and Practices for Retention and Disposal of Records to reflect that call recording records fall under the General Records Schedule.

Updates to Record Access Procedures: The FRTIB is modifying the Record Access Procedures to reflect that either TSP Account Number may be used in lieu of Social Security Number in certain cases to access records.

Updates to Contesting Record Procedures: The FRTIB is modifying the Contesting Record Procedures to reflect that either TSP Account Number may be used in lieu of Social Security Number in certain cases to contest or correct records.

The FRTIB is also making non-substantive revisions to the system of records notice to align with the Office of Management and Budget's recommended model in Circular A–108, *Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act,* appendix II.

In accordance with 5 U.S.C. 552a(r), the Agency has provided a report to OMB and to Congress on this notice of a modified system of records.

Megan Grumbine,

General Counsel and Senior Agency Official for Privacy.

SYSTEM NAME AND NUMBER:

FRTIB–1, Thrift Savings Plan Records.

SECURITY CLASSIFICATION:

This system contains unclassified information.

SYSTEM LOCATION:

These records are located at the office of the entity engaged by the Agency to perform record keeping services for the Thrift Savings Plan (TSP). The current address for this record keeper is listed at *http://www.tsp.gov.*

SYSTEM MANAGER(S):

Director, Office of Participant Services, Federal Retirement Thrift Investment Board, 77 K Street NE, Suite 1000, Washington, DC 20002, (202) 942–1600.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 8474; Thrift Savings Plan (TSP) Enhancement Act of 2009, Public Law 111–31.

PURPOSE(S) OF THE SYSTEM:

The purpose of this system of records is to ensure the integrity of the Plan, to record activity concerning the TSP account of each Plan participant, to communicate with the participant, spouse, former spouse, and beneficiary concerning the account, and to make certain that he or she receives a correct payment from the Plan. Information contained in the system will also be used to comply with the reporting requirements of the TSP Enhancement Act of 2009 and to develop outreach and educational initiatives for participants and beneficiaries.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All participants (which term includes former participants, *i.e.,* participants whose accounts have been closed), as well as spouses, former spouses, and beneficiaries of TSP participants. Participants in the TSP consist of present and former Members of Congress and Federal employees covered by the Federal Employees' Retirement System Act of 1986, (FERSA) as amended, 5 U.S.C. chapter 84; all present and former Members of Congress and Federal employees covered by the Civil Service Retirement System who elect to contribute to the TSP; Supreme Court Justices, Federal judges, and magistrates who elect to contribute; certain union officials, those individuals described in 5 CFR part 1620, and any other individual for whom an account has been established.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain the following kinds of information: Records of TSP account activity, including account balances, employee contributions, agency automatic (one percent) and agency matching contributions, earnings, interfund transfers, contribution allocation elections, investment status by fund, loan and withdrawal information, employment status, retirement code and whether employee is vested, error correction information, participant's date of birth, email address, phone number, and designated beneficiary; records of spousal waivers and consents; powers of attorney and conservatorship and guardianship orders; participant's name, current or former employing agency, and servicing payroll and personnel office; records of Social Security number, TSP account number, TSP PIN, and home address for participants, spouses, former spouses, and beneficiaries and potential beneficiaries; demographic information (*e.g.,* gender, education information, ethnicity, race, etc.); demographic information on uniformed services participants (*e.g.,* grade, service branch, rank, months in rank, occupation information); death certificates; records of bankruptcy actions; information regarding domestic relations court orders to divide the account; child support, child abuse, and alimony orders; information on payments to the participant's spouse, former spouse, or children and their attorneys; information on notices sent to participants, spouses, former spouses, and beneficiaries; and general correspondence. Documents used to verify identity including: Birth certificate, U.S. passport, driver's license or state-issued ID, or other government-issued ID that can be used to verify identity.

RECORD SOURCE CATEGORIES:

The information in this system is obtained from the following sources: (a) The individual to whom the information pertains; (b) Agency payroll and personnel records; (c) Court orders; or (d) Spouses, former spouses, other family members, beneficiaries, legal guardians, and personal representatives (executors, administrators).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Information about covered individuals may be disclosed without consent as permitted by the Privacy Act of 1974, 5 U.S.C. 552a(b) and:

1. Routine Use—Tax Enforcement Agencies: To disclose financial data and addresses to Federal, state, and local governmental tax enforcement agencies so that they may enforce applicable tax laws.

2. Routine Use—Designated Annuity Vendor: To disclose to the designated annuity vendor in order to provide TSP participants who have left Federal service with an annuity.

3. Routine Use—Other Retirement Plans: To disclose to sponsors of eligible retirement plans for purposes of transferring the funds in the participant's account to an Individual Retirement Arrangement or into another eligible retirement plan.

4. Routine Use—Spousal Rights: To disclose to current and former spouses and their attorneys in order to protect spousal rights under FERSA and to receive benefits to which they may be entitled.

5. Routine Use—Death Benefits, Beneficiaries: When a participant to whom a record pertains dies, to disclose the following types of information to any potential beneficiary: Information in the participant's record which could have been properly disclosed to the participant when living (unless doing so would constitute a clearly unwarranted invasion of privacy) and the name and relationship of any other person who claims the benefits or who is entitled to share the benefits payable.

6. Routine Use—Death Benefits, Estate Administration: When a participant to whom a record pertains dies, to disclose the following types of information to anyone handling the participant's estate: Information in the participant's record which could have been properly disclosed to the participant when living (unless doing so would constitute a clearly unwarranted invasion of privacy), the name and the relationship of any person who claims the benefits or who is entitled to share the benefits payable, and information necessary for the estate's administration (for example, post-death tax reporting).

7. Routine Use—Beneficiaries, Incompetent or Legal Disability: To disclose information to any person who is named by the participant, spouse, former spouse, or beneficiary of the participant in a power of attorney and to any person who is responsible for the care of the participant or the spouse, former spouse, or beneficiary of the participant to whom a record pertains, and who is found by a court to be incompetent or under other legal disability, information necessary to manage the participant's account and to ensure payment of benefits to which the participant, spouse, former spouse or beneficiary of the participant is entitled.

8. Routine Use—Congressional Inquiries: To disclose information to a congressional office from the record of a participant or of the spouse, former spouse, or beneficiary of a participant in order for that office to respond to a communication from that person.

9. Routine Use—Agency Payroll or Personnel Offices: To disclose to agency payroll or personnel offices in order to calculate benefit projections for individual participants, to calculate error corrections, to reconcile payroll records, and otherwise to ensure the effective operation of the Thrift Savings Plan.

10. Routine Use—Department of Treasury, Payments: To disclose to the Department of the Treasury information necessary to issue checks from accounts of participants in accordance with withdrawal or loan procedures or to make a payment to a spouse, former spouse, child, or his or her attorney, or to a beneficiary.

11. Routine Use—Audit: To disclose to the Department of Labor and to private sector audit firms so that they may perform audits as provided for in FERSA.

12. Routine Use—Parent Locator Service: To disclose to the Parent Locator Service of the Department of Health and Human Services, upon its request, the address of a participant, spouse, former spouse, or beneficiary of the participant for the purpose of enforcing child support obligations against that individual.

13. Routine Use—Investigations, Third Parties: To disclose pertinent information to the appropriate Federal, foreign, state, local, or tribal agency, or to other public authority responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, upon its request, when presented with an indication that the information is relevant to any enforcement, regulatory, investigative, or prosecutorial responsibility of that agency or authority.

14. Routine Use—Private Relief Legislation: To disclose information to the Office of Management and Budget at any stage of the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A–19.

15. Routine Use—Participant and Third Parties, Health or Safety: If there is a reasonable and credible threat to an individual's health or safety, to disclose to a state, local, or Federal agency, in response to its request, the address of a participant, spouse, former spouse, or beneficiary of the participant and any other information the agency needs to contact that individual concerning the possible threat to his or her health or safety.

16. Routine Use—Litigation, Department of Justice: To disclose information to the Department of Justice, where:

1. The Board or any component of it, or

2. Any employee of the Board in his or her official capacity, or

3. Any employee of the Board in his or her individual capacity, where the Department of Justice has agreed to represent the employee; or

4. The United States (where the Board determines that litigation is likely to affect the agency or any of its components) is a party to litigation or has an interest in such litigation, and the Board determines that use of such records is relevant and necessary to the litigation. However, in each such case, the Board must determine that disclosure of the records to the Department of Justice is a use of the information contained in the records which is compatible with the purpose for which the records were collected.

17. Routine Use—Litigation, Third Parties: In response to a court subpoena, or to appropriate parties engaged in litigation or preparing for possible litigation. Examples include disclosure to potential witnesses for the purpose of securing their testimony to courts, magistrates, or administrative tribunals, to parties and their attorneys in connection with litigation or settlement of disputes, or to individuals seeking information through established discovery procedures in connection with civil, criminal, or regulatory proceedings.

18. Routine Use—Contractors and Third Parties: To disclose to contractors and their employees who have been engaged to assist the Board in performing a contract service or agreement, or who have been engaged to perform other activity related to this system of records and who need access to the records in order to perform the activity. Recipients of TSP records are required to comply with the requirements of the Privacy Act.

19. Routine Use—Agency Personnel/Payroll Offices or Casualty Assistance Officers: To disclose to personnel from agency personnel/payroll offices or to casualty assistance officers when necessary to assist a beneficiary or potential beneficiary.

20. Routine Use—Consumer Reporting Agencies: To disclose to a consumer reporting agency when the Board is trying to collect a debt owed to the Board under the provisions of 5 U.S.C. 3711.

21. Routine Use—Commercial Loan Applications, Quality Control: To disclose to quality control companies when such companies are verifying documents submitted to lenders in connection with participants' commercial loan applications.

22. Routine Use—Federal Agencies, Analysis: To disclose to an official of another Federal agency information needed in the performance of official duties related to reconciling or reconstructing data files, compiling descriptive statistics, and making analytical studies in support of the function for which the records were collected and maintained.

23. Routine Use—Breach Mitigation and Notification: A record from this system may be disclosed to appropriate agencies, entities, and persons when (1) FRTIB suspects or has confirmed that there has been a breach of the system of records, (2) FRTIB has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, FRTIB (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with FRTIB's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

24. Routine Use—Response to Breach of Other Records: A record from this system may be disclosed to another Federal agency or Federal entity, when FRTIB determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

These records are maintained on electronic or magnetic media, on microfilm, or in folders.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

These records are retrieved by Social Security number, TSP account number, and other personal identifiers of the individual to whom they pertain.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

TSP documents are retained for 99 years. Manual records are disposed of by compacting and burning; data on electronic or magnetic media are obliterated by destruction or reuse, or are returned to the employing agency. Call recording records from the Agency's contact center are retained in accordance with NARA General Records Schedule 6.5, Public Customer Services Records, DAA–GRS–2017–0002–0001.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Hard copy records are kept in metal file cabinets in a secure facility, with access limited to those whose official duties require access. Personnel are screened to prevent unauthorized disclosure. Security mechanisms for automatic data processing prevent unauthorized access to the electronic or magnetic media.

RECORD ACCESS PROCEDURES:

Individuals who want notice of whether this system of records contains information pertaining to them and to obtain access to their records may contact the TSP Service Office or their employing agency, as follows:

a. Participants who are current Federal employees may call or write their employing agency for personnel or payroll records regarding the agency's and the participant's contributions and adjustments to contributions. A request to the employing agency must be made in accordance with that agency's Privacy Act regulations or that agency's procedures. For other information regarding their TSP accounts, participants who are Federal employees may call or write the TSP Service Office.

b. Participants who have separated from Federal employment and spouses, former spouses, and beneficiaries of participants may call or write the TSP Service Office.

Individuals calling or writing the TSP Service Office must furnish the following information for their records to be located and identified:

a. Name, including all former names;

b. TSP Account Number or Social Security number; and

c. Other information, if necessary. For example, a participant may need to provide the name and address of the agency, department, or office in which he or she is currently or was formerly employed in the Federal service. A spouse, former spouse, or beneficiary of a participant may need to provide information regarding his or her communications with the TSP Service Office or the Board.

Participants may also inquire whether this system contains records about them and access certain records through the account access section of the TSP website and the ThriftLine (the TSP's automated telephone system). The TSP website is located at *www.tsp.gov.* To use the TSP ThriftLine, the participant must have a touch-tone telephone and call the following number 1–877–968–3778. Hearing-impaired participants should dial 1–877–847–4385. The following information is available on the TSP website and the ThriftLine: Account balance; available loan amount; the status of a monthly withdrawal payment; the current status of a loan or withdrawal application; and an interfund transfer request.

CONTESTING RECORD PROCEDURES:

Individuals who want to amend TSP records about themselves must submit a detailed written explanation as to why information regarding them is inaccurate or incorrect, as follows:

a. Participants who are current Federal employees must write their employing agency to request amendment of personnel records regarding employment status, retirement coverage, vesting code, and TSP service computation date, or payroll records regarding the agency's and the participant's contributions and adjustments to contributions. A request to the employing agency must be made in accordance with that agency's Privacy Act regulations or that agency's procedures. For other information regarding their TSP accounts, participants who are Federal employees must submit a request to the TSP Service Office.

b. Participants who have separated from Federal employment and spouses, former spouses, and beneficiaries of participants must submit a request to the TSP Service Office.

c. Individuals must provide their Social Security number or Account Number and name, and they may also need to provide other information for their records to be located and identified.

The employing agency or the TSP Service Office will follow the procedures set forth in 5 CFR part 1605, Error Correction Regulations, in responding to requests to correct contribution errors.

NOTIFICATION PROCEDURES:

See Record Access Procedures above.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

52 FR 12065 (Apr. 14, 1987); 55 FR 18949 (May 7, 1990); 59 FR 26496 (May 20, 1994); 64 FR 50092 (Sept. 15, 1999); 64 FR 67917 (Dec. 3, 1999); 74 FR 3043 (Jan. 16, 2009); 77 FR 11534 (Feb. 27, 2012); 77 FR 20022 (Apr. 3, 2012); 79 FR 21246 (Apr. 15, 2014).

[FR Doc. 2020–18944 Filed 8–27–20; 8:45 am]

BILLING CODE P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–00XX; Docket No. 2020–0001; Sequence No. 2]

Information Collection; Technology Transformation Services—Candidate Experience Surveys

AGENCY: Technology Transformation Services (TTS), Federal Acquisition Service (FAS), General Services Administration (GSA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve a new information collection requirement regarding sending candidate surveys to all applicants who apply to jobs within the Technology Transformation Services (TTS).

DATES: Submit comments on or before September 28, 2020.

ADDRESSES: Written comments and recommendations for this 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. If your comment cannot be submitted using *www.reginfo.gov/public/do/PRAMain,* call or email the points of contact in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Jennifer Moran, Technology Transformation Services at 202–501–4755 or via email to *jennifer.moran@gsa.gov*.

SUPPLEMENTARY INFORMATION:

A. Purpose

The goal of TTS is to modernize the way the government uses technology by applying modern methodologies and technologies to improve the public's experience with government. In order to accomplish this, we need to be able to attract top technical talent from across the country. This often means competing for talent with the private sector, where companies can often offer more robust compensation and benefits.

In order to remain competitive, it is vital that we provide an exceptional candidate experience and maintain a strong brand reputation. Some of the ways we strive to do this is through providing clear job descriptions, thorough interview preparation and personalized candidate experience throughout the process. In doing so, we are better able to recruit more candidates into doing a tour of duty in the government. Candidate Surveys are a way for us to continuously measure how we are doing and make any necessary improvements to our hiring process so we can continue to hire and attract the top talent we need at the rate we need them in this demanding market.

By consistently asking applicants and candidates for their feedback and reviewing the survey results, we can pinpoint what areas in our process need to be modified, changed, removed, and/or added. Surveys allow respondents to remain anonymous and will be sent out three times during the hiring process:

- After a candidate applies to a role. Data at this stage will help us understand if our job descriptions provide a clear understanding of the roles and responsibilities that we are hiring for. It will also help us understand if our website has thorough enough information about the overall hiring process or if there are more resources that we can be providing.
- After a candidate interviews. Data at this stage will help us understand if we are properly preparing candidates and interviewers for interviews.
- When the candidate is Selected or Not Selected after the Interview. Data at this stage will help us understand what the candidate's experience was with their TTS recruiter overall and if there is anything they think we can improve upon.

B. Annual Reporting Burden

Respondents: 7,400.

Responses per Respondent: 1–3.

Total Annual Responses: 1,110.

Hours per Response: 5 minutes per survey.

Total Burden Hours: 15 minutes for candidates who complete all 3 surveys.

C. Public Comments

A notice published in the **Federal Register** at 85 FR 32394 on May 29, 2020. No comments were received.

Beth Anne Killoran,

Deputy Chief Information Officer.

[FR Doc. 2020–18959 Filed 8–27–20; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–20–20ML; Docket No. CDC–2020–0096]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies the opportunity to comment on a proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled ''Cruise Operator COVID–19 Response Plans,'' which will provide CDC with the ability require cruise ship operators to submit plans outlining their response procedures for preventing the spread of COVID–19 onboard, and for preventing the use of scarce U.S. domestic resources in response to COVID–19 cases originating on cruise ships.

DATES: CDC must receive written comments on or before October 27, 2020.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2019–0096 by any of the following methods:

- *Federal eRulemaking Portal: Regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *Regulations.gov*.

Please note: Submit all comments through the Federal eRulemaking portal (*regulations.gov*) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, of the Information Collection Review

Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

5. Assess information collection costs.

Proposed Project

Cruise Operator COVID–19 Response Plans—New—National Center for Emerging Zoonotic and Infectious Diseases (NCEZID), Centers for Disease Control and Prevention (CDC)

Background and Brief Description

Recent CDC actions in response to COVID onboard maritime vessels has shown that cruise ship travel markedly increases the risk and impact of the COVID–19 disease outbreak within the United States. If unrestricted cruise ship passenger operations are permitted to resume after the March 14, 2020 No Sail Order, infected and exposed cruise ship cases would place healthcare workers at substantial increased risk. Specifically, these cases would divert medical resources away from persons with other medical problems and other COVID–19 cases, consuming precious diagnostics, therapeutics, and protective equipment. Ongoing concerns with cruise ship transmission would further draw valuable resources away from the immense Federal, state, and local effort to contain and mitigate the spread of COVID–19. Further, the current ongoing non-passenger operation of cruise ships has not sufficiently abated the public health concern, as ship crews become sick and require medical care drawing on otherwise engaged Federal, state, and local resources. As operators of non-U.S. flagged vessels sailing in international waters, it is imperative that the cruise ship industry and cruise lines themselves take responsibility for the care of their crew and do not further tax limited U.S. resources during a public health emergency.

CDC is therefore implementing a requirement within an extended No Sail Order that obligates cruise operators to develop and implement a plan that adequately prevents, mitigates, and responds to the spread of COVID–19 on board cruise ships and ensures that any disembarkation of passengers or crew is conducted in such a way as to not result in further spread of COVID–19. An appropriate plan shall not significantly burden U.S. government operations or the operations of any state or local government, including the U.S. healthcare system. The cruise ship operator shall further ensure that the plan is consistent with CDC recommendations and guidance for any public health actions related to COVID–19. As a condition of the granting of controlled free pratique to continue to engage in any cruise ship operations in any international, interstate, or intrastate waterways subject to the jurisdiction of the United States, the cruise ship operator shall present the plan, upon request, to U.S. Coast Guard and HHS/CDC personnel.

Within these plans are notification requirements that obligate cruise ship operators to provide CDC and local health departments in the follow circumstances:

- Disembarking U.S. residents who plan to leave the ships and travel by private transport
- Disembarking crew to the United States for repatriation via non-commercial travel to home countries
- Crew transfers for purposes such as maintaining Minimum Safe Manning standards

In addition, cruise ship operators can choose to submit an attestation statement to CDC attesting that their ship is free of COVID–19. If this is statement is accepted, cruise ship operators have the option to repatriate their crew via commercial travel.

There are no costs to respondents other than their time to develop and submit the plan and the required notifications to CDC, U.S. Coast Guard, and the local or state health authority, as directed.

ESTIMATED ANNUALIZED BURDEN HOURS

Respondent	Form	Number of respondents	Number of responses per respondent	Average burden per response (in minutes)	Total burden hours
Cruise ship operator	COVID–19 Response Plan (no form).	100	1	2,400/60	4,000
Cruise ship operator	72-hour notification to CDC of disembarkation or U.S. residents for private travel.	100	5	5/60	42
Cruise ship operator	72-hour notification to state/local health department of disembarkation for crew repatriation.	100	2	5/60	17
Cruise ship operator	72-hour notification for crew transfers.	100	5	5/60	42

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Respondent	Form	Number of respondents	Number of responses per respondent	Average burden per response (in minutes)	Total burden hours
Cruise ship operator	Attestation statement of COVID–19 free ship (for repatriating crew via commercial travel).	100	1	20/60	33
Total					4,134

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2020–19010 Filed 8–27–20; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–20–1218; Docket No. CDC–2020–0091]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies the opportunity to comment on a proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled ''Evaluation of Medication-Assisted Treatment (MAT) for Opioid use disorder.'' CDC will use the collection to continue the epidemiologic study to assess the type of MAT (methadone maintenance; buprenorphine; naltrexone; or, counseling, no MAT), and the contextual, provider, and individual factors that influence implementation and improved patient wellbeing.

DATES: Written comments must be received on or before October 27, 2020.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2020–0091 by any of the following methods:

- *Federal eRulemaking Portal: Regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *Regulations.gov*.

Please note: Submit all comments through the Federal eRulemaking portal (*regulations.gov*) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

5. Assess information collection costs.

Proposed Project

Evaluation of Medication-Assisted Treatment (MAT) for Opioid Use Disorder—Revision—National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC)

Background and Brief Description

CDC seeks a one-year OMB approval to continue collecting data for Medication-Assisted Treatment (MAT) for Opioid use disorder. Approximately 2.4 million people aged 18 or older have opioid use disorders (OUDs) in the United States. At any given time, only half of these people receive some form of treatment, which may include medication-assisted treatment (MAT) or abstinence-based psychotherapy or self-help treatments (*i.e.,* counseling without medication [COUN]). The rise in opioid overdose deaths, up from 2014–2015 due partly to a 72% rise in synthetic opioid overdose deaths alone, shows that engaging and retaining clients in OUD treatment is an urgent public health need. Only a few studies are available to help clients and providers make informed decisions about the risks and benefits associated with the different types of MATs. This information is crucial because even though each MAT drug helps prevent withdrawal symptoms and decreases cravings, differences in treatment approach and settings influence how people respond to the medication and, thus, their long-term treatment success.

The purpose of this study is to conduct an epidemiologic, mixed-methods evaluation of OUD treatment in real-world outpatient settings. Client recruitment for this study was originally scheduled to take place between 5/1/2018 and 8/31/2019, however patient recruitment levels were lower than originally anticipated. The recruitment period was extended to 11/30/2019 to enable to recruit additional patients. Because the follow-up period for this study is 18 months, patients recruited during the extended recruitment period (8/31/2019 to 11/30/2019) will need to complete their final 18-Month Patient Questionnaire between 2/28/2021 and 5/31/2021, which is after the current OMB expiration date. The extended time period is only needed for one of the data collection instruments, thus there is a reduction in burden of 3839 hours.

The study uses a mixed-method approach using quantitative methods such as multilevel latent growth models, propensity score matching, latent class analysis and advance mediation analysis and qualitative methods such as interactive coding and analysis for common themes. There are no costs to respondents other than their time. The only cost to respondents will be time spent responding to the survey/screener. CDC requests approval for 300 annualized burden hours.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Patients	Client Questionnaire 18-Month Follow-up.	400	1	45/60	300
Total					300

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2020–18997 Filed 8–27–20; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–20–20QN; Docket No. CDC–2020–0085]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing efforts to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. This notice invites comment on ''Availability, Use, and Public Health Impact of Emergency Supply Kits among Disaster-Affected Populations.'' The goal of this study is to determine the efficacy and public health impact of emergency supply kits among disaster-affected populations to understand how emergency supply kits are used during and after a natural disaster, if public health outcomes are associated with access to emergency supply kits, and what the most useful items to include in an emergency supply kit are across different types of disasters.

DATES: Written comments must be received on or before October 27, 2020.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2020–0085 by any of the following methods:

- *Federal eRulemaking Portal: Regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Jeffrey Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. All relevant comments received will be posted without change to *Regulations.gov*, including any personal information provided. For access to the docket to read background documents or comments received, go to *Regulations.gov*.

Please note: All public comment should be submitted through the Federal eRulemaking portal (Regulations.gov) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffry Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated,

electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

5. Assess information collection costs.

Proposed Project

Availability, Use, and Public Health Impact of Emergency Supply Kits Among Disaster-Affected Populations—New—National Center for Environmental Health (NCEH), Centers for Disease Control and Prevention (CDC)

Background and Brief Description

The National Center for Environmental Health (NCEH) is requesting a new information collection request (ICR) with two years of approval. An all-of-society approach to disaster risk reduction emphasizes inclusion and engagement in preparedness activities. A common recommendation is to promote household preparedness through the preparation of an emergency supply kit that can be used to shelter-in-place or during evacuation. Lack of household preparedness is a public health concern, especially in medically frail populations, because it consumes first responders' time, taking them away from relief and recovery efforts, and can easily deplete community health resources. The Federal Emergency Management Agency (FEMA) states that individuals or households are prepared for a disaster if they have thought about and planned for the types of disaster for which they are at most risk, have developed a family communication and evacuation plan in the event of a disaster, and have assembled a complete disaster (emergency) supply kit. However, the prevalence of emergency supply kits across households in the United States ranges considerably from a community-level low of 10% to a regional high of 68%. This lack and variation of emergency supply kits across households makes household disaster preparedness a public health concern.

Self-sufficiency (defined as the ability to shelter-in-place without needing to leave your home or call for outside assistance for ~3 days following a disaster) can help reduce the demands placed on first responders during critical times, which has downstream public health impacts. Among persons with an existing physical or mental health condition at the time of the disaster, having an adequate supply of prescription and over-the-counter medications and medical supplies allows people to maintain treatment and prevent worsening or exacerbation of their existing condition or illness. It also can reduce their need for emergency medical services following a disaster. The FEMA definition of an emergency supply kit is one that can sustain each member of a household with food, water, and medication for up to three days. However, there are several knowledge gaps and challenges related to emergency supply kit use and effectiveness, including whether the current recommendations are adequate or need expansion. We identified the following gaps:

- *Lack of consistency for what supplies to include in an emergency supply kit:* While the public can access information on what contents are likely important to include in emergency supply kits, there is a lack of information as to whether there is a standard set of supplies that is consistently needed across disaster types
- Lack of a standard tool for evaluation of emergency supply kit use and effectiveness
- *Lack of information on how emergency supply kit items are used during or following disasters:* Currently we lack detailed information on how households use emergency supply kit items during or following disasters and what, if any, are barriers to their use
- *Lack of information on effectiveness of emergency supply kits in preventing adverse outcomes:* To our knowledge, there is no information on whether the use of emergency supply items prevents adverse health outcomes. Among individuals with health conditions, it remains unclear whether preparing an emergency supply kit with adequate medications and medical supplies prevents the worsening of conditions or the need for emergency medical services
- *Lack of data to support emergency supply kit recommendations:* It is unclear whether having essential supplies improves self-sufficiency and lessens the need for outside assistance

This general lack of research on the efficacy and use of emergency supply kits impedes our ability to make data-driven recommendations regarding emergency supply kit promotion. The cross-sectional disaster survey and focus group(s) on the public's knowledge, preparedness, and use of emergency supply kits will identify and inform public health officials about the most useful items to include in an emergency supply kit, ideally across two different types of disasters. Data collection is anticipated to be between September 2020 and April 2022, depending upon disaster occurrence. Parameters for site selection include a major or state-level disaster declaration for a natural disaster that affects a mid- to high-density area (*e.g.,* population of 100,000 people) within the United States.

Survey participants will be selected via address-based sampling in the defined geographic area impacted by the disaster and given the choice to complete the survey via paper (*i.e.,* Teleform) or online via a web-based instrument. Survey participants will also be recruited using an existing, nonprobability web panel and be directed to the online, web-based instrument to create a larger, more cost-effective dataset. Focus group participants will be randomly selected among survey respondents and/or recruited via targeted social media (*e.g.,* Facebook, Craigslist) to provide context and enhancement to the survey.

The estimated annualized burden is 464 hours. The estimated burden is based on conducting the survey in two sites, taking 15-minutes per respondent via the web or 45 minutes via paper survey, and up to two focus groups in each site taking approximately 120 minutes. There is no cost to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total annualized burden (in hours)
General Public Household Member ..	Web Survey	667	1	15/60	166
	Paper Survey	333	1	45/60	250
	Focus Group	24	1	120/60	48
Total					464

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2020–18996 Filed 8–27–20; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–20–0621]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled National Youth Tobacco Survey 2021–2023 to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on January 23, 2020 to obtain comments from the public and affected agencies. CDC received six comments related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the agencies' estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570. 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. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

National Youth Tobacco Survey 2021–2023 (OMB Control No. 0920–0621, Exp. 4/30/2021)—Revision—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC)

Background and Brief Description

Tobacco use is the leading cause of preventable disease and death in the United States, and nearly all tobacco use begins during youth and young adulthood. A limited number of health risk behaviors, including tobacco use, account for the overwhelming majority of immediate and long-term sources of morbidity and mortality. Because many health risk behaviors are established during adolescence, there is a critical need for public health programs directed towards youth, and for information to support these programs.

Since 2004, the Centers for Disease Control and Prevention (CDC) has periodically collected information about tobacco use among adolescents (National Youth Tobacco Survey (NYTS) 2004, 2006, 2009, 2011, 2012, 2013–2020, OMB Control No. 0920–0621, Exp. 04/30/2021). This surveillance activity builds on previous surveys funded by the American Legacy Foundation in 1999, 2000, and 2002.

At present, the NYTS is the most comprehensive source of nationally representative tobacco data among students in grades 9–12. Moreover, the NYTS is the only source of such data for students in grades 6–8. The NYTS has provided national estimates of tobacco use behaviors, information about exposure to pro- and anti-tobacco influences, and information about racial and ethnic disparities in tobacco-related topics. Information collected through the NYTS is used to identify trends over time, to inform the development of tobacco cessation programs for youth, and to evaluate the effectiveness of existing interventions and programs.

CDC plans to request OMB approval to conduct additional cycles of the NYTS in 2021, 2022, and 2023. The survey will be conducted among nationally representative samples of students attending public and private schools in grades 6–12 and will be administered to students as a digitally-based survey programmed onto tablets. Information supporting the NYTS also will be collected from state-, district-, and school-level administrators and teachers. During the 2021–2023 timeframe, changes will be incorporated that reflect CDC's ongoing collaboration with FDA and the need to measure progress toward meeting strategic goals established by the Family Smoking Prevention and Tobacco Control Act. Information collection will occur annually and may include a number of new questions, as well as increased representation of minority youth.

The survey will examine the following topics: Use of e-cigarettes, cigarettes, cigars, smokeless tobacco, hookahs, roll-your own-cigarettes, pipes, snus, dissolvable tobacco, bidis, heated tobacco products, and nicotine pouches; knowledge and attitudes; media and advertising; access to tobacco products and enforcement of restrictions on access; secondhand smoke and e-cigarette aerosol exposure; provision of school- and community-based interventions, and cessation.

Results of the NYTS will continue to be used to inform and evaluate the National Comprehensive Tobacco Control Program; provide data to inform the Department of Health and Human Service's Tobacco Control Strategic Action Plan, and provide national benchmark data for state-level Youth Tobacco Surveys. Information collected through the NYTS also is expected to provide multiple measures and data for monitoring progress on seven tobacco-related objectives for Healthy People 2030.

OMB approval will be requested for three years. There are no costs to respondents other than their time. The total annualized burden is estimated to be 18,733 hours.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hr.)
State Administrators	State-level Recruitment Script for the NYTS	33	1	30/60
District Administrators	District-level Recruitment Script for the NYTS	253	1	30/60
School Administrators	School-level Recruitment Script for the NYTS	281	1	30/60
Teachers	Data Collection Checklist	1,177	1	15/60
Students	National Youth Tobacco Survey	24,000	1	45/60
	Cognitive Testing	40	1	120/60
	Survey Pre-tests	30	1	45/60
	Testing Activities	300	1	10/60

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2020–18995 Filed 8–27–20; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–20–20AZ]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled Evaluation of the Effectiveness of the Training and Education Modules in the North American Fatigue Management Program to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on November 4, 2019 to obtain comments from the public and affected agencies. CDC received one comment related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570. 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. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

Evaluation of the Effectiveness of the Training and Education Modules in the North American Fatigue Management Program—New—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC)

Background and Brief Description

The mission of the National Institute for Occupational Safety and Health (NIOSH) is to promote safety and health at work for all people through research and prevention. Reducing fatigue-related crashes is one of the top 10 changes needed to reduce transportation accidents and save lives identified by the National Transportation Safety Board (NTSB) and a National Occupational Research Agenda (NORA) priority. Fatigue is a preventable cause of crashes.

The North American Fatigue Management Program (NAFMP) was developed by the FMCSA, Transport Canada, and other entities to address commercial motor vehicle (CMV) driver fatigue through a comprehensive approach that delivers prevention information to carriers, dispatchers, drivers, and family members. In 2015, the National Academy of Sciences published the report ''Commercial motor vehicle driver fatigue, long-term health, and highway safety research needs'' that identified the need for fully evaluating the NAFMP so that recommendations for implementation of NAFMP are supported by scientific evidence. NIOSH is collaborating with the FMCSA to ensure the success of the proposed study.

NIOSH will recruit two commercial vehicle carriers, and CMV drivers, hereafter referred to as ''drivers'', employed by those carriers. Data will be collected during drivers' application to participate in the study, briefing session, study participation, and debriefing session. Data collection will primarily focus on driving performance, sleep, and sleepiness. These outcomes will be compared between pre-rollout of the NAFMP (in which drivers will operate as they did before their participation in the study) and after the rollout of the NAFMP training and education modules (in which drivers and managers will operate with increased knowledge, strategies, and techniques to reduce their fatigue). All drivers interested in participating in the study may complete the application. A briefing session will be scheduled with drivers who are found eligible for the study. During the briefing session, drivers who provide informed consent

will be enrolled in the study. Drivers will have a debriefing session if a driver chooses to withdraw from the study early or upon completion of the 8-month participation period.

Drivers who have a valid Class-A commercial driver's license (CDL) and work at the participating company in regional and long-haul operations for at least one year will be eligible for the study. A convenience sample of 180 eligible drivers will be recruited to participate in the study. The study sample will include approximately 90 regional and 90 long-haul drivers. There will be no required minimum number of female or minority drivers.

Data will be collected during each phase: (1) In the application, drivers will be asked to provide their name and contact information (home address, telephone number, and email address) to allow contact from the research team regarding their eligibility for the study. (2) In the briefing session, drivers will be asked to complete the Background Questionnaire. (3) During the study, information collection will occur through several streams: (a) A real-time fatigue monitoring system installed in the participating driver's vehicle; (b) Smart phone apps to collect data from a psychomotor vigilance test, the Karolinska Sleepiness Scale, a sleep log, a difficulty of drive scale, a degree of drive hazards scale, a fatigue scale, and a stress scale; (c) an electronic logging device which will record information about the driver's hours of service and driving; (d) a wrist actigraphy device to collect data on driver sleep and wake times. Drivers will be asked to synchronize the actigraph with a smartphone app daily; (e) smartphone or web-based questionnaires including an Exercise and Food Consumption Questionnaire, the quality of life short form 36 version-2 questionnaire (SF–36v2), Family Interactions Questionnaire, and Job Descriptive Index. These will be completed by drivers at four different intervals, including the beginning (1st week) and middle (2nd month) of the baseline phase, and the middle (5th month) and end (8th month) of the intervention phase; (f) A questionnaire to assess corporate practices and corporate safety climate will be given to managers at the participating carriers. These will be completed by managers at the beginning (1st week) of the study and end (8th month) of the intervention phase; and (g) During the field study, carriers will be asked to provide information concerning crashes and roadside violations occurring during each driver's period of study participation. Administrative cost information (*e.g.,* equipment, labor, etc.) will also be collected from the carrier to evaluate cost-benefit of the intervention.

OMB approval is requested for two years. Participation is voluntary and there are no costs to respondents other than their time. The total estimated annualized burden is 5,278 hours.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Carrier Management	Participation Agreement	1	1	1
	Retrieval of Company Monthly Roadside Violations/Crash Reports.	1	8	90/60
	Retrieval of Company Administrative Costs	1	16	2
	Management Practice questionnaire (Time 1)	5	1	45/60
	Management Practice questionnaire (Time 2)	5	1	45/60
Drivers	Application to Participate	150	1	12/60
	Actigraph Training	90	1	10/60
	Background Questionnaire	90	1	45/60
	Daily Smartphone Questions	90	720	1/60
	PVT	90	720	3/60
	Exercise and Food Consumption Questionnaire.	90	4	20/60
	SF–36v2	90	4	30/60
	Family Interactions Questionnaire	90	4	15/60
	Safety Climate Questionnaire	90	4	10/60
	Job Descriptive Index	90	4	30/60
	Post-Study Questionnaire	90	1	1
	Phone Briefings	90	8	6/60

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2020–18994 Filed 8–27–20; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Screening Tool for Unaccompanied Alien Children Program Staff and Visitors (New Collection)

AGENCY: Office of Refugee Resettlement, Administration for Children and Families, Health and Human Services (HHS).

ACTION: Request for public comment.

SUMMARY: The Office of Refugee Resettlement (ORR), Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS), is proposing to continue use of a coronavirus (COVID–19) screening form for Unaccompanied Alien Children (UAC) program staff and visitors at ORR-funded programs. The form was originally approved under emergency approval for 6 months. ACF is requesting a 3-year extension of this information collection.

DATES: *Comments due within 30 days of publication.* OMB is required to make a decision concerning the collection of

information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent 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.

SUPPLEMENTARY INFORMATION:

Description: The COVID–19 risk questionnaire asks participants whether or not they display COVID–19 symptoms, whether or not they have had close contact with individuals known to test positive for COVID–19, and whether or not they have been tested for COVID–19. The questionnaire also requests temperature checks on individuals. This will help to reduce possible exposure to the virus and help protect the health and safety of both UAC and program staff.

Respondents: Staff and visitors at UAC program sites.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Annual responses per respondent	Average burden hours per response	Annual burden hours
UAC COVID–19 Risk Questionnaire	15,000	260	.033	128,700

Authority: 6 U.S.C. 279(b)(1)(B);(E).

Emily Ball Jabbour,

ACF/OPRE Certifying Officer.

[FR Doc. 2020–19024 Filed 8–27–20; 8:45 am]

BILLING CODE 4184–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–N–0008]

Patient Engagement Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a forthcoming public advisory committee meeting of the Patient Engagement Advisory Committee. The general function of the committee is to provide advice to the Commissioner, or designee, on complex issues relating to medical devices, the regulation of devices, and their use by patients. The meeting will be open to the public.

DATES: The meeting will take place virtually on October 22, 2020, from 10 a.m. Eastern Time to 5 p.m. Eastern Time.

ADDRESSES: Please note that due to the impact of this COVID–19 pandemic, all meeting participants will be joining this advisory committee meeting via an online teleconferencing platform. Answers to commonly asked questions about FDA advisory committee meetings may be accessed at: *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm.*

Information on how to access the webcast will be made available no later than 2 business days prior to the meeting at *www.fdalive.com/PEAC.*

FOR FURTHER INFORMATION CONTACT: Letise Williams, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave. Bldg. 66, Rm. 5441, Silver Spring, MD 20993–0002, *letise.williams@fda.hhs.gov,* 301–796–8398, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's website at *https://www.fda.gov/advisory-committees* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications.

SUPPLEMENTARY INFORMATION:

Agenda: The meeting presentations will be heard, viewed, captioned, and recorded through an online teleconferencing platform. On October 22, 2020, the committee will discuss and make recommendations on the topic ''Artificial Intelligence (AI) and Machine Learning (ML) in Medical Devices.'' Specifically, we will discuss the composition of the datasets on which the software ''learns'', components of the device information shared with patients, and factors that impact patient trust in the technology. Large clinical datasets are used to train and improve AI/ML algorithms, allowing transformational improvements in the diagnosis, clinical decision making, and treatment of patients. Devices using AI/ML technology will transform healthcare delivery by increasing efficiency of key processes in the treatment of patients. Health products powered by AI/ML are streaming into our lives, from virtual doctor apps to wearable sensors and drugstore chatbots to algorithms for detecting cancer in mammography and interpretations of chest X rays. Despite the rapid advancement and integration, AI/ML systems may have algorithmic biases, limited generalizability, and lack transparency in their assumptions based on potential limitations of training datasets. The recommendations provided by the committee will address the importance of including various demographic groups in AI/ML algorithm development. The recommendations will also address the impact of the user interface and transparency including what information and how the information about the devices could be communicated to foster patient trust in the AI/ML devices.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its website prior to the meeting, the background material will be made publicly available on FDA's website at the time of the advisory committee meeting, and the background material will be posted on FDA's website after the meeting. Background materials will be available at *https://www.fda.gov/advisory-committees/committees-and-meeting-materials/patient-engagement-advisory-committee.* Select the link for the 2020 Meeting Materials. The meeting will include slide presentations with audio components to allow the presentation of materials in a manner that most closely resembles an in-person advisory committee meeting.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Oral presentations

from the public will be scheduled on October 22, 2020, between approximately 1:30 p.m. Eastern Time to 2:30 p.m. Eastern Time. Those individuals interested in making formal oral presentations should notify the contact person (see **FOR FURTHER INFORMATION CONTACT**). The notification should include a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before September 22, 2020. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by September 24, 2020. Individuals who do not wish to speak at the open public hearing session but would like their comments to be heard by the committee may send written submissions to the contact person on or before September 30, 2020.

Virtual Breakout Session:

Individuals interested in participating in the virtual breakout scenario discussion will need to signup to participate on or before October 8, 2020. The signup sheet, as well as, additional information pertaining to the virtual scenario discussion will be available at *https://www.fdalive.com/peac/.* Please note due to limited technology capacity, participation in the virtual breakout scenario discussion will be limited to 150 participants. The first 150 participants to sign up for the virtual breakout scenario discussion will receive a Zoom access link that will provide them with access to their assigned breakout room. Participants will receive the Zoom link no later than 2 days prior to the meeting. Individuals participating in the virtual breakout scenario discussion will only have access to Zoom during the time of the virtual breakout scenario discussion. Participants will need to sign out of the webcast and log into the Zoom at the time of the virtual breakout scenario discussion. Once the virtual breakout scenario discussion concludes participants will be signed out from Zoom and will need to log back into the webcast to participate in the remainder of the meeting.

For press inquiries, please contact the Office of Media Affairs at *fdaoma@fda.hhs.gov* or 301–796–4540.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require accommodations due to a disability, please contact AnnMarie Williams at *Annmarie.Williams@fda.hhs.gov,* or 301–796–5966 at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our website at *https://www.fda.gov/advisory-committees/about-advisory-committees/public-conduct-during-fda-advisory-committee-meetings* for procedures on public conduct during advisory committee meetings. Please be advised that, during the virtual scenario breakout discussions, FDA will prepare a summary of the discussion in lieu of detailed transcripts.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: August 21, 2020.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2020–18953 Filed 8–27–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–N–1767]

Joint Meeting of the Psychopharmacologic Drugs Advisory Committee and the Drug Safety and Risk Management Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; establishment of a public docket; request for comments.

SUMMARY: The Food and Drug Administration (FDA) announces a forthcoming public advisory committee meeting of the Joint Meeting of the Psychopharmacologic Drugs Advisory Committee and the Drug Safety and Risk Management Advisory Committee. The general function of the committee is to provide advice and recommendations to FDA on regulatory issues. The meeting will be open to the public. FDA is establishing a docket for public comment on this document.

DATES: The meeting will be held on October 9, 2020, from 8 a.m. to 5 p.m., Eastern Time.

ADDRESSES: Please note that due to the impact of this COVID–19 pandemic, all meeting participants will be joining this advisory committee meeting via an online teleconferencing platform. Answers to commonly asked questions about FDA advisory committee meetings may be accessed at: *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm.*

FDA is establishing a docket for public comment on this meeting. The docket number is FDA–2020–N–1767. The docket will close on October 8, 2020. Submit either electronic or written comments on this public meeting by October 8, 2020. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before October 8, 2020. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of October 8, 2020. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Comments received on or before September 25, 2020, will be provided to the committees. Comments received after that date will be taken into consideration by FDA. In the event that the meeting is canceled, FDA will continue to evaluate any relevant applications or information, and consider any comments submitted to the docket, as appropriate. You may submit comments 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–1767 for ''Joint Meeting of the Psychopharmacologic Drugs Advisory Committee and the Drug Safety and Risk Management Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments.'' Received comments, those filed in a timely manner (see the **ADDRESSES** section), 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.'' FDA 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 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 the 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.

FOR FURTHER INFORMATION CONTACT: LaToya Bonner, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993–0002, 301–796–9001, Fax: 301–847–8533, email: *PDAC@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the FDA's website at *https://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

SUPPLEMENTARY INFORMATION:

Agenda: The meeting presentations will be heard, viewed, captioned, and recorded through an online teleconferencing platform. The committees will discuss the efficacy, safety, and benefit-risk profile of new drug application (NDA) 213378, olanzapine and samidorphan oral tablets, submitted by Alkermes, Inc., for the proposed indications of schizophrenia and bipolar disorder.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its website prior to the meeting, the background material will be made publicly available on FDA's website at the time of the advisory committee meeting. Background material and the link to the online teleconference meeting room will be available at *https://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link. The meeting will include slide presentations with audio components to allow the presentation of materials in a manner that most closely resembles an in-person advisory committee meeting.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committees. All electronic and written submissions submitted to the Docket (see the **ADDRESSES** section) on or before September 25, 2020, will be provided to the committees. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before September 16, 2020. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by September 17, 2020.

For press inquiries, please contact the Office of Media Affairs at *fdaoma@fda.hhs.gov* or 301–796–4540.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require accommodations due to a disability, please contact LaToya Bonner (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our website at *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: August 24, 2020.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2020–18951 Filed 8–27–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–N–0001]

Vaccines and Related Biological Products Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) announces a forthcoming public advisory committee meeting of the Vaccines and Related Biological Products Advisory Committee. The general function of the committee is to provide advice and recommendations to the Agency on FDA's regulatory issues. The meeting will be open to the public.

DATES: The meeting will be held on October 22, 2020, from 10 a.m. Eastern Time to 5 p.m. Eastern Time.

ADDRESSES: Please note that due to the impact of this COVID–19 pandemic, all meeting participants will be joining this advisory committee meeting via an online teleconferencing platform. Answers to commonly asked questions including information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm.* The online web conference meeting will be available at the following links: Main at *https://collaboration.fda.gov/vrbpac102220/* and overflow at *https://collaboration.fda.gov/vrbpac102220overflow/.*

FOR FURTHER INFORMATION CONTACT: Prabhakara Atreya or Monique Hill, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 6306, Silver Spring, MD 20993–0002, 240–506–4946, *Prabhakara.Atreya@fda.hhs.gov,* or 301–796–4620, *monique.hill@fda.hhs.gov,* respectively, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's website at *https://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

SUPPLEMENTARY INFORMATION:

Agenda: The meeting presentations will be heard, viewed, captioned, and recorded through an online teleconferencing platform. In open session, the committee will discuss, in general, the development, authorization and/or licensure of vaccines to prevent COVID–19. No specific application will be discussed at this meeting.

FDA intends to make any background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its website prior to the meeting, any background material will be made publicly available on FDA's website at the time of the advisory committee meeting. Any background material and the link to the online teleconference meeting room will be available at *https://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link. The meeting will include slide presentations with audio components to allow the presentation of materials in a manner that most closely resembles an in-person advisory committee meeting.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before October 15, 2020. Oral presentations from the public will be scheduled between approximately 2:30 p.m. Eastern Time and 3:30 p.m. Eastern Time. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before October 7, 2020. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by October 8, 2020.

For press inquiries, please contact the Office of Media Affairs at *fdaoma@fda.hhs.gov* or 301–796–4540.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require accommodations due to a disability, please contact Prabhakara Atreya (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our website at: *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: August 24, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–18985 Filed 8–27–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the National Clinical Care Commission

AGENCY: Office of Disease Prevention and Health Promotion, Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: The National Clinical Care Commission (the Commission) will conduct a virtual meeting on September 11, 2020. The Commission is charged to evaluate and make recommendations to the U.S. Department of Health and Human Services (HHS) Secretary and Congress regarding improvements to the coordination and leveraging of federal programs related to diabetes and its complications.

DATES: The meeting will take place on September 11, 2020, from 1 p.m. to approximately 5:30 p.m. Eastern Daylight time (EDT).

ADDRESSES: The meeting will be held online via webinar. To register to attend the meeting, please visit the registration website at *https://kauffmaninc.adobeconnect.com/nccc_sept2020/event/event_info.html.*

FOR FURTHER INFORMATION CONTACT: Jennifer Anne Bishop, ScD, MPH, Designated Federal Officer, National Clinical Care Commission, U.S. Department of Health and Human Services, Office of the Assistant

Secretary for Health, Office of Disease Prevention and Health Promotion, 1101 Wootton Parkway, Suite 420, Rockville, MD 20852. Phone: (240) 453–8826. Email: *OHQ@hhs.gov.*

SUPPLEMENTARY INFORMATION: The National Clinical Care Commission Act (Pub. L. 115–80) requires the HHS Secretary to establish the National Clinical Care Commission. The Commission consists of representatives of specific federal agencies and non-federal individuals and entities who represent diverse disciplines and views. The Commission will evaluate and make recommendations to the HHS Secretary and Congress regarding improvements to the coordination and leveraging of federal programs related to diabetes and its complications.

The eighth meeting will be held virtually, and will consist of updates from the Commission's three subcommittees and a discussion of public comments and outreach to stakeholder organizations. Additionally, the first round of potential ''action plans'' from the subcommittee (*i.e.,* recommendations) to be discussed by Commission. The final meeting agenda will be available prior to the meeting at *https://health.gov/our-work/health-care-quality/national-clinical-care-commission/meetings.*

Public Participation at Meeting: The Commission invites public comment on issues related to the Commission's charge. There will be an opportunity for limited oral comments (each no more than 3 minutes in length) at this virtual meeting. Virtual attendees who plan to provide oral comments at the Commission meeting during a designated time must register prior to the meeting at *https://kauffmaninc.adobeconnect.com/nccc_sept2020/event/event_info.html.*

Written comments are welcome throughout the entire development process of the Commission's work and may be emailed to *OHQ@hhs.gov.* Written comments should not exceed three pages in length.

Individuals who need special assistance, such as sign language interpretation or other reasonable accommodations, should indicate the special accommodation when registering online or by notifying Jennifer Gillissen at *jennifer.gillissen@kauffmaninc.com* by August 27, 2020.

Authority: The National Clinical Care Commission is required under the National Clinical Care Commission Act (Pub. L. 115–80). The Commission is governed by provisions of the Federal Advisory Committee Act (FACA), Public Law 92–463, as amended (5 U.S.C., App.) which sets forth standards for the formation and use of federal advisory committees.

Dated: August 24, 2020.

Paul Reed,

Deputy Assistant Secretary for Health, Acting Director, Office of Disease Prevention and Health Promotion, Office of the Assistant Secretary for Health.

[FR Doc. 2020–18917 Filed 8–27–20; 8:45 am]

BILLING CODE 4150–32–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; Leadership in Alzheimer's disease.

Date: October 15, 2020.

Time: 11:00 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Video Meeting).

Contact Person: Greg Bissonette, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Gateway Building, Suite 2W200, Bethesda, MD 20892, (301) 402–1622, *bissonettegb@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: August 24, 2020

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–18927 Filed 8–27–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

NIH Bethesda Surgery, Radiology and Laboratory Medicine Record of Decision

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services, the National Institutes of Health (NIH), has decided, after completion of a Final Environmental Impact Statement (FEIS) and a thorough consideration of the public comments on the Draft EIS, to implement the Proposed Action, referred to as the Proposed Action in the Final EIS. The Surgery, Radiology and Laboratory Medicine (SRLM) action is for construction of an additional 527,100 gross square feet (gsf) to the exiting Building 10. In addition to 527,100 gsf of space in the new building, the Proposed Action will include renovation of 102,600 gsf of existing space within the West Laboratory Wing of the Clinical Research Center. The footprint of the SRLM will occupy 55,500 gsf. A proposed patient parking garage is also included in the proposed action. The proposed garage will be a multi-level, self-park garage, accommodating approximately 780 cars.

FOR FURTHER INFORMATION CONTACT: Valerie Nottingham, Deputy Director, DEP, ORF, NIH, Building 13, Room 2S11, 9000 Rockville Pike, Bethesda, MD 20892, Phone 301–496–7775, *nihnepa@mail.nih.gov.* RESPONSIBLE OFFICIAL: Daniel G. Wheeland, Director, Office of Research Facilities (ORF) Development and Operations, NIH.

SUPPLEMENTARY INFORMATION:

Decision

After careful review of the environmental consequences in the Final Environmental Impact Statement for the SRLM, National Institutes of Health Bethesda Campus, and consideration of public comment throughout the National Environmental Policy Act of 1969 (NEPA) process, NIH has decided to implement the Proposed Action described below as the Selected Alternative.

Selected Alternative

The Selected Alternative is intended to further the NIH mission: To seek fundamental knowledge about the nature and behavior of living systems and the application of that knowledge to

enhance health, lengthen life, and reduce illness and disability.

The Selected Alternative will meet the purpose and need of the project in several ways. First, the spatial deficiencies would be addressed by moving the current operations to surgical, radiological, laboratory, and office spaces that consolidate and organize activities in an efficient manner. Next, the SRLM Building will be designed with the flexibility to address future growth and change, including floor-to-ceiling heights and other features capable of accommodating equipment associated with newer technologies. The SRLM Building will also incorporate upgraded, up-to-date infrastructure systems which will be more reliable, and will ensure the ability to control temperature and humidity. The SRLM Building will address unacceptable vibration levels by using more robust construction materials and methods. The Selected Alternative will be constructed to meet progressive collapse requirements and blast criteria.

Security and safety issues associated with the current Building 10 parking garage will be addressed by eliminating exposure to deteriorated and spalling concrete in the existing garage. The Utility Vault portion of the project will enable NIH to replace critical electrical equipment that is beyond its service life.

Alternatives Considered

The Proposed Action Alternative and No Action Alternative were the two alternatives analyzed in the Final EIS. Other alternatives were considered but not carried forward due to their inability to meet the purpose and need of the project.

Factors Involved in the Decision

Several factors were involved during the decision-making process; these include spatial deficiencies, inability to house new technologies, security and safety, and an aging switching station.

Spatial deficiencies severely impact the operating rooms, radiology suite and clinical laboratory. Both patients and staff lack sufficient support space as they undergo care and conduct treatment protocols. The distribution systems for electrical, duct work, and piping are degrading and require replacement, but this work cannot be done while the space is occupied. The building's floor-to-floor heights are deficient by today's utility requirements and cannot contain the necessary utility distribution systems. A lack of utility capacity and control results in work environments that suffer from poor temperature and humidity control. These environmental factors can also negatively impact the patient samples that are being processed and tested.

Since the clinical research facility opened more than 34 years ago, biomedical research and its supporting clinical programs have rapidly evolved influencing the criteria for space and infrastructure systems. The rapid evolution of equipment (changing every three to five years) has had a direct impact on both space requirements and utility systems that support them. Hospital surgical suites are typically replaced every 20 years to keep up with the latest technological advancements, operating room equipment, and techniques. The existing facility has not kept pace with modern surgical, imaging, and clinical laboratory facility requirements, and cannot accommodate evolving requirements.

Currently, patient, visitor, and staff parking is partially accommodated in an underground parking garage located below the Ambulatory Care Research Facility tower. More specifically, existing parking is located directly below surgery, radiology, and laboratory areas of the complex, which makes repairs to the garage expensive, due to patient occupancy on floors above. The current garage has serious structural deficiencies due to corrosion of the concrete and underlying (exposed) rebar, despite on-going maintenance. The concrete and rebar corrosion is from years of salt and chemicals brought into the garage by the vehicle traffic. This condition poses a safety threat to users of the facility, and a liability threat to the government, due to the potential for falling pieces of concrete.

The equipment in Buildings 59 and 59A is aging and will soon need replacement due to space constraints, the inability to acquire replacement parts, and failure of the current system to meet requirements of the Life Safety Code (National Fire Protection Association 101) and Environment of Care standards of the Joint Commission.

Resources Impacted

The Final EIS describes potential environmental effects of the Selected Alternative. These potential effects are documented in Chapter 3 of the Final EIS. Any potential adverse environmental effects will be avoided or mitigated through design elements, procedures, and compliance with regulatory and NIH requirements. Potential impacts on air quality are all within government standards (federal, state, and local). NIH does not expect significant negative effects on the environment or on the citizens of Bethesda from construction and operation at NIH.

Summary of Impacts

The following is a summary of potential impacts resulting from the Selected Alternative that NIH considered when making its decision. No adverse cumulative effects have been identified during the NEPA process. Likewise, no unavoidable or adverse impacts from implementation of the Selected Alternative have been identified. The Selected Alternative will be beneficial to the long-term productivity of the national and international biomedical research communities. As a result of the Selected Alternative, biomedical research conducted at the NIH facilities on the campus will experience an enhanced potential of advance techniques in disease prevention and cures, development of infectious disease vaccinations, and preparation of defenses against naturally emerging and re-emerging diseases and against bioweapons. Additionally, the local community will benefit from increased employment, housing, and investment

Housing

Under the Selected Alternative, the action will result in temporary minor impacts on the population and the availability of housing, due to construction workers who might temporarily relocate to the area. The Proposed Action will result in no permanent impacts to these resources as there is no projected change in staff. Temporary impacts on population and housing associated with construction activities are expected to be minor as Bethesda is a densely populated urban area and therefore the small temporary increase in population would be very small on a percentage basis.

Education

The Selected Alternative does not involve any projected change in staff or campus census. If any new employees are hired, the numbers will be modest, and the current public school capacity in Bethesda or Montgomery County and surrounding school districts is adequate to accommodate the expected minimal growth caused by the Selected Alternative.

Transportation

Implementation of the Selected Alternative will result in minor temporary impacts to off-Campus roads, transit, and traffic due to construction activities. This will include additional traffic due to construction vehicles, as

well as shifts in employee and patient traffic patterns.

Construction vehicles, estimated at well less than 100 vehicles per day will be screened at the Commercial Vehicle Inspection Station (CVIF) on Rockville Pike, and then enter via Wilson Drive. As reported in the 2015 Chilled Water EIS, peak morning traffic at Rockville Pike and Wilson Drive, which is just south of the CVIF, is 2,800 cars southbound on Rockville Pike and 1,100 cars northbound on Rockville Pike. It is assumed peak traffic on those roads is similar to or higher than was reported in 2015. Therefore, the overall impact to off-Campus roads will be minor as the number of construction vehicles would be minimal (<100 vehicles per day) relative to existing traffic counts.

Security

The Selected Alternative will not be expected to have adverse impacts on security on the NIH Campus. No new security measures are proposed in the Selected Alternative.

Employment

The Selected Alternative does not involve any projected change in staff.

Environmental Justice

The Selected Alternative will not be expected to have disproportionately high or adverse impacts on low income or minority populations of the affected area.

Visual Quality

During construction of the Surgery Radiology and Laboratory Medicine (SRLM), Patient Parking Garage (PPG) and Utility Vault (UV), direct visual impacts will occur on Campus. Large construction equipment will be deployed in the project area for the duration of activities. It is anticipated that cranes, earth-moving equipment, concrete trucks and other heavy machinery will be in use for approximately 6 years. Due to the phased approach, the construction duration is extended, and this will represent a moderate, direct impact to visual resources at the project location. Off-Campus observers may also be directly impacted as some of the trees currently screening the Building 10 Complex from external views would be removed during construction. This impact will be considered minor, however, as the distance from the property line would reduce the scale of the equipment. Additional minor impacts are anticipated due to the partial closure of Center Drive and redirection of traffic during construction.

Noise

Implementation of the Selected Alternative will result in direct, temporary, minor noise impacts due to construction activities as well as direct, long-term, moderate noise impacts due to operational changes at the SRLM, PPG, and UV.

Construction activities associated with the Selected Alternative will temporarily increase environmental noise levels in the vicinity of the project site, primarily due to the use of heavy equipment. Equipment that may be used includes backhoes, bulldozers, and excavators. Construction equipment noise emission levels generally range between 74 to 101 dBA 50 feet from the source, depending on the type of equipment (U.S. DOT FHWA, 2014). Residents at the Convent will likely experience elevated noise levels during construction activities. NIH will mitigate the impact of this construction noise by limiting most construction activity to between the hours of 7 a.m. and 5 p.m. NIH will ensure that noise levels from construction activities will not exceed 75 dBA at neighboring properties or 85 dBA if a noise suppression plan is approved by the Montgomery County Department of Environmental Protection. Most of the construction noise will be temporary and will dissipate as the distance from the source increases. It is expected that residents in surrounding neighborhoods will not experience noise louder than the applicable noise limit.

Construction personnel will take the necessary precautions (*e.g.,* hearing protection) to ensure that they will not be exposed to noise louder than the Occupational Safety and Health Administration standard of 90 dBA for 8 hours. Because the construction of the SRLM, PPG, and UV will result in the temporary loss of some parking spaces at surface parking lot 10E and the Building 10 garage, some vehicular traffic will be redirected to other parking areas at the Campus. While these other destinations may see an increase in vehicular traffic, the increases are expected to be minor and will not be expected to substantially alter the noise levels anywhere at the Campus. Any added traffic noise will blend with ambient noise.

The Selected Alternative will include installation of new equipment, including pumps and generators at the UV. NIH will mitigate operational noise from this equipment by enclosing the equipment inside utility buildings and providing sound-attenuating measures such as mufflers for the emergency generators. Due to this mitigation, operational noise from all elements of the Selected Alternative will be expected to be below regulatory thresholds.

The Selected Alternative may change traffic patterns during the operations phase, as more services will be consolidated at the SRLM complex and as parking shifts from Building 10 to the PPG. However, an overall increase in traffic is not anticipated. General operations will continue to meet the Montgomery County nighttime noise ordinance of 55 dBA at the property lines. If necessary, NIH would utilize noise suppression techniques in order to meet that requirement.

Overall, construction impacts will be minimal and temporary, and operational impacts will be minor.

Air Quality

In order to demonstrate that the Selected Alternative will result in minor increases in emissions, NIH conservatively performed a General Conformity Rule (GCR) and air emission calculations. This analysis conservatively estimates the emissions of nonattainment criteria pollutants during construction of the proposed facilities for the entire 6-year construction period. The conservative results, even assuming that the total emissions over approximately six construction years will occur only within a single year, show no exceedance of the applicable de minimis criteria of 100 tons per year (tpy) for NO_X, 50 tpy of VOC, and 100 tpy of CO and $PM_{2.5}$. Therefore, the Selected Alternative will have minimal air quality impacts and will not require a formal conformity determination. These incremental emissions will also be well below the Prevention of Significant Deterioration (PSD) major source threshold of 250 tpy. The PSD program is applicable to the attainment area. Therefore, it is anticipated that the attainment pollutant emissions under construction of the Selected Alternative will be minimal resulting in no significant air quality impacts.

NIH will work with the Maryland Department of the Environment (MDE) to determine regulatory applicability of the New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) to the new generators, as necessary. However, the Selected Alternative does not include any change in operations for any of the departments affected except relocation and consolidation, which will result in more efficient operations. There will be no associated change in the numbers of employees or patients, and therefore no

impact to traffic levels or need for parking. There will be no change in the need for or amounts of utilities provided to support operations. The new generators will replace the current generators, so will not result in an increase in air emissions. Therefore, the need to update the current facility air permits, such as the Campus Title V permit, is not anticipated. Thresholds specified in Code of Maryland Regulation (COMAR) 26.11.02.10 are not expected to be exceeded; operational emissions are not expected to exceed New Source Review or Prevention of Significant Deterioration levels. The air quality effects of criteria pollutants at the Campus would be insignificant under operations of the Selected Alternative and will not interfere with regional efforts to meet the National Ambient Air Quality Standards.

Water Resources

NIH will implement appropriate pollution prevention measures to avoid spills and exposure of groundwater to contamination. These measures could include using booms or pigs during fuel transfer, protecting excavations during fuel transfer and use, and implementation of stormwater management controls during construction.

Implementation of the Selected Alternative could result in minor indirect impacts to the NIH Stream due to runoff from construction sites, which could enter stormwater sewer drains that lead to that stream. Impacts to surface waters resulting from the construction projects are likely to be minor due to compliance with state and federal regulations and mitigation measures. Mitigation measures include development of and adherence to sediment and erosion control plans, stormwater management plans, and implementation of pollution prevention measures to ensure that sediments, petroleum products and other contaminants do not migrate to the storm drains during construction.

Implementation of the Proposed Action will result in minor temporary impacts to stormwater quantity and quality due to earth disturbances during construction activities. The Limits of Disturbance (LOD) for the Proposed Action, will be approximately 378,972 SF (8.7 acres) of earth during construction activities.

Potential erosion and sediment runoff impacts will be mitigated through implementation of stormwater management practices, including the development of an erosion and sediment control plan that is approved by MDE. The construction of the SRLM, PPG, and UV will disturb more than one acre and therefore will obtain coverage under the MDE 2014 General Permit for Stormwater Associated with Construction Activity (MDE, 2014). As a result, construction activities under the Selected Alternative will have a minor impact on stormwater quality. Additionally, some of the existing stormwater drainage systems will have to be modified or moved as they are currently within the LOD. NIH will design and construct replacement systems so as not to impact existing drainage characteristics.

Implementation of the Selected Alterative will result in minor long-term stormwater management impacts. The project area covers a total of 8.7 acres. The Selected Alternative will increase impervious surface at the Campus by approximately 125,196 SF (2.9 acres), which will increase runoff within the Rock Creek Watershed relative to baseline conditions. The construction of the SRLM, PPG, and UV will each disturb greater than 5,000 SF, and therefore site design will be required to meet EISA 2007 Section 438 requirements to restore each site to predevelopment conditions. This requirement will minimize hydrologic impacts resulting from increased stormwater runoff volumes, such as damage to storm sewer infrastructure, increased likelihood of flooding, and increased erosion.

The Selected Alternative will require permanent site stormwater management to control runoff and provide water quality treatment per federal and Maryland stormwater regulations. Long-term stormwater management facilities will be designed and installed per an MDE approved stormwater management plan. Construction of the SRLM, PPG, and UV will incorporate bioretention areas including stormwater planter boxes. These vegetated areas will infiltrate runoff from impervious surfaces at the sites, reducing the quantity of stormwater runoff and improving the water quality. NIH will incorporate appropriate and feasible Environmental Site Design (ESD) practices into the project designs to restore the predevelopment hydrology to the maximum extent technically feasible. Overall, these practices will reduce runoff volume and rate, disperse flow, remove pollutants, and provide for groundwater recharge by facilitating infiltration into the soil. These measures will have the potential to benefit the ability of NIH to meet the Campus' Total Maximum Daily Load (TMDL) nutrient and sediment load reduction requirements, and thus comply with the Campus' Municipal Separate Storm Sewer System (MS4) TMDL.

Historic Resources

Pursuant to Section 106 of the National Historic Preservation Act, NIH initiated consultation with the Maryland State Historic Preservation Officer (MD SHPO) to obtain their concurrence with this finding. The MD SHPO requested additional information regarding the project on 29 May 2019.

NIH provided the additional information to the MD SHPO and on July 21, 2020, a representative from the Maryland Historical trust concurred with NIH on their findings of *no adverse effect* associated with the Selected Alternative.

Practicable Means To Avoid or Minimize Potential Environmental Harm From the Selected Alternative

All practicable means to avoid or minimize adverse environmental effects from the Selected Action have been identified and incorporated into the action. The proposed construction will be subject to the existing NIH pollution prevention, waste management, and safety, security, and emergency response policies and procedures as well as existing environmental permits. Best management practices, spill prevention and control, and stormwater management plans will be followed to appropriately address the construction and operation envisioned in the Selected Alternative and comply with applicable regulatory and NIH requirements. No additional mitigation measures have been identified.

Pollution Prevention

Air quality permit standards will be met, as will all federal, state, and local requirements to protect the environment and public health.

Conclusion

Based upon review and careful consideration, NIH has decided to implement the Selected Alternative for the construction of the SRLM, Patient Parking garage, and associated Utility Vault on the Bethesda NIH Campus located in Bethesda, Maryland. The decision accounts for the need of NIH to further the fundamental mission of clinical research by providing facilities that support the NIH mission. The decision was based upon review and careful consideration of the impacts identified in the Final EIS and public comments received throughout the NEPA process.

Separate NEPA reviews, when required, will be done on projects that may come about during the planning

and design process. Proper NEPA documentation will be completed based on the outcome of that review.

Dated: August 22, 2020.

Lawrence A. Tabak,

Principal Deputy Director, National Institutes of Health.

[FR Doc. 2020–18926 Filed 8–27–20; 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 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: Cell Biology Integrated Review Group Cellular Signaling and Regulatory Systems Study Section.

Date: September 24–25, 2020.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health Rockledge II 6701 Rockledge Drive Bethesda, MD 20892 (Virtual Meeting).

Contact Person: David Balasundaram, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5189, MSC 7840, Bethesda, MD 20892, 301–435–1022, *balasundaramd@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: August 24, 2020.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–18955 Filed 8–27–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Cancer Institute Clinical Trials and Translational Research Advisory Committee.

The meeting will be held as a virtual meeting and is open to the public. Individuals who plan to view the virtual meeting and need special assistance or other reasonable accommodations to view the meeting, should notify the Contact Person listed below in advance of the meeting. The meeting will be videocast and can be accessed from the NIH Videocasting and Podcasting website (*http://videocast.nih.gov*).

Name of Committee: National Cancer Institute Clinical Trials and Translational Research Advisory Committee.

Date: November 4, 2020.

Time: 11:00 a.m. to 3:00 p.m.

Agenda: Strategic Discussion of NCI's Clinical and Translational Research Programs.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Rockville, MD 20850 (Virtual Meeting).

Contact Person: Sheila A. Prindiville, M.D., MPH Director, Coordinating Center for Clinical Trials, National Institutes of Health, National Cancer Institute, Coordinating Center for Clinical Trials, 9609 Medical Center Drive, Room 6W136, Rockville, MD 20850, 240–276–6173, *prindivs@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *http://deainfo.nci.nih.gov/advisory/ctac/ctac.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: August 25, 2020.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–18986 Filed 8–27–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of an Exclusive Patent License: Anti-CD56 as an Antibody-Drug Conjugate (''ADC'') or Non-ADC To Target Glioblastoma Either Alone or in Combination With Other Potential Immuno-Oncology Drugs.

AGENCY: National Institutes of Health, Health and Human Services. (HHS).

ACTION: Notice.

SUMMARY: The National Cancer Institute, an institute of the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an Exclusive Patent License to practice the inventions embodied in the Patents and Patent Applications listed in the Supplementary Information section of this notice to Connectyx Technologies Holdings Group (''Connectyx'') located in Boca Raton, FL.

DATES: Only written comments and/or applications for a license which are received by the National Cancer Institute's Technology Transfer Center on or before September 14, 2020 will be considered.

ADDRESSES: Requests for copies of the patent application, inquiries, and comments relating to the contemplated an Exclusive Patent License should be directed to: Jasmine Yang, Ph.D., Senior Licensing and Patenting Manager at Telephone: (240)-276–5530 or at Email: *jasmine.yang@nih.gov.*

SUPPLEMENTARY INFORMATION:

Intellectual Property

(1) U.S. Provisional Patent Application No. 62/119,707 filed July 31, 2015. HHS Ref No. E–221–2015–0–US–01

(2) PCT Application No. PCT/US2016/044777 filed 07/29/2016. HHS Ref. No. E–221–2015–0–PCT–02

(3) U.S. Patent No. 10,548,987 issued February 02, 2020 (Patent Application No. 15/747,620 filed January 25, 2018). HHS Ref. No. E–221–2015–0–US–03.

The patent rights in these inventions have been assigned and/or exclusively licensed to the government of the United States of America.

The prospective exclusive license territory may be worldwide and the field of use may be limited to the use of Licensed Patent Rights for the following: Anti-CD56 as an antibody-drug conjugate (''ADC'') to target and treat glioblastoma either alone or in

combination with other potential immuno-oncology drugs.

This technology discloses the composition of an ADC comprising a drug conjugated to CD56-specific monoclonal antibodies, m900 and m906, or an antigen-binding fragment, wherein the drug comprises a cytotoxic agent, including but not limited to PBD, and to methods of using the ADCs for treating neuroblastoma, small-cell lung cancer, multiple myeloma, acute myeloid leukemia, NK–T lymphoma, and neuroendocrine cancer. This notice is made in accordance with 35 U.S.C. 209 and 37 CFR part 404. The prospective exclusive license will be royalty bearing, and the prospective exclusive license may be granted unless within fifteen (15) days from the date of this published notice, the National Cancer Institute receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR part 404.

In response to this Notice, the public may file comments or objections. Comments and objections, other than those in the form of a license application, will not be treated confidentially, and may be made publicly available.

License applications submitted in response to this Notice will be presumed to contain business confidential information and any release of information in these license applications will be made only as required and upon a request under the Freedom of Information Act, 5 U.S.C. 552.

Dated: August 20, 2020.

Richard U. Rodriguez,

Associate Director, Technology Transfer Center, National Cancer Institute.

[FR Doc. 2020–18988 Filed 8–27–20; 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: Biological Chemistry and Macromolecular Biophysics Integrated Review Group; Biochemistry and Biophysics of Membranes Study Section.

Date: September 28–29, 2020.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Nuria E. Assa-Munt, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4164, MSC 7806, Bethesda, MD 20892, (301) 451–1323, *assamunu@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: Cancer Health Disparities.

Date: September 28–29, 2020.

Time: 9:30 a.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Ola Mae Zack Howard, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4192, MSC 7806, Bethesda, MD 20892, (301) 451–4467, *howardz@mail.nih.gov.*

Name of Committee: Cell Biology Integrated Review Group; Nuclear and Cytoplasmic Structure/Function and Dynamics Study Section.

Date: September 28–29, 2020.

Time: 11:00 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Jessica Smith, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, *jessica.smith6@nih.gov.*

Name of Committee: Healthcare Delivery and Methodologies Integrated Review Group; Health Services Organization and Delivery Study Section.

Date: September 29–30, 2020.

Time: 8:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Jacinta Bronte-Tinkew, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3164, MSC 7770, Bethesda, MD 20892, (301) 806–0009, *brontetinkewjm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–19–264: Imaging, Biomarkers and Digital Pathomics for the Early Detection of Premetastatic Aggressive Cancer.

Date: September 29, 2020.

Time: 9:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Ileana Hancu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, Bethesda, MD 20817, (301) 402–3911, *ileana.hancu@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: August 24, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–18929 Filed 8–27–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed 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 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 clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group Health, Behavior, and Context Subcommittee.

Date: October 19, 2020.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: NICHD/NIH, 6710B Rockledge Drive, Bethesda, MD 20892 (Virtual/Teleconference).

Contact Person: Kimberly L. Houston, M.D., Scientific Review Officer, Eunice Kennedy Shriver National Institute of Child Health and Human Development, 6710B

Rockledge Drive, Room 2137C, Bethesda, MD 20892, 301–827–4902, *kimberly.houston@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: August 25, 2020.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–18957 Filed 8–27–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2020–0489]

National Offshore Safety Advisory Committee

AGENCY: U.S. Coast Guard, Department of Homeland Security.

ACTION: Notice of Federal Advisory Committee video teleconference meeting.

SUMMARY: The National Offshore Safety Advisory Committee teleconference meeting scheduled for August 26, 2020 and announced in the **Federal Register** on July 28, 2020 has been rescheduled.

DATES: The meeting announced at 85 FR 45436 has been rescheduled to September 30, 2020, from 10 a.m. to 2:30 p.m. Eastern Daylight Time.

FOR FURTHER INFORMATION CONTACT: Commander Stephen West, Designated Federal Officer of the National Offshore Safety Advisory Committee, 2703 Martin Luther King Jr. Ave. SE, Stop 7509, Washington, DC, 20593–7509, telephone 202–372–1410, fax 202–372–8382 or email: *Stephen.E.West@uscg.mil,* or Mr. Patrick Clark, telephone 202–372–1358, or email *Patrick.W.Clark@uscg.mil.*

Dated: August 25, 2020.

Jeffrey G. Lantz,

Director of Commercial Regulations and Standards.

[FR Doc. 2020–19044 Filed 8–26–20; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2020–0028; OMB No. 1660–0029]

Agency Information Collection Activities: Proposed Collection; Comment Request; Approval and Coordination of Requirements To Use the NETC for Extracurricular and Training Activities

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: 60 Day Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public to take this opportunity to comment on an extension, without change, of a currently approved information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning the purpose of collecting information by utilizing FEMA Form 119–17–1 and FEMA Form 119–17–2. These forms are used to reserve lodging and reserve meeting space at the National Emergency Training Center (NETC) for official business. To determine whether housing space is available, the requestor is required to confirm availability and complete FEMA Form 119–17–1. To determine whether meeting space is available, the requestor is required to confirm availability with the Special Groups Coordinator and if space is available, the requestor is required to complete FEMA Form 119–17–2.

DATES: Comments must be submitted on or before October 27, 2020.

ADDRESSES: To avoid duplicate submissions to the docket, please use the following means to submit comments: *Online.* Submit comments at *www.regulations.gov* under Docket ID FEMA–2020–0028. Follow the instructions for submitting comments.

All submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy and Security Notice that is available via a link on the homepage of *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Merril Sollenberger, Administrative Specialist, FEMA, U.S. Fire Administration, (301) 447–1179, *merril.sollenberger@fema.dhs.gov.* You may contact the Information Management Division for copies of the proposed collection of information at email address: *FEMA-Information-Collections-Management@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: The Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. 5121–5207, authorizes the President to establish a program of disaster preparedness that utilizes services of all appropriate agencies and includes training and exercises. Section 611 of the Stafford Act (42 U.S.C. 5196) directs that the Federal Emergency Management Agency (FEMA) may conduct training for the purpose of emergency preparedness. In response, FEMA established the National Emergency Training Center (NETC), located in Emmitsburg, Maryland. The NETC site has facilities and housing available for those participating in emergency preparedness training. For planning purposes, a request for use of these areas must be made in advance.

Collection of Information

Title: Approval and Coordination of Requirements to Use the NETC for Extracurricular Training Activities.

Type of Information Collection: Extension, without change, of a currently approved information collection.

OMB Number: 1660–0029.

FEMA Forms: FEMA Form 119–17–1 Request for Housing Accommodations, FEMA Form 119–17–2 Request for Use of NETC Facilities.

Abstract: In accordance with FEMA Directive 119–3: Facility Use and Expenses at the National Emergency Training Center, 21 May 2018, FEMA Form 119–17–1, Request For Housing Accommodations, and FEMA Form 119–17–2, Request for Use of NETC Facilities are applied for functions at NETC.

Affected Public: Individuals or households, Not-for-profit institutions, Federal Government, State, local or Tribal Governments.

Estimated Number of Respondents: 120.

Estimated Number of Responses: 120.

Estimated Total Annual Burden Hours: 12.

Estimated Total Annual Respondent Cost: $354.

Estimated Respondents' Operation and Maintenance Costs: $0.

Estimated Respondents' Capital and Start-Up Costs: There are no annual start-up or capital costs for Respondents.

Estimated Total Annual Cost to the Federal Government: $1,148.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Maile Arthur,

Acting Records Management Branch Chief, Office of the Chief Administrative Officer, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2020–18948 Filed 8–27–20; 8:45 am]

BILLING CODE 9111–45–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7024–N–39; OMB Control No. 2506–0133]

30-Day Notice of Proposed Information Collection: Housing Opportunities for Persons With AIDS (HOPWA) Program

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 30 days of public comment.

DATES: *Comments Due Date: September 28, 2020.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806, Email: *OIRA Submission@omb.eop.gov*

FOR FURTHER INFORMATION CONTACT: Anna P. Guido, Reports Management Officer, QMAC, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email her at *Anna.P.Guido@hud.gov* or telephone 202–402–5535. This is not a toll-free number. Person with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. Copies of available documents submitted to OMB may be obtained from Ms. Guido.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on March 24, 2020 at 85 FR 16643.

A. Overview of Information Collection

Title of Information Collection: Housing Opportunities for Persons with AIDS (HOPWA): Grant Application Submission, Recordkeeping, and Reporting.

OMB Approval Number: 2506–0133.

Type of Request: Revision of currently approved collection.

Form Number: HUD–40110–B, HUD–40110–C, HUD–40110–D, SF–424, SF424D, SF–LLL, and HUD–2991.

Description of the need for the information and proposed use: The current Paperwork Reduction Act approval under OMB Control No. 2506–0133 covers both the HOPWA formula and competitive grant programs. The competitive grant program includes new competitive grants and renewal grants. This revision would only apply to reporting requirements for new competitive Special Projects of National Significance (SPNS) grants.

The current approval covers reporting for new competitive SPNS grants through HUD–40110–C, the HOPWA Annual Performance Report (APR). This submission requests to add four data elements to be reported annually through the HIV Housing Care Continuum Model Report to be submitted annually and the Housing as an Intervention to Fight AIDS (HIFA) report to be submitted at the end of the grant period of performance. The additional reporting will allow HOPWA to share lessons learned and promising practices with the public, and uphold the purpose of SPNS grants to be replicable in other similar localities or nationally. The data elements in the HIV Housing Care Continuum Model Report follow Center for Disease Control (CDC) definitions for the HIV Care Continuum and will allow SPNS grantees to collect standardized project data that can be used to compare outcomes with other projects. The HIV Housing Care Continuum Model report will require grantees to collect four client-level data elements for each person with diagnosed HIV receiving HOPWA assistance by type of assistance received through this NOFA. The data elements include:

1. Receipt of Care. Receipt of care is measured as a person with diagnosed HIV receiving HOPWA assistance under this NOFA who had at least one CD4 or viral load test during the operating year.

2. Retained in Care. Retained in care is measured as a person with diagnosed HIV receiving HOPWA assistance under this NOFA who had two or more CD4 or viral load tests, performed at least three months apart during the operating year.

3. Viral Suppression. Viral suppression is measured as a person with diagnosed HIV receiving HOPWA assistance under this NOFA who had a viral load test result of <200 copies/mL at the most recent viral load test during the operating year.

4. Type of HOPWA assistance received. The type of HOPWA assistance received by the person with diagnosed HIV includes any HOPWA assistance for housing or supportive services funded through this NOFA. This data element will provide the denominator for the variety of HIV Housing Care Continuums created through the HIV Housing Care Continuum Model Report. Grantees will be required to separately report receipt of care, retained in care, and viral suppression for persons with diagnosed HIV receiving the following categories of type of HOPWA assistance under this NOFA: Any eligible HOPWA assistance; Housing assistance only; Supportive Services only; Both Housing assistance and Supportive Services; Tenant-based Rental Assistance (TBRA) and Master Leasing only; TBRA, Master Leasing, and Supportive Services; Facility-based Housing only; Facility-based Housing and Supportive Services; Short-term Rent, Mortgage, and Utilities (STRMU) only; STRMU and Supportive Services; Other Housing Activities only; and

Other Housing Activities and Supportive Services.

Each annual submission of the HIV Housing Care Continuum Model report will cover only the data from the program year covered. The client-level data elements should be collected at minimum annually and at the following times: Client Intake, HOPWA Assistance Ends, Type of HOPWA Assistance Changes, or Recertification for HOPWA Assistance. In addition to the data elements collected, the grantee will provide a brief narrative to interpret the data reported.

The HIFA Model report will document the project's design, implementation, and outcomes, and identify best practices and model qualities related to the use of housing as a structural intervention in the ending the HIV/AIDS epidemic. The HIFA Model report includes the following components: a vision or goal for the project; description of the need being met by the project; description of the program design; description of the alignment with initiatives or strategies to end the HIV/AIDS epidemic; description of data collection and analysis used to make data-driven decisions on stable housing and positive health outcomes; description of culturally competent approaches used to clients experiencing service gaps; partnerships formed or continued with community organizations and other housing and service providers; resources and partnerships used to transition clients to self-sufficiency or other forms of housing assistance by the end of the grant period; successes and challenges in using housing as a structural intervention to end the HIV/AIDS epidemic; client outcomes related to health and housing stability including a summary of HIV Housing Care Continuum results and, if applicable, employment and income growth. Health outcome measures will include eligible program beneficiary CD4 count, viral load, and perceived health. This data will be provided in the aggregate. Each HIFA Model will be shared with the public, and lessons learned through these grantee efforts will help inform national and community policy and actions.

Reporting and recordkeeping for both HOPWA formula and competitive grant programs are already included in this approval. As currently approved through this collection, all HOPWA grantees will continue to provide annual information on program accomplishments that supports program evaluation and the ability to measure program beneficiary outcomes related to: maintaining housing stability; preventing homelessness; and improving access to care and support. Competitive grantees report through HUD–40110–C, the HOPWA APR; Formula grantees report through HUD–40110–D, the HOPWA Consolidated Annual Performance and Evaluation Report (CAPER). Grantees are required to report on the activities undertaken only, thus there may be components of these reporting requirements that may not be applicable. HUD systematically reviews and conducts data analysis in order to prepare national and individual grantee performance profiles that are not only used to measure program performance against benchmark goals and objectives, but also to communicate the program's achievement and contributions towards Departmental strategic goals.

The currently approved collection also pertains to grant application submission requirements which will be used to rate applications, determine eligibility, and establish grant amounts.

HOPWA will continue using application narratives and form HUD–40110–B, HOPWA Competitive Application & Renewal of Permanent Supportive Housing Project Budget Summary, as a component of determining applicant eligibility and establishing grant amounts for competitive grants. HOPWA competitive and renewal application submission also continue to require submission of the following forms currently approved under this collection: SF424 and SF424b assurances; SFLLL; and HUD–2991. Form HUD–2991 is currently covered under OMB approval number 2506–0112. This revision will also include the SF424D to include assurances for constructions programs for HOPWA competitive grants that may utilize funding for new construction or rehabilitation.

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
HOPWA Renewal Application (including HUD–40110–B, narratives, and other requirements listed in the renewal notice)	28.00	1.00	28.00	15.00	420.00	$25.35	$10,647.00
HOPWA Competitive Application (including HUD–40110–B, narratives, and other requirements listed in the NOFA)	40.00	1.00	40.00	45.00	1,800.00	25.35	45,630.00
HUD–40110–C Annual Progress Report (APR)	116.00	1.00	116.00	55.00	6,380.00	25.35	161,733.00
HUD–40110–D Consolidated Annual Performance and Evaluation Report (CAPER)	128.00	1.00	128.00	41.00	5,248.00	25.35	133,036.80
HIV Housing Care Continuum Model Report (new competitive SPNS grant only)	26.00	1.00	26.00	20.00	520.00	25.35	13,182.00
Housing as an Intervention to Fight AIDS (HIFA) Model Report (new competitive SPNS grant only)	26.00	1.00	26.00	40.00	1,040.00	25.35	26,364.00
Recordkeeping for Competitive, Renewal, and Formula Grantees	244.00	1.00	244.00	60.00	14,640.00	25.35	371,124.00
Grant Amendments (budget change, extension, or early termination)	30.00	1.00	30.00	6.00	180.00	25.35	4,563.00
Total	638.00	.....	638.00	.....	30,228.00	.....	766,279.80

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(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;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

(5) Ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Anna P. Guido,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2020–18949 Filed 8–27–20; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6232–N–01]

Guidelines for Certain HUD Approvals Regarding Properties Encumbered by HUD-Held Mark-to-Market Program Debt and Portfolio Reengineering Demonstration Program Debt

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This **Federal Register** Notice announces that HUD has posted a draft Notice, ''Guidelines for Certain HUD Approvals Regarding Properties Encumbered by HUD-Held Mark-to-Market Program Debt and Portfolio Reengineering Demonstration Program Debt,'' on the Multifamily Drafting Table on HUD's website for public feedback. The draft Notice is intended to replace Housing Notice 2012–10, ''Guidelines for Assumption, Subordination, or Assignment of Mark-to-Market (M2M) Loans in Transfer of Physical Assets (TPA) and Refinance Transactions'' in its entirety.

DATES: The draft Notice will be available for feedback for 30 days after publication in the **Federal Register**.

ADDRESSES: Interested persons are invited to submit questions or comments electronically to *postM2M@hud.gov.*

FOR FURTHER INFORMATION CONTACT: To assure a timely response, please direct requests for further information electronically to the email address *postM2M@hud.gov.* Written requests may also be directed to the following address: Office of Housing—Office of Recapitalization; Department of Housing and Urban Development; 451 7th Street SW, Room 6230; Washington, DC 20410; or by telephone at 202–708–0001 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the Federal Relay Service at (800) 877–8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION: The draft Notice posted on the Multifamily Housing Drafting Table provides new instructions for the acquisition and/or refinancing of projects after they have been through a Mark-to-Market Program (''M2M'') debt restructuring or a Portfolio Reengineering Demonstration Program (''Demo Program'') restructuring and are encumbered by HUD-held debt (collectively referred to as ''Post-M2M'' activities). In addition, Section 3 of the draft Notice would replace Appendix C of the Mark-to-Market Operating Procedures Guide regarding transfers of assets to qualified nonprofits, Section 4 covers matured and outstanding M2M or Demo Program debt, and Section 5 contains guidance that supplements HUD's previously issued 8(bb) Notice (H–2015–03), and this supplemental guidance may also be relied upon by owners of projects with satisfied M2M subordinate debt obligation(s) that remain encumbered by a M2M Use Agreement and continue to benefit from a Full M2M Renewal Contract. The draft Notice will be available for feedback for 30 days at the following URL: *https://www.hud.gov/program_offices/housing/mfh/MFH_policy_drafts.*

Dana T. Wade,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 2020–18976 Filed 8–27–20; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–HQ–IA–2020–0092; FXIA16710900000–190–FF09A30000]

Endangered Species; Marine Mammals; Issuance of Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permits.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have issued the following permits to conduct certain activities with endangered species, marine mammals, or both. We issue these permits under the Endangered Species Act (ESA) and Marine Mammal Protection Act (MMPA).

ADDRESSES: Information about the applications for the permits listed in this notice is available online at *www.regulations.gov.* See **SUPPLEMENTARY INFORMATION** for details.

FOR FURTHER INFORMATION CONTACT: Brenda Tapia, by phone at 703–358–2185, via email at *DMAFR@fws.gov,* or via the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service (Service), have issued permits to conduct certain activities with endangered and threatened species in response to permit applications that we received under the authority of section 10(a)(1)(A) of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

After considering the information submitted with each permit application and the public comments received, we issued the requested permits subject to certain conditions set forth in each permit. For each application for an endangered species, we found that (1) the application was filed in good faith, (2) the granted permit would not operate to the disadvantage of the endangered species, and (3) the granted permit would be consistent with the purposes and policy set forth in section 2 of the ESA.

Availability of Documents

The permittees' original permit application materials, along with public comments we received during public comment periods for the applications, are available for review. To locate the application materials and received comments, go to *www.regulations.gov* and search for the appropriate permit number (*e.g.,* 12345C) provided in the following table:

Permit No.	Applicant	Permit issuance date
Endangered Species		
51283D	Kristin Brzeski	06/10/2020
02395D	Virginia Safari Park	06/11/2020
51201D	Bright and Associates, Inc	07/17/2020
50284D	Eastern Connecticut State University	07/16/2020
10866B	Ox Ranch Investments, LLC dba Ox Hunting Ranch	08/04/2020
10867B	Ox Ranch Investments, LLC dba Ox Hunting Ranch	08/04/2020
Marine Mammals		
82088B	U.S. Fish and Wildlife Service Marine Mammals Management	07/21/2020
62285D	Wild Space Productions	07/17/2020

Authorities

We issue this notice under the authority of the Endangered Species Act, as amended (16 U.S.C. 1531 *et seq.*), and the Marine Mammal Protection Act as amended (16 U.S.C. 1361 *et seq.*) and their implementing regulations.

Brenda Tapia,

Management Analyst/Program Analyst, Branch of Permits, Division of Management Authority.

[FR Doc. 2020–19019 Filed 8–27–20; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–HQ–IA–2020–0091; FXIA16710900000–201–FF09A30000]

Foreign Endangered Species; Receipt of 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, invite the public to comment on applications to conduct certain activities with foreign species that are listed as endangered under the Endangered Species Act (ESA). With some exceptions, the ESA prohibits activities with listed species unless Federal authorization is issued that allows such activities. The ESA also requires that we invite public comment before issuing permits for any activity otherwise prohibited by the ESA with respect to any endangered species.

DATES: We must receive comments by September 28, 2020.

Obtaining Documents: The applications, application supporting materials, and any comments and other materials that we receive will be available for public inspection at *http://www.regulations.gov* in Docket No. FWS–HQ–IA–2020–0091.

Submitting Comments: When submitting comments, please specify the name of the applicant and the permit number at the beginning of your comment. You may submit comments by one of the following methods:

- *Internet: http://www.regulations.gov.* Search for and submit comments on Docket No. FWS–HQ–IA–2020–0091.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: Docket No. FWS–HQ–IA–2020–0091; U.S. Fish and Wildlife Service Headquarters, MS: PRB/3W; 5275 Leesburg Pike; Falls Church, VA 22041–3803.

For more information, see Public Comment Procedures under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Brenda Tapia, by phone at 703–358–2185, via email at *DMAFR@fws.gov,* or via the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

A. How do I comment on submitted applications?

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.

You may submit your comments and materials by one of the methods in **ADDRESSES**. We will not consider comments sent by email or fax, or to an address not in **ADDRESSES**. We will not consider or include in our administrative record comments we receive after the close of the comment period (see **DATES**).

When submitting comments, please specify the name of the applicant and the permit number at the beginning of your comment. Provide sufficient information to allow us to authenticate any scientific or commercial data you include. The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) those that include citations to, and analyses of, the applicable laws and regulations.

B. May I review comments submitted by others?

You may view and comment on others' public comments at *http://www.regulations.gov,* unless our allowing so would violate the Privacy Act (5 U.S.C. 552a) or Freedom of Information Act (5 U.S.C. 552).

C. Who will see my comments?

If you submit a comment at *http://www.regulations.gov,* your entire comment, including any personal identifying information, will be posted on the website. If you submit a hardcopy comment that includes personal identifying information, such as your address, phone number, or email address, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. Moreover, 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.

II. Background

To help us carry out our conservation responsibilities for affected species, and in consideration of section 10(c) of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), we invite public comments on permit applications before final action is taken. With some exceptions, the ESA prohibits certain activities with listed species unless Federal authorization is issued that allows such activities.

Permits issued under section 10(a)(1)(A) of the ESA allow otherwise prohibited activities for scientific purposes or to enhance the propagation or survival of the affected species. Service regulations regarding prohibited activities with endangered species, captive-bred wildlife registrations, and permits for any activity otherwise prohibited by the ESA with respect to any endangered species are available in title 50 of the Code of Federal Regulations in part 17.

III. Permit Applications

We invite comments on the following applications.

Applicant: Memphis Zoological Society, Memphis, TN; Permit No. 052166

The applicant requests reissuance of their permit for scientific research with two captive-born giant pandas (*Ailuropoda melanoleuca*) and their offspring currently held under loan agreement with the Government of China and under provision of the USFWS Giant Panda Policy. The proposed research will cover all aspects of behavior, reproductive physiology, nutrition, and animal health, and is a continuation of activities currently in progress. This notice covers activities to be conducted by the applicant over a 5-year period.

Applicant: U.S. Fish and Wildlife Service, National Eagle and Wildlife Property Repository, Commerce City, CO; Permit No. 76282D

The applicant requests a permit to import 9 kilograms of confiscated wild pangolin scales (*Manis spp.,* potentially including *Manis temminckii*) from Kowloon, Hong Kong, for the purpose of enhancing the propagation or survival of the species. This notification is for a single import.

Applicant: United States Geological Survey, National Wildlife Health Center, Honolulu, HI; Permit No. 105568

The applicant requests a permit to import biological samples and carcasses from wild, captive-held, or captive-born animals for the purpose of scientific research. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Minnesota Zoological Gardens, Apple Valley, MN; Permit No. 66472D

The applicant requests a permit to export four male and four female captive-born Przewalski's horses (*Equus przewalskii*) to the Orenburg Nature Reserve, Orenburg, Russia, for the purpose of enhancing the propagation or survival of the species. This notification is for a single export.

Applicant: Stanford University, Stanford, CA; Permit No. 69314D

The applicant requests a permit to import biological samples derived from wild brown mouse lemurs (*Microcebus rufus*), taken in Madagascar, and captive-born grey mouse lemurs (*Microcebus murinus*), taken in France, for the purpose of scientific research. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Ryan Blakley, Lubbock TX; Permit No. 27473B

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the following species, to enhance the propagation or survival of the species. This notification covers activities to be conducted by the applicant over a 5-year period.

Common name	Scientific name
Radiated tortoise	*Geochelone radiata.*
Galapagos tortoise	*Geochelone nigra.*
Yellow-spotted side-necked turtle.	*Podocnemis unifilis.*
Ring-tailed lemur	*Lemur catta.*
Black-and-white ruffed lemur.	*Varecia variegata.*
Red ruffed lemur	*Varecia rubra.*
Cotton-headed tamarin	*Saguinus oedipus.*

Applicant: University of Texas at Arlington, Arlington, TX; Permit No. 93328C

The applicant requests authorization to export and reimport nonliving museum specimens of endangered species previously accessioned into the applicant's collection for scientific research. This notification covers activities to be conducted by the applicant over a 5-year period.

IV. Next Steps

After the comment period closes, we will make decisions regarding permit issuance. If we issue permits to any of the applicants listed in this notice, we will publish a notice in the **Federal Register**. You may locate the notice announcing the permit issuance by searching *http://www.regulations.gov* for the permit number listed above in this document. For example, to find information about the potential issuance of Permit No. 12345A, you would go to *regulations.gov* and search for ''12345A''.

V. Authority

We issue this notice under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and its implementing regulations.

Brenda Tapia,

Management Analyst/Program Analyst, Branch of Permits, Division of Management Authority.

[FR Doc. 2020–19018 Filed 8–27–20; 8:45 am]

BILLING CODE 4333–15–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1182]

Certain Argon Plasma Coagulation System Probes, Their Components, and Other Argon Plasma Coagulation System Components for use Therewith; Commission Determination Not to Review an Initial Determination Terminating the Investigation in Its Entirety; Termination of Investigation

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (''Commission'') has determined not to review an initial determination (''ID'') (Order No. 21) of the presiding administrative law judge (''ALJ''), terminating the investigation in its entirety based on a settlement agreement.

FOR FURTHER INFORMATION CONTACT: Ronald Traud, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–3427. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on November 8, 2019, based on a complaint filed by Erbe Elektromedizin GmbH of the Republic of Germany and Erbe USA, Inc. of Marietta, Georgia (collectively, ''Erbe''). 84 FR 60451 (Nov. 8, 2019). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 based upon the importation into the

United States, the sale for importation, or the sale within the United States after importation of certain argon plasma coagulation system probes, their components, and other argon plasma coagulation system components for use therewith by reason of infringement of certain claims of U.S. Patent Nos. D577,671; 7,311,707; 7,717,911; 9,510,889; and 9,603,653. *Id.* The complaint further alleges that a domestic industry exists. *Id.* After an amendment to the notice of investigation and complaint, 85 FR 12016 (Feb. 28, 2020), the respondents to the investigation are: (1) Olympus Corporation of Tokyo, Japan; (2) Olympus Corporation of the Americas of Center Valley, Pennsylvania; (3) Olympus America of Center Valley, Pennsylvania; (4) Olympus Surgical Technologies Europe of Hamburg, Republic of Germany; (5) Olympus Winter & lbe GmbH of Hamburg Republic of Germany; and (6) Gyrus Medical Ltd (collectively, ''Olympus''). The Office of Unfair Import Investigations (''OUII'') is participating in the investigation. 84 FR at 60452.

On July 27, 2020, Erbe and Olympus filed a joint motion to terminate this investigation based on a settlement agreement. On August 6, 2020, OUII filed a response supporting the motion.

On August 10, 2020, the presiding ALJ issued Order No. 21, the subject ID, which grants the motion. The ID finds that the joint motion complies with Commission Rules 210.21(b)(1) and 201.6(a). The ID additionally finds that terminating the investigation would not adversely affect the public interest. No petitions for review were filed.

The Commission has determined not to review the subject ID. The investigation is hereby terminated in its entirety.

The Commission vote for this determination took place on August 25, 2020.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: August 25, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–19012 Filed 8–27–20; 8:45 am]

BILLING CODE 7020–02–P

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 From Czechia, Korea, Russia, and Ukraine

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of seamless carbon and alloy steel standard, line, and pressure pipe from Czechia, Korea, Russia, and Ukraine, provided for in subheadings 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.[2]

Commencement of Final Phase Investigations

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in § 207.21 of the Commission's rules, upon notice from the U.S. Department of Commerce (''Commerce'') of affirmative preliminary determinations in the investigations under §§ 703(b) or 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under §§ 705(a) or 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. 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 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 the investigations.

Background

On July 8, 2020, Vallourec Star, LP, Houston, Texas filed petitions with the Commission and Commerce, alleging that an industry in the United States is materially injured or threatened with material injury by reason of subsidized imports of imports of seamless carbon and alloy steel standard, line, and pressure pipe from Korea and Russia and LTFV imports of imports of seamless carbon and alloy steel standard, line, and pressure pipe from Czechia, Korea, Russia, and Ukraine. Accordingly, effective July 8, 2020, the Commission instituted countervailing duty investigation Nos. 701–TA–654–655 and antidumping duty investigation Nos. 731–TA–1529–1532 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of July 14, 2020 (85 FR 42431). The conference was held in Washington, DC, on July 29, 2020, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission made these determinations pursuant to §§ 703(a) and 733(a) of the Act (19 U.S.C. 1671b(a) and 1673b(a)). It completed and filed its determinations in these investigations on August 24, 2020. The views of the Commission are contained in USITC Publication 5114 (September 2020), entitled *Seamless carbon and alloy steel standard, line, and pressure pipe from Czechia, Korea, Russia, and Ukraine: Investigation Nos. 701–TA–654–655 and 731–TA–1529–1532 (Preliminary).*

By order of the Commission.

Issued: August 24, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–18932 Filed 8–27–20; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] *Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe From the Czech Republic, the Republic of Korea, the Russian Federation, and Ukraine: Initiation of Less-Than-Fair-Value Investigations;* 85 FR 47176 (August 4, 2020) and *Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe From the Republic of Korea and the Russian Federation: Initiation of Countervailing Duty Investigations*; 85 FR 47170 (August 4, 2020).

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–656 and 731–TA–1533 (Preliminary)]

Certain Metal Lockers and Parts Thereof From China; Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of certain metal lockers and parts thereof from China, provided for in subheadings 9403.20.00 and 9403.90.80 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (''LTFV'') and to be subsidized by the government of China.[2]

Commencement of Final Phase Investigations

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in § 207.21 of the Commission's rules, upon notice from the U.S. Department of Commerce (''Commerce'') of affirmative preliminary determinations in the investigations under §§ 703(b) or 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under §§ 705(a) or 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. 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 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 the investigations.

Background

On July 9, 2020, List Industries, Inc., Deerfield Beach, Florida; Lyon LLC, Montgomery, Illinois; Penco Products, Inc., Greenville, North Carolina; and Tennsco Corp., Dickson, Tennessee filed petitions with the Commission and Commerce, alleging that an industry in the United States is materially injured or threatened with material injury by reason of subsidized and LTFV imports of certain metal lockers and parts thereof from China. Accordingly, effective July 9, 2020, the Commission instituted countervailing duty investigation No. 701–TA–656 and antidumping duty investigation No. 731–TA–1533 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of July 15, 2020 (85 FR 42917). The conference was held in Washington, DC, on July 30, 2020, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission made these determinations pursuant to §§ 703(a) and 733(a) of the Act (19 U.S.C. 1671b(a) and 1673b(a)). It completed and filed its determinations in these investigations on August 24, 2020. The views of the Commission are contained in USITC Publication 5113 (August 2020), entitled *Certain Metal Lockers and Parts Thereof from China: Investigation Nos. 701–TA–656 and 731–TA–1533 (Preliminary).*

By order of the Commission.

Issued: August 24, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–18938 Filed 8–27–20; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—OpenJS Foundation

Notice is hereby given that, on August 14, 2020, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), OpenJS Foundation has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Online Only OÜ (dba websiteSetup), Harjumaa, ESTONIA, has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and OpenJS Foundation intends to file additional written notifications disclosing all changes in membership.

On August 17, 2015, OpenJS Foundation filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on September 28, 2015 (80 FR 58297).

The last notification was filed with the Department on March 4, 2020. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on March 20, 2020 (85 FR 16131).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2020–18989 Filed 8–27–20; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—The Open Group, L.L.C.

Notice is hereby given that, on July 27, 2020, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), The Open Group, L.L.C. (''TOG'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Anduril Industries, Inc., Irvine, CA; BNP PARIBAS S.A., Montreuil, FRANCE; Organizacion Educativa Certifica, S.C, Iztacalco, MEXICO; Cobham Advanced Electronic Solutions, Hollis, NH; Critical Frequency Design, LLC, Melbourne, FL; Curtis & Associates Ltd., Port St. Mary, UNITED KINGDOM; Cyber Assessments, Inc., New York, NY; Dawn VME Products, Fremont, CA; DT360, Inc., Natick, MA; EIZO Rugged Solutions Inc., Altamonte Springs, FL;

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] 85 FR 47343 (August 5, 2020) and 85 FR 47353 (August 5, 2020).

Endress+Hauser Process Solutions, Reinach, SWITZERLAND; Eni S.p.A., Rome, ITALY; FLIR Systems, Inc., Wilsonville, OR; Global Data Analytics Pty Ltd, Perth, AUSTRALIA; JourneyOne, West Perth, AUSTRALIA; Midwest Microwave Solutions, Inc., Hiawatha, IA; OPENextech (Hangzhou) Co., Ltd, Hangzhou, CHINA; Orolia Defense & Security, LLC, Rochester, NY; Parry Labs, LLC, Colombia, MD; PCI Systems Inc., Cupertino, CA; Peloton Computer Enterprises, Inc., Katy, TX; R Stahl, Inc., Stafford, TX; RADA Technologies, LLC, Germantown, MD; Resolve GeoSciences, Inc., Fulshear, TX; Reveal Energy Services, LLC, Houston, TX; University of Texas at Austin—RAPID Consortium, Austin, TX; University of Utah, Salt Lake City, UT; and Viqtor Davis, Austin, TX, have been added as parties to this venture.

Also, 6point6 Limited, London, UNITED KINGDOM; act! consulting GmbH, Braunschweig, GERMANY; Adservio, Paris, FRANCE; Ajman Municipality Planning Department, Ajman, INDIA; Auldhouse Computer Training Limited, Auckland, NEW ZEALAND; Axellience, Lille, FRANCE; BAE Systems Applied Intelligence, London, UNITED KINGDOM; Benchmark Consulting, Montreal, CANADA; Brockwell Technologies, Inc., Huntsville, AL; Data Security Council of India, New Delhi, INDIA; DRS Training & Control Systems, LLC, Fort Walton Beach, FL; EA-Xperts, Mannheim, GERMANY; Enterprise Architects LTD, London, UNITED KINGDOM; Essentive LLC, Wilmington, DE; Innoitus/Austech Institute PTY Ltd, Moonee Ponds, AUSTRALIA; Jodayn Consulting, Riyadh, SAUDI ARABIA; OAG Analytics, Inc., Houston, TX; Osokey Ltd, Henley-on-Thames, UNITED KINGDOM; Quantico Energy Solutions, Inc., Houston, TX; Semantic Designs, Inc., Austin, TX; Sopra Steria Denmark, Copenhagen, DENMARK; Texas Department of Motor Vehicles, Austin, TX; Vinsys IT Consulting, Pune, INDIA; and Xuenn Private Limited, Taipei City, TAIWAN have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and TOG intends to file additional written notifications disclosing all changes in membership.

On April 21, 1997, TOG filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 13, 1997 (62 FR 32371).

The last notification was filed with the Department on May 29, 2020. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on June 18, 2020 (85 FR 36878).

Suzanne Morris,

Chief, Premerger and Division Statistics Antitrust Division.

[FR Doc. 2020–18980 Filed 8–27–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Countering Weapons of Mass Destruction

Notice is hereby given that, on August 17, 2020, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Countering Weapons of Mass Destruction (''CWMD'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, 3dB Labs, Inc.; West Chester, OH; ANP Technologies, Inc.; Newark, DE; Augmntr, Inc.; Grass Valley, CA; deciBel Research, Inc.; Huntsville, AL; Deep Analytics, LLC; Montpelier, VT; Defense Equipment Company; Alpharetta, GA; DEFTEC Corporation; Huntsville, AL; DiPole Materials, Inc.; Baltimore, MD; Dynetics, Inc.; Huntsville, AL; Eirene Technologies, Inc.; La Mesa, CA; Ennetix, Inc.; Davis, CA; Epiq Design Solutions, Inc.; Rolling Meadows, IL; Firefly Photonics, LLC; Southborough, MA; Immersive Wisdom, Inc.; Boca Raton, FL; JANUS Research Group, LLC; Evans, GA; Jasper Solutions, Inc.; Huntington Station, NY; Kalman & Company, Inc.; Virginia Beach, VA; KD Analytical Consulting, LLC; Lexington, KY; L&C Protec dba Cocoon, Inc.; North Hampton, NH; Lockheed Martin; Moorestown, NJ; MHA Technologies, Inc.; Alexandria, VA; Mobilestack, Inc.; Dublin, CA; Molecular Products, Inc.; Louisville, CO; MuniRem Environmental, LLC; Duluth, GA; Practical Energetics Research, Inc.; Huntsville, AL; Research Innovations Incorporated; Alexandria, VA; Space Information Laboratories; Santa Maria, CA; and University of Pittsburgh; Pittsburgh, PA have been added as parties to this venture.

Also, Space Information Laboratories; Santa Maria, CA has withdrawn as party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and CWMD intends to file additional written notifications disclosing all changes in membership.

On January 31, 2018, CWMD filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 12, 2018 (83 FR 10750).

The last notification was filed with the Department on April 30, 2020. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on May 19, 2020 (85 FR 29975).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2020–18987 Filed 8–27–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Pistoia Alliance, Inc.

Notice is hereby given that, on July 21, 2020, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. Section 4301 *et seq.* (the ''Act''), Pistoia Alliance, Inc. filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Impact Business Information Services Inc. (IBIS Inc), Princeton, NJ; Stichting Triall Foundation, THE NETHERLANDS; Good Clinical Practice Alliance—Europe (GCPA), Leuven (Kessel-Lo), BELGIUM; Zifo Technologies Inc., Deerfield, IL; Sainy Alafaireet (individual member), Columbia, MO; Anderson Ifill (individual member), Willingham, UNITED KINGDOM; Lextech Global Services, Downers Grove, IL; Roger Frechette (individual member), Reading, MA; RAND Europe Community Interest Company, Cambridge, UNITED KINGDOM; QC

Ware Corp., Palo Alto, CA; Bowhead Health, Inc., Kanato, CANADA; and Jason Mesut (individual member), Twickenham, UNITED KINGDOM have been added as parties to this venture.

Also, Cambridge Semantics Incorporated, Boston, MA; WuXi AppTec, Shanghai, PEOPLE'S REPUBLIC OF CHINA; Phenomic AI Inc., Toronto, CANADA; and Avantor Performance Materials (formerly VWR International), Darmstadt, GERMANY have withdrawn as parties to this venture. No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open and Pistoia Alliance, Inc. intends to file additional written notifications disclosing all changes in membership.

On May 28, 2009, Pistoia Alliance, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on July 15, 2009 (74 FR 34364).

The last notification was filed with the Department on April 24, 2020. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on May 19, 2020 (85 FR 29975).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2020–18973 Filed 8–27–20; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Medical CBRN Defense Consortium

Notice is hereby given that, on July 30, 2020, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Medical CBRN Defense Consortium (''MCDC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Abiogenix, Inc.; Rochester, MI; ANP Technologies, Inc.; Newark, DE; Arcturus UAV, Inc.; Petaluma, CA; AstraZeneca Pharmaceuticals, LP; Gaithersburg, MD; Blade Therapeutics, Inc.; South San Francisco, CA; Celularity, Inc.; New York, NY; Commonwealth Trading Partners, Inc.; Alexandria, VA; Cytonus Therapeutics, Inc.; Columbus, OH; D. Wheatley Enterprises, Inc.; Belcamp, MD; ElectroNucleics, Inc.; Placentia, CA; Fast-Track Drugs & Biologics, LLC; Poolesville, MD; Fry Laboratories, LLC; Scottsdale, AZ; Full Effect Biotech, Inc.; Kansas City, KS; GAP Solutions, Inc.; Herndon, VA; iBio CDMO LLC; Bryan, TX; iBio, Inc.; New York, NY; Massachusetts Eye and Ear Infirmary; Boston, MA; MicroHealth LLC; Vienna, VA; Novavax, Inc.; Gaithersburg, MD; Pfizer, Inc.; New York, NY; Planet Biotechnology, Inc.; Hayward, CA; Primmune Therapeutics, Inc.; San Diego, CA; Quantum Leap Healthcare Collaborative; San Francisco, CA; QuickSilver Analytics, Inc.; Hampstead, NC; Regeneron Pharmaceuticals, Inc.; Tarrytown, NY; Resonant Sensors, Inc.; Arlington, TX; Rubix Strategies LLC; Lawrence, MA; Shift Labs, Inc.; Seattle, WA; SiO2 Medical Products, Inc.; Auburn, AL; Space Information Laboratories; Santa Maria, CA; Teledyne Brown Engineering, Inc.; Huntsville, AL; TensorX Inc.; Vienna, VA; Tunnell Consulting, Inc.; Bethesda, MD; Ultimaxx Health, Inc.; Boca Raton, FL; University of Delaware on behalf of NIIMBL; Newark, DE; University of Louisville; Louisville, KY; Vaxart, Inc.; South San Francisco, CA; Zeteo Biomedical LLC; Austin, TX have been added as parties to this venture.

Also, Onyx Government Services; Centreville, VA; Space Information Laboratories; Santa Maria, CA, Valaria Technical Consultants, LLC; Westminister, MD have withdrawn from this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and MCDC intends to file additional written notifications disclosing all changes in membership.

On November 13, 2015, MCDC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on January 6, 2016 (81 FR 513).

The last notification was filed with the Department on April 30, 2020. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on May 19, 2020 (85 FR 29976).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2020–18979 Filed 8–27–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—UHD Alliance, Inc.

Notice is hereby given that, on July 28, 2020, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), UHD Alliance, Inc. (''UHD Alliance'') filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Toshiba Visual Solutions Corporation (formerly Toshiba Lifestyle Products & Services Corporation), Tokyo, JAPAN has withdrawn as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and UHD Alliance intends to file additional written notifications disclosing all changes in membership.

On June 17, 2015, UHD Alliance filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on July 17, 2015 (80 FR 42537).

The last notification was filed with the Department on May 12, 2020. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on May 27, 2020 (85 FR 31808).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2020–18963 Filed 8–27–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—CHEDE–8

Notice is hereby given that, on August 10, 2020, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), CHEDE–8 (''CHEDE–8'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Borgwarner Inc., Auburn Hills, MI, and Toyota Industries Corporation, Aichi, JAPAN have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and CHEDE–8 intends to file additional written notifications disclosing all changes in membership.

On December 4, 2019, CHEDE–8 filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on December 30, 2019 (84 FR 71977).

The last notification was filed with the Department on April 21, 2020. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on May 6, 2020 (85 FR 26988).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2020–18978 Filed 8–27–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Open Source Imaging Consortium

Notice is hereby given that, on August 19, 2020, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Open Source Imaging Consortium, Inc. (''Open Source Imaging Consortium'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Brainomix Ltd., Oxford, UNITED KINGDOM, has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Open Source Imaging Consortium intends to file additional written notifications disclosing all changes in membership.

On March 20, 2019, Open Source Imaging Consortium filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on April 12, 2019 (84 FR 14973).

The last notification was filed with the Department on May 18, 2020. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on June 2, 2020 (85 FR 33733).

Suzanne Morris,

Chief, Premerger and Division Statistics Antitrust Division.

[FR Doc. 2020–18983 Filed 8–27–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Institute of Electrical and Electronics Engineers

Notice is hereby given that, on August 4, 2020, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), the Institute of Electrical and Electronics Engineers (''IEEE'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions or changes to its standards development activities. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, 49 new standards have been initiated and 9 existing standards are being revised. More detail regarding these changes can be found at: *https://standards.ieee.org/about/sasb/sba/june2020.html.*

On February 8, 2015, the IEEE Board of Directors approved an update of the IEEE patent policy for standards development, which became effective on 15 March 2015. The updated policy is available at *http://standards.ieee.org/develop/policies/bylaws/approved-changes.pdf* and, from the effective date, will be available at *http://standards.ieee.org/develop/policies/bylaws/sect6-7.html.*

On September 17, 2004, IEEE filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on November 3, 2004 (69 FR 64105).

The last notification was filed with the Department on May 27, 2020. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on June 26, 2020 (85 FR 38391).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division, Department of Justice.

[FR Doc. 2020–18982 Filed 8–27–20; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 16–33]

Heavenly Care Pharmacy; Decision and Order

On August 3, 2016, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration issued an Order to Show Cause (''OSC'') to Heavenly Care Pharmacy (hereinafter, Respondent or Respondent Pharmacy), which sought to revoke Respondent's DEA Certificate of Registration FH4377291, at the registered location of 617 9th Ave., Bessemer, Alabama, and to deny any pending or current applications for renewal or modifications of FH4377291. Administrative Law Judge Exhibit (ALJX) 1 (OSC), at 1–2, 7 (citing 21 U.S.C. 823(f), 824(a)(4)). The OSC alleged that Respondent's continued registration is inconsistent with the public interest. *Id.* at 1. Specifically, the OSC alleged that Respondent (1) failed to exercise its corresponding responsibility to assess the legitimacy of prescriptions that it filled in violation of 21 CFR 1306.04(a) and failed to dispense controlled substances within the bounds of the pharmacy profession in violation of 21 CFR 1306.06, *id.* at 2; (2) failed to maintain certain records required under federal and Alabama

state law and have them available for inspection, *id.* at 5–7 (citing 21 CFR 1304.11(a) and (b); 1304.11(e)(1)(iii) and (iv); 1304.11(e)(6); 1304.21(a); and 1305.04(a)); and (3) inaccurately reported its dispensing data to the Alabama Prescription Drug Monitoring Program (PDMP), which the OSC alleged ''clearly constitutes 'such other conduct which may threaten the public health and safety' that counsels against [Respondent's] maintenance of a DEA registration,'' *id.* at 7 (citing 21 U.S.C. 823(f)(5)). The Government also alleged via its Supplemental Prehearing Statement that Respondent provided materially false responses in a registration renewal application filed on September 8, 2016. ALJX 16, at 1.

In a letter from its counsel dated September 7, 2016, Respondent requested a hearing on the allegations. ALJX 2. The matter was placed on the docket of the Office of the Administrative Law Judges and assigned to Chief Administrative Law Judge John J. Mulrooney, II (hereinafter, Chief ALJ). Prehearing proceedings were initiated, ALJX 3, and the Government filed a Prehearing Statement, ALJX 4; however, the case was terminated on October 13, 2016, due to the Respondent's non-compliance with the Chief ALJ's orders, ALJX 3, 5–7. On June 15, 2017, the Acting Administrator of the DEA issued an order remanding the matter to the Office of the Administrative Law Judges for a hearing. ALJX 12. The case was reassigned to ALJ Mark M. Dowd. ALJX 21.

Respondent filed a Prehearing Statement and the Government filed a Supplemental Prehearing Statement on July 19, 2017. ALJX 16 and 17. The ALJ issued an order with a consolidated list of the parties' stipulations on August 2, 2017, ALJX 23, and a hearing was conducted on August 29–31, 2017, in Birmingham, Alabama, ALJX 14. Both the Government and the Respondent filed Posthearing Briefs.

On November 6, 2017, the ALJ issued and served his recommended decision, which included the ALJ's recommendation that I revoke Respondent's registration and deny its pending application for renewal. Recommended Decision (hereinafter, RD), at 61. Neither the Government nor Respondent filed exceptions to the ALJ's RD, and the record was forwarded to me for final agency action.

Having considered the record in its entirety, I agree with the RD that the record established, by substantial evidence, two independent grounds for the revocation of Respondent's registration: (1) Respondent's continued registration is inconsistent with the public interest; and (2) Respondent materially falsified its renewal application. I further agree with the RD that Respondent's acceptance of responsibility is insufficient and that, even if it were sufficient, Respondent did not offer adequate remedial measures.

Accordingly, I conclude that the appropriate sanctions are (1) for Respondent's DEA Registration FH4377291 to be revoked; and (2) for any pending application by Respondent to renew or modify its registration be denied. I make the following findings.

I. Findings of Fact

A. Respondent's DEA Registration

Respondent Heavenly Care Pharmacy holds DEA registration FH4377291, which authorizes it to dispense controlled substances in schedules II through V as a retail pharmacy at the registered location of 617 9th Ave. N., Bessemer, Alabama 35020. RD, at 7. The registration was set to expire on October 31, 2016, but Respondent submitted a timely renewal application on September 8, 2016.[1] *Id.*

Respondent's answers on the renewal application were certified as true and correct by Santonia Davison, Respondent Pharmacy's owner/proprietor and Pharmacist-in-Charge (PIC) (hereinafter, PIC Davison). Government Exhibit (hereinafter, GX) 26, at 1; Transcript (hereinafter, Tr.) 693. On the renewal application, Respondent answered ''No'' to the question ''Has the applicant ever surrendered (for cause) or had a federal controlled substance registration revoked, suspended, restricted or denied, or is any such action pending?'' GX 26, at 1; Tr. 214. I find by clear, unequivocal, and convincing evidence that Respondent's answer was false because Respondent acknowledged that it was served the OSC on August 9, 2016. *See* ALJX 2, at 1.

B. The Investigation of Respondent

1. Forgery Investigation

In October 2014, a Diversion Investigator (hereinafter, DI One) and a Birmingham Police Department Sergeant (hereinafter, Police Sergeant) were working a prescription forgery ring, which involved approximately ten pharmacies, including the Respondent Pharmacy.[2] Tr. 130–31, 138–39, 814–16. Prescription pads had been stolen from The University of Alabama Medical Center (UAB) and were being forged to obtain controlled substances. *Id.* at 135, 231–32.

Along with the Police Sergeant, DI One proceeded to the Respondent Pharmacy to obtain hard copies of the forged prescriptions filled there. *Id.* at 131, 234; GX 6. Of the ten pharmacies involved in the investigation, DI One testified that Respondent Pharmacy had the most forged prescriptions filled—at least seven during a two-week time frame. Tr. 138–39, 233–35. While there, PIC Davison notified the Police Sergeant and DI One that one of the forged prescriptions had only been partially filled, and that the individual was expected to return shortly to fill the remainder of the prescription. *Id.* at 133, 816–19. When the subject individual sought to fill the remainder of the prescription, he was arrested by the Police Sergeant and removed to a back room at the pharmacy for questioning. *Id.* at 134, 817–18. Again with PIC Davison's assistance, two other individuals were questioned at the Respondent Pharmacy in connection with the forgery ring that day. *Id.* at 134, 586–87, 817–18.

2. Administrative Inspection

On May 20, 2015, DEA Investigators executed an Administrative Inspection Warrant (AIW) at Respondent. GX 1, at 4; Tr. 30. The lead Diversion Investigator for the audit (hereinafter, DI Two)[3] presented the AIW to PIC Davison. Tr. 30. DI Two was accompanied on the inspection by another diversion investigator, a DEA intelligence analyst, two local police officers, and two Alabama Board of Pharmacy investigators. *Id.* at 30, 31. DI Two testified that when she entered the pharmacy there were papers everywhere ''like someone had turned on a fan in there'' and that there was trash on the counter. *Id.* at 32.

During the inspection, the investigators requested Respondent's ''initial inventory,'' the annual inventory required by the State of Alabama, controlled substance ordering records, controlled substance receipt records, and records accounting for all controlled substances dispensed from the pharmacy, to date. *Id.* at 31–34, 83. DI Two testified that she requested these records for two reasons: (1) To audit the

[1] The status of a registration under an OSC, such as Respondent's, does not impact my jurisdiction or prerogative under the Controlled Substances Act (hereinafter, CSA) to adjudicate the OSC to finality. *Jeffrey D. Olsen, M.D.,* 84 FR 68,474 (2019).

[2] DI One has been a DEA Diversion Investigator since July 2012. She was assigned to the Birmingham DEA Office in September 2012. Tr. 129.

[3] DI Two has been a DEA diversion investigator since February 2011. Tr. 24, 25. DI Two is assigned to investigate DEA registrants, and in that capacity, typically inspects ten to twelve pharmacies a year. Tr. 25–26.

number of controlled substances—the drugs entering and leaving the pharmacy; and (2) to review the records for completeness. *Id.* at 34

PIC Davison was unable to produce an initial inventory of the controlled substances at the pharmacy to DI Two. *Id.* at 32–33. During the hearing, she testified that she did not know that she was required to have an initial inventory, *id.* at 543, but conceded that the Pharmacy Manual, which she studied in pharmacy school and used in developing her policies and procedures, contained a detailed explanation of the initial inventory report requirements, *id.* at 700. PIC Davison was also unable to produce the annual inventory required by the state to be completed on January 15, 2015, *id.* at 33, and during the hearing she stated that she could not produce the inventory record because she did not complete the inventory on January 15, 2015, *id.* at 714.

PIC Davison did produce records during the inspection for the ordering, receipt, and dispensation of controlled substances. For Schedule II substances, Respondent ordered drugs using both DEA Form 222s and through an electronic Controlled Substance Ordering System (CSOS). *Id.* at 35, 46–49, 562. DI Two testified that fifteen of Respondent's DEA Form 222s lacked documentation to evidence the receipt of the number of packages received and the date received, Tr. 46–48; GX 3, and that Respondent had failed to record that it had received the ordered drugs for sixteen orders in Respondent's CSOS, Tr. 35–36, 98–99; GX 2. DI Two acknowledged that documentation of receipt would not exist for drugs that were ordered and not received, Tr. 48–49, and that there was no set amount of time in which a pharmacy must record receipt on a DEA Form 222 or in the CSOS, *id.* at 40–42, but expressed doubt that the orders were not received, because they dated back to 2014 and the pharmacist had not written ''VOID'' on the DEA Form 222s, *id.* at 36–37, 43–44, 48–49. PIC Davison confirmed that Respondent Pharmacy had, in fact, received the orders. *Id.* at 92, 564–65.

DI Two testified that she also found the records for Respondent's orders of schedule III–V controlled substances to be incomplete because they did not indicate the date or the amount received. *Id.* at 50; GX 4. On some of the receipt invoices, Respondent had circled the quantity shipped, which DI Two inferred could indicate the amount received was correct, but on other receipt invoices, there were no circled quantities. Tr. 50–51; GX 4. PIC Davison did sign the invoices, which she testified she did to document receipt of the order and confirm that the quantity and date listed on the invoice were correct. Tr. 578; GX 4.

DI Two further testified that, in her experience, it was unusual to find such a large number of record-keeping discrepancies at a new pharmacy, such as Respondent Pharmacy. Tr. 112. She stated that the paperwork at newer pharmacies is generally very compliant and that, in general, it is not until a pharmacy is busier that the record-keeping becomes ''sloppier.'' *Id.* at 112–13.

As part of executing the AIW, DI Two completed a closing inventory (count) of the generic versions of six controlled substances—hydrocodone 10/325, hydrocodone 7.5/325, promethazine with codeine cough syrup, oxycodone 10/325, oxycodone 15, and oxycodone 30. *Id.* at 34, 115, 120–21. Using Respondent's receipt and dispensation records, the DI conducted an audit of Respondent's handling of these six controlled substances. *Id.* at 34. These records included Respondent's DEA Form 222s, CSOS records, schedule III–V receipt invoices, and dispensation records printed by PIC Davison from her electronic system and provided to the investigators. Tr. 55–57, 555–57; GX 27. DI Two stated that for the purposes of the audit, she assumed all drug orders had been received by the pharmacy even though, as described above, Respondent had not documented receipt of all orders. Tr. 53. DI Two's audit found both shortages and overages among the six drugs, including a 22% shortage of oxycodone 10/325 and a 92% overage of hydrocodone 7.5/325. GX 5.[4]

Respondent disputes the accuracy of DI Two's audit. Tr. 551–57. PIC Davison testified that she completed her own closing inventory of the six controlled substances on May 20, 2015, and had a different count than DI Two's for five of the six drugs. Tr. 551–52; GX. 7, at 3. PIC Davison also testified that she believes DI Two's tabulations for the amounts distributed for five of the six drugs were inaccurate, because they were based on an incorrect report that PIC Davison provided at the inspection. Tr. 553–57. PIC Davison stated that she did not know how to run the report in her computer system for the information that DI Two requested, and it was not until July 6, 2015, that PIC Davison ran the ''correct'' report, on which she based her own tabulations.[5] Tr. 555, 561; GX 7, at 3. PIC Davison does not dispute that the July 6 report, which she claims to be the report that should have been used for the audit, was not available to the DEA Investigators during the inspection of Respondent Pharmacy. Tr. 561.

DI Two returned to the Respondent Pharmacy on May 21, 2015, to discuss with PIC Davison each regulatory violation, the audit discrepancies that DI Two discovered, and instructions regarding steps to correct these violations. *Id.* at 62–64, 81, 85, 112.[6] DI Two did not recall any explanation by PIC Davison for the regulatory violations or audit discrepancies discussed. *Id.* at 63–64.

The ALJ found, and I agree, that the testimony of DI Two regarding the execution of the AIW, the audit, and all other aspects of her testimony was fully credible. RD, at 13.

3. July 6, 2015 Meeting

DI One reviewed the results of the AIW at Respondent Pharmacy and invited PIC Davison to attend a meeting on July 6, 2015, at the Birmingham DEA Office with DI One, two of DI One's supervisors, and two investigators from the Alabama Board of Pharmacy, including its Chief Investigator, to discuss bringing the Respondent Pharmacy ''into compliance'' with the relevant regulations and professional standards. Tr. 143–44. The officials contemplated entering into a Memorandum of Agreement (MOA) with Respondent Pharmacy for what was essentially a probationary period in which the DEA would agree not to seek

[4] DI Two explained that a shortage occurs when a pharmacy cannot account for drugs received, *i.e.,* the drug is not in the pharmacy's inventory but there is no record of it being dispensed or otherwise leaving the pharmacy, and an overage reflects the presence of controlled substances in the pharmacy's inventory in excess of the recorded amount received. Tr. 58.

[5] PIC Davison's own tabulations using the July 6 report still showed a shortage for one and overages for three of the six audited drugs. GX 7, at 3. At the hearing, after seeing the July 6 report and PIC Davison's tabulations, DI Two testified that she believed at least one of PIC Davison's tabulations was incorrect. Tr. 823–24.

[6] DI Two testified that after the May 21, 2015 conversation with PIC Davison she had no other interaction with the Respondent Pharmacy. Tr. 65. However, DI Two did learn through DI One that PIC Davison believed that either DI Two or one of the individuals on the day of the AIW took with them a notebook that had the missing records, or improperly kept records from it. *Id.* at 66. DI Two testified that this was not possible, as the alleged notebook had been reviewed multiple times on May 20, 2015. *Id.* at 66. Moreover, DI Two did not believe that a notebook that had been taken from the Respondent Pharmacy contained any missing/incomplete records as DI Two and the other investigators spent five to six hours in the Respondent Pharmacy, and the Respondent Pharmacy was not very large, and DI Two believed that if the record was there, it would have been found. *Id.* at 68. Moreover, DI Two stated that everything taken from the Respondent Pharmacy was recorded in Government Exhibit 1. *Id.* at 69; *see* GX 1.

sanctions as long as the Respondent Pharmacy cooperated with the DEA to bring the Respondent Pharmacy into compliance. *Id.* at 144–45. At some point during the meeting,[7] the officials decided that an MOA would not be appropriate, and that proceedings would be initiated to pursue revocation of the Respondent Pharmacy's registration. *Id.* at 144. DI One explained that this decision was reached because PIC Davison did not concede that the reported violations had occurred, deflected direct questions, and wished to dispose of the matter by simply paying a fine. *Id.* at 145–47.

PIC Davison testified that she learned about the requirement to have an initial inventory during the July 6 meeting and, after the meeting, went to the pharmacy to look through her records and ''see if [she] could find perhaps what they could be looking for.'' *Id.* at 543–44. PIC Davison found a ''Narcotics Sales Report'' generated from Cardinal Health, Respondent Pharmacy's sole pharmaceutical distributor, which listed Respondent's controlled substance purchases from May 1 to May 31, 2014, and which PIC Davison thought was ''as close to what they were explaining to me I should have [for an initial inventory].'' *Id.* at 544–45. PIC Davison then handwrote ''Initial Inventory'' on the report. *Id.* at 545.

The next morning, July 7, 2015, at 1:54 a.m., DI One received an email from PIC Davison explaining that her ''initial inventory'' had been in a three-ring binder that had been ''retrieved'' by one of the DEA Agents during the May 20, 2015, inspection.[8] Tr. 149–50. The email included a two-page attachment, the ''Narcotics Sales Report,'' which PIC Davison purported to be the Respondent Pharmacy's ''initial inventory.'' Tr. 151; GX 7, at 58–59. DI One suspected that the report was produced on the evening of July 6, 2015.[9] Tr. 150–53, 246–48, 253. The ''Narcotics Sales Report'' included a list of the schedule III through V controlled substances procured by the Respondent Pharmacy from Cardinal Health from May 1, 2014, through May 31, 2014. Tr. 151–55; GX 7, at 58–59. The Respondent Pharmacy opened for business on May 26, 2014. Besides perhaps not being a timely report—that is, not created at the time the Respondent Pharmacy began dispensing controlled substances, Tr. 151–156—DI One opined that it was not a fully compliant initial inventory report, as it lacked several other necessary elements. It did not include the initial inventory of schedule I and II controlled substances. It also lacked a specific date and whether it was taken at the open or close of business on that date. *Id.* at 154, 250.

4. DI One's Investigation

Sometime following the July 6, 2015 meeting with PIC Davison, DI One received a call from a local Alabama doctor, (hereinafter, Dr. F.), complaining that the Respondent Pharmacy had filled a prescription and attributed it to him (Dr. F.) in the Alabama Prescription Drug Monitoring Program, PDMP, which the doctor denied prescribing. *Id.* at 157–59. To investigate the matter further, DI One retrieved the PDMP report for the subject prescription and a PDMP report for the Respondent Pharmacy from August 2014-August 2015, revealing all controlled substances dispensed by the Respondent Pharmacy during that period. *Id.* at 159–60; *see* GX 8. DI One further retrieved the original prescription from the Respondent Pharmacy, which identified a different doctor as the prescriber, yet the Respondent Pharmacy label incorrectly identified Dr. F. as the prescriber. Tr. 162–68; see GX. 9.

Using the August 2014-August 2015 PDMP report, DI One located two other instances where the wrong doctor was identified as the prescriber in the subject Respondent Pharmacy PDMP report. *Id.* at 170–71. DI One also found instances where duplicate prescriptions were entered into the PDMP. *Id.* at 172–73; *see* GX 10, at 36. DI One additionally identified a twenty-one day period in which no controlled substance prescriptions were entered into the PDMP by the Respondent Pharmacy, yet nearly 100 prescriptions were filled there during that period. Tr. 174; *see* GX 10, at 36. These discrepancies prompted DI One to retrieve a number of original prescriptions from the Respondent Pharmacy. Tr. 180–81; *see* GX 11–17, 28.

DI One also testified regarding the two administrative subpoenas the DEA issued to Respondent. Tr. 197. The first was issued on February 16, 2016, and requested any documentation on prescriptions for specific patients, specific prescribers, and patients and prescribers that met certain characteristics. GX 18. Respondent replied to this subpoena with a single document describing Respondent's interactions with and knowledge of the patients and prescribers in narrative, summary form. GX 19. The DEA issued a second subpoena on May 6, 2016, requesting ''any and all documents or records (paper or electronic) reflecting efforts by pharmacists at Heavenly Care Pharmacy to exercise their corresponding responsibility to assess the prescriptions for controlled substances they were asked to fill or dispense from March 1, 2013, through December 31, 2015.'' GX 20. The subpoena was delivered to Respondent's counsel along with a letter clarifying that the DEA was not asking Respondent to ''create documents that do not already exist'' but rather was seeking ''contemporaneous documents or records that fit the description provided in the subpoena.'' *Id.; see* Tr. 202. DI One testified that the DEA served the second subpoena because it wanted to be sure that Respondent ''provided any and all documentation regarding patient profiles of dispensing controlled substances to the specific patients and prescribers on the administrative subpoena.'' Tr. 204. Respondent replied to this subpoena with printouts of patient profiles that Respondent kept in its computer system regarding the patients identified by the DEA. GX 22; *see* Tr. 209–10. DI One provided Respondent's responses to the subpoenas to Dr. Alverson to use in her review. Tr. 197.

The ALJ found, and I agree, that, although DI One reported some memory lapse regarding uncritical aspects of the investigation, her testimony was credible in all relevant respects. RD, at 15.

C. Testimony of Dr. Susan Alverson

1. Dr. Alverson's Credentials

Dr. Susan Alverson, a licensed pharmacist for forty-nine years, has been the Executive Secretary for the Alabama Board of Pharmacy for the preceding four years. Dr. Alverson was qualified as an expert in retail pharmacy and the standards for retail pharmacists under both Alabama and federal law and regulations. *Id.* at 309–12. The ALJ found that Dr. Alverson testified convincingly as an expert witness and Respondent conceded Dr. Alverson is a renowned expert. RD, at 20.

2. Auburn University Encounter

Prior to offering her expert opinion testimony, Dr. Alverson testified as a fact witness regarding an encounter she had with PIC Davison approximately

[7] DI One could not remember how long into the meeting the decision was made to move for revocation, and Counsel for the Respondent Pharmacy suggested the meeting only lasted perhaps 90 seconds; however, PIC Davison later suggested the meeting lasted at least 30–40 minutes. Tr. 549.

[8] PIC Davison later explained to DI One that the initial inventory had been picked up by a DEA Agent during the May 20, 2015 audit, and was not discovered by PIC Davison until later that evening. Tr. 258.

[9] The time of the document's creation was suggested to the Government by review of other documents apparently created coincident to the subject document. Tr. 150–56.

one month prior to the hearing. Tr. 313. Dr. Alverson was at Auburn University for a continuing education program. Following the program, Dr. Alverson was approached by PIC Davison, one of Dr. Alverson's former students at Samford University. *Id.* at 313–316. PIC Davison told Dr. Alverson that DEA wanted to ''take [her] license.'' *Id.* at 315–16. PIC Davison began to explain the circumstances of her situation to Dr. Alverson. She explained, in essence, that patients from a nearby pharmacy who appeared to be addicted to prescription drugs had gravitated to her pharmacy. *Id.* PIC Davison suggested she could not ''just cut them off and leave them with no options.'' *Id.* at 317. PIC Davison also voiced her concern to Dr. Alverson about disparate treatment of black patients by the medical/pharmaceutical establishment and law enforcement. *Id.*

On cross-examination, Dr. Alverson conceded PIC Davison's comments may have been less exacting. Dr. Alverson testified that it was possible PIC Davison did not use the word ''addicted'' and may have instead said that the subject patients were receiving the same medication from another pharmacy before coming to Respondent Pharmacy and that ''[w]hatever problems they had when they got to [Respondent Pharmacy], they had those problems before they got to [Respondent Pharmacy].'' *Id.* at 329–30.

Dr. Alverson was unaware of the name of the pharmacist involved in her review of Respondent Pharmacy (and therefore did not immediately connect PIC Davison to Respondent Pharmacy), but as their conversation progressed, Dr. Alverson recognized the circumstances described by PIC Davison as involving the instant investigation. *Id.* PIC Davison then reported that she had read Dr. Alverson's statement on the matter. Dr. Alverson advised PIC Davison to confer with PIC Davison's attorney for advice, and took her leave. *Id.* at 316–17.

The ALJ found, and I agree, that Dr. Alverson testified credibly as a fact witness. RD, at 20.

3. Dr. Alverson's Expert Opinion

Dr. Alverson testified about an Alabama pharmacy's/pharmacist's standard of practice when presented with a controlled substance prescription. *See* Tr. 331–356. Dr. Alverson explained the evolution of the professional responsibilities of pharmacists to the contemporary healthcare team-concept, in which the pharmacist has a ''corresponding responsibility'' to the prescribing physician to make an independent evaluation of each prescription. Tr. 334–35, 347. A pharmacist cannot assume that a prescription is legitimate just because it was written by a physician. *Id.* at 348. The pharmacist acts as the final ''gatekeeper'' in dispensing prescribed medication, with the patient's health and safety of paramount concern. *Id.* at 347–52. The pharmacist must make her own determination that a prescribed drug is safe and appropriate for the patient and look for indicators that the drug was prescribed for illegitimate reasons or outside the norms of the medical profession. *Id.* at 332, 347–48, 377, 474.

Dr. Alverson noted that the State of Alabama had adopted this concept and codified it in several provisions of the Alabama Administrative Code. *See* Tr. 335; GX 25; Ala. Admin. Code 680–X–2–.21. For example, Ala. Admin. Code 680–X–2–.21(2) provides that ''[e]ach new prescription and, where appropriate, refill prescription, should be reviewed for, but not limited to, the following: (a) Therapeutic duplication; (b) drug-disease contraindication where indicated; (c) drug-drug interaction; (d) incorrect dosage/duration; (e) drug allergy interactions; and (f) clinical abuse/misuse.'' Dr. Alverson explained the practical application of these requirements, what is expected of Alabama pharmacists in these regards, and the potential fatal consequences to patients upon the pharmacist's failure to comply with any of these provisions. Tr. 336–40. Dr. Alverson discussed the pharmacist's codified responsibility to develop, document, and maintain patient medication profiles and patient notes, and explained the critical importance of this provision. Tr. 341, 518–23; *see* Ala. Admin. Code 680–X–2–.21(5). In addition to their internal documentation, Dr. Alverson testified that pharmacies in Alabama are required to report each dispensation of a controlled substance to the State's PDMP. Tr. 507–08.

Dr. Alverson explained the various warning signs—''red flags''—of diversion or abuse of which a pharmacist must be cognizant to protect the safety of the patient and community. These included: Doctor-shopping; pharmacy-shopping; the doctor and practice specialty; [10] over-prescribing or duplication of pain medication; traveling long distances to obtain or fill prescriptions; drug combinations susceptible to abuse, *e.g.,* a combination of pain medication with anxiety medication and a muscle relaxant, which is informally referred to as a ''cocktail,'' and well-known as evidence of abuse or diversion; among others. Tr. 348–52, 401. In the face of these red flags, a pharmacist is expected to investigate the matter, to either satisfy her concerns or, failing that, to decline to fill the prescription. Tr. 352, 391. Dr. Alverson explained the investigation would include steps such as interviewing the patient, calling the prescribing physician, reviewing the patient's records in the PDMP, and checking the Alabama Medical Board's website to determine the prescribing physician's registration status, location, and specialty. Tr. 378–381. If the pharmacist fills the prescription, the pharmacist is obliged to document the results of her investigation in the electronic patient notes or on the prescription and the documentation should always be contemporaneous. Tr. 353, 361, 378. These notes are used upon a patient's return to the pharmacy to demonstrate to the pharmacist or to the next pharmacist that red flags have been investigated and resolved, and to demonstrate that the pharmacist is practicing their due diligence. Tr. 353, 520.

Dr. Alverson discussed how pharmacists must use the professional judgment that they develop from education and training. *Id.* at 345. She explained that accredited pharmacy schools offer a class in pharmacy law covering both state and federal law and lessons on pharmacists' responsibilities under the law are integrated into the curriculum of other classes. *Id.* at 346. In order to obtain a pharmacy license, one must pass both a clinical examination, as well as a law exam, which covers both state and federal law. *Id.* Dr. Alverson testified that the corresponding responsibility of a pharmacist is included in the law exam and taught under the pharmacy school curriculum. *Id.* at 347. Dr. Alverson also emphasized that the Alabama Code of Professional Conduct requires a pharmacist to stay abreast of developments in the field, including patterns of abuse and diversion. *Id.* at 343–44; GX 24; Ala. Admin. Code 680–X–2–.22.

In her testimony, Dr. Alverson reacted to the comments made to her at Auburn University by PIC Davison a month prior to the hearing to the effect the subject patients had already been on the subject medications when they reached the Respondent Pharmacy, and had

[10] Dr. Alverson testified that it is important to know the doctor's specialty to determine if a prescription is appropriate. She used the example of an oncologist prescribing higher doses of pain medication to end-stage/hospice patients. Tr. 351. As a counter example, she explained that she would question the appropriateness of a dentist prescribing 30 days of a pain medication for a tooth pull. Tr. 349.

already developed addiction problems. Dr. Alverson deemed that rationale inconsistent with a pharmacist's responsibility, and suggested appropriate responses: Counsel the patient to see a different doctor, refer them to treatment programs, and refuse to fill such prescriptions. Tr. 447–48. Dr. Alverson also dismissed a suggestion that Respondent Pharmacy's responsibilities to investigate red flags were in some way lessened when the prescription was a transfer from another pharmacy—noting that a pharmacy should review transfer prescriptions the same as any new patient prescription. *Id.* at 453.

Dr. Alverson reviewed a number of documents provided by the DEA including patient records from Respondent Pharmacy, corresponding prescriptions from those patients, and a record Respondent Pharmacy produced in response to a DEA subpoena. Dr. Alverson also reviewed records from the Alabama PDMP. She noted that from November 10, 2014, until December 1, 2014, the Respondent Pharmacy made no reports of dispensing controlled substances to the PDMP, despite the presence of original prescriptions evidencing the filling of controlled substances during that period. *Id.* at 393–95. On cross-examination, Dr. Alverson conceded that the pharmaceutical knowledge base was ever-growing and the professional standards ever-evolving, but confirmed that she evaluated the Respondent Pharmacy based upon the standards in place at the time of the dispensations. *Id.* at 460–73.

a. Patient M.A. (Male) [11]

For the first patient discussed, male M.A., Dr. Alverson noted that the patient arrived at Respondent Pharmacy in December 2014 with prescriptions for a risky combination of drugs, but that none of the records included any patient notes by PIC Davison, as would be expected in light of the red flags revealed by the prescriptions. *Id.* at 359–68, 382, 494; GX 11, 22. The medications prescribed to M.A. included both hydrocodone and oxycodone, which are two opioid pain medications and respiratory depressants that ''potentiate'' each other, or magnify the other's effects. Tr. 369. These medications were coupled with carisoprodol, a muscle relaxant, which further acts to depress respiration. *Id.* at 368–70. Dr. Alverson testified that a responsible pharmacist would have investigated why this combination of drugs, all of which cause respiratory depression and work the same way, were prescribed and would have declined to dispense the drugs unless satisfied that she could dispense them safely. *Id.* at 377.

Dr. Alverson noted that M.A.'s dose of pain medication (oxycodone) was doubled from 60 tablets to 120 tablets over a thirty-day period, when the best practice is to increase by no more than 25% at a time. *Id.* at 383–84. The increase also troubled Dr. Alverson, because the oxycodone was prescribed for breakthrough pain but was being prescribed at the level for a maintenance pain drug, *id.* at 386; and then, in June 2015, the doctor switched which pain medication was for maintenance and which was for breakthrough pain, *id.* at 386–390. Dr. Alverson testified that this switch was a red flag for abuse because it indicated the doctor ''didn't really care about providing legitimate medical treatment.'' *Id.* at 390. In June 2015, the patient was also prescribed zolpidem, a fourth respiratory depressant. *Id.* at 385. In addition, patient M.A. continued to receive repeated refills of carisoprodol despite a Food and Drug Administration (FDA) approval saying that the drug should not be used for more than three weeks. *Id.* at 370.

Dr. Alverson opined the prescribing pattern for M.A. was inconsistent with accepted pharmaceutical standards and posed a danger to the patient. *Id.* at 379, 502–03. She stated that in addition to an investigation at the initial prescription (of which there was no record), Respondent Pharmacy should have done further investigations based on the increased quantities and number of drugs prescribed. *Id.* at 391. Dr. Alverson found no indication in the records before her, which included copies of the front and back of the original hard-copy prescription and the patient's profile from Respondent's electronic system, that an appropriate, timely investigation was ever performed by the Respondent Pharmacy regarding the above-noted red flags. *Id.* at 392, 500, 504. Dr. Alverson testified that the prescriptions should not have been filled without investigation, and that even if the pharmacist had completed an investigation and just failed to document the investigation, the lack of documentation is itself a violation of the standard of care in Alabama. *Id.* at 502–504.

b. Patient C.W.[12]

The next patient discussed, C.W., had controlled substances prescribed by two different doctors—a red flag—as well as pain medication coupled with a muscle relaxant and benzodiazepine, or in Dr. Alverson's words a drug ''cocktail,'' as discussed above. *Id.* at 393, 396–98; GX 10, 12, 22. Despite the red flags, Dr. Alverson found no evidence that any investigation was undertaken by the Respondent Pharmacy, which Dr. Alverson stated was contrary to what was expected of a pharmacist acting in the usual course of the retail pharmacy profession in Alabama. Tr. 399–400.

The physician later added promethazine and codeine cough syrup to C.W.'s prescriptions, an additional controlled substance with a high street value. *Id.* at 401; GX 22, at 23. The patient also received an unusual increase in medication amounts and there was a three-month gap in treatment. Dr. Alverson noted no investigation evident by the Respondent Pharmacy into these, and other, red flags and said that without investigation and documentation a pharmacist within

[11] The parties stipulated that Respondent filled the following prescriptions for controlled substances for patient M.A. (male): on December 1, 2014, 30 tablets of carisoprodol 350mg and 120 tablets of hydrocodone-acetaminophen 10–325 mg; on December 8, 2014, 60 tablets of oxycodone 15mg; on January 6, 2015, 30 tablets of carisoprodol 350mg, 120 tablets of oxycodone 15mg, and 120 tablets of hydrocodone-acetaminophen 10–325mg; on February 9, 2015, 30 tablets of carisoprodol 350mg, 120 tablets of oxycodone 15mg, and 120 tablets of hydrocodone-acetaminophen 10–325mg; on March 9, 2015, 30 tablets of carisoprodol 350mg, 120 tablets of oxycodone 15mg, 120 tablets of hydrocodone-acetaminophen 10–325mg, and 30 tablets of zolpidem 10mg; on April 13, 2015, 30 tablets of carisoprodol 350mg, 120 tablets of oxycodone 15mg, 120 tablets of hydrocodone-acetaminophen 10–325mg, and 30 tablets of zolpidem 10mg; on May 11, 2015, 30 tablets of carisoprodol 350mg, 120 tablets of oxycodone 15mg, 120 tablets of hydrocodone-acetaminophen 10–325mg, and 30 tablets of zolpidem 10mg; on June 8, 2015, 120 tablets of oxycodone 15mg, 120 tablets of hydrocodone-acetaminophen 10–325mg, and 30 tablets of zolpidem 10mg; on July 13, 2015, 30 tablets of carisoprodol 350mg, 120 tablets of oxycodone 15mg, and 120 tablets of hydrocodone-acetaminophen; on August 17, 2015, 30 tablets of carisoprodol 350mg, 120 tablets of oxycodone 15mg, and 120 tablets of hydrocodone-acetaminophen. RD, at 3–4.

[12] The parties stipulated Respondent filled the following prescriptions for controlled substances for patient C.W. On December 5, 2014, 30 tablets of carisoprodol 350mg; on December 9, 2014, 31 tablets of alprazolam 2mg and 60 tablets of oxycodone 30mg; on January 16, 2015, 180ml of promethazine-codeine syrup; on February 18, 2015, 90 tablets of oxycodone 30mg, 100 tablets of hydrocodone-acetaminophen 10–325mg, and 30 tablets of alprazolam 2mg; on March 18, 2015, 30 tablets of alprazolam 2mg and 30 tablets of carisoprodol 350mg; on June 15, 2015, 30 tablets of carisoprodol 350mg, 30 tablets of alprazolam 2mg, another 30 tablets of alprazolam 2mg, 100 tablets of hydrocodone-acetaminophen, and 100 tablets of oxycodone 30mg; on June 16, 2015, 180ml of promethazine-codeine syrup; on July 15, 2015, 30 tablets of carisoprodol 350mg, 30 tablets of alprazolam 2mg, 100 tablets of hydrocodone-acetaminophen, and 100 tablets of oxycodone 30mg; on August 18, 2015, 30 tablets of carisoprodol 350mg, 60 tablets of alprazolam 2mg, 100 tablets of hydrocodone-acetaminophen, and 100 tablets of oxycodone 30mg. RD, at 4.

the usual course of professional practice could not continue to fill prescriptions for C.W. Tr. 402–05.

c. Patient D.B.[13]

The third patient discussed, D.B., was prescribed 180 tablets of methadone-10 milligrams and 90 tablets of carisoprodol-350 milligrams by two different doctors. Tr. 413–14; GX 13, 22, 25.[14] Dr. Alverson explained the heightened danger caused by methadone, as methadone creates its own form of sleep apnea and is responsible for a disproportionate number of deaths among the synthetic opioids, especially when prescribed in conjunction with another respiratory depressant, as was done for this patient. Tr. 414–15. Alprazolam, a benzodiazepine, was later added to this patient's prescription creating the red flag drug ''cocktail.'' *Id.* at 418–19. Dr. Alverson noted that as of September 1, 2016, alprazolam became the subject of a ''black box'' warning issued by the FDA, putting all pharmacists on notice of the heightened risk of fatal consequences when combining the drug with an opioid. *Id.* at 418–19, 495. Although the ''black box'' warning was issued after the subject prescription was filled, Dr. Alverson noted that the dangerous combination of alprazolam and opioids was well-known within the pharmacy community in 2014. *Id.* at 420. Despite the danger of D.B.'s prescriptions, no investigation by the Respondent Pharmacy was evident in the records reviewed by Dr. Alverson. *Id.* at 420–21.

d. Prescriptions Issued by Dr. U.I.[15]

Dr. Alverson then reviewed three prescriptions issued to three different patients by the same doctor, Dr. U.I., for the benzodiazepine/opioid/muscle relaxant ''cocktail.'' Tr. 421; GX 14. She noted that it was ''strange'' to see a physician write this combination of drugs repeatedly for a variety of patients and was indicative of a problem because the ''cocktail'' is rarely prescribed for legitimate medical reasons. Tr. 421–22. Dr. Alverson also found it highly suspicious that two of the three patients shared the same last name and lived at the same address, suggesting they were related. *Id.* at 422. She stated that it would be extraordinarily rare for two people living at the same address to receive this combination of drugs for legitimate medical purposes. *Id.* at 424. Dr. Alverson opined that after the second cohabitant presented a prescription for this cocktail, Respondent Pharmacy should have declined to fill the prescription and that a pharmacist could not fill the prescription consistent with their professional responsibilities.

e. Prescriptions Issued by Dr. S.H.[16]

Dr. Alverson also reviewed several opioid prescriptions issued by the same doctor, Dr. S.H., to three separate patients, which were filled at the Respondent Pharmacy within minutes of each other, suggesting the patients arrived together. Tr. 427–28; GX 15. Dr. Alverson described this circumstance as suspicious, in that, three patients from different parts of the area would be highly unlikely to appear together at the same pharmacy at the same time, unless they were involved in diversion. Tr. 429–33.

f. Patient A.C.[17]

Dr. Alverson's review of patient A.C.'s records revealed a patient who was prescribed opioids by multiple doctors and filled at multiple pharmacies within a 30-day period, which was suggestive of doctor-shopping and pharmacy-shopping. Tr. 434–38; GX 16, 28. Dr. Alverson noted that a review of the PDMP by the pharmacist would have disclosed these suspicious circumstances. For example, if PIC Davison had reviewed the PDMP before dispensing a prescription of hydrocodone to A.C. on September 24, 2015, she would have seen that A.C. had five different prescriptions for hydrocodone in the previous month. Tr. 438; GX 28. Dr. Alverson stated that, under the circumstances, the prescriptions should not have been filled, and the prescribing doctors and the police should have been notified. Tr. 439–440.

g. Patient R.D.[18]

The Respondent Pharmacy filled opioid prescriptions for patient R.D., which turned out to be forgeries. The filled prescriptions included a month's supply of hydrocodone and a month's supply of oxycodone, which Respondent Pharmacy filled within a week of each other. *Id.* at 441; GX 17. Dr. Alverson testified that there is no ''logical reason'' narcotics would be prescribed in this way and that an Alabama pharmacist acting in the bounds of her profession would be expected to investigate the prescriptions by calling the prescriber and checking the PDMP. Tr. at 441; *see also,* GX 31, at 26. Dr. Alverson conducted a brief investigation of the prescriptions by accessing the Alabama Medical Board website, which revealed the prescribing doctor to be an OB–GYN. Tr. at 444–45. Patient R.D. was a man. *Id.* at 445.

D. Testimony of Dr. Santonia Davison

PIC Davison was born in Bessemer, Alabama, attended the local high school, graduated from Miles College with a B.S. in biology, and then graduated from Samford University with a Doctorate of Pharmacy in 2011. Tr. 530–31. PIC Davison began her pharmacy career at CVS Pharmacy, where she ultimately worked at all 43

[13] The parties stipulated that Respondent filled the following prescriptions for controlled substances for patient D.B.: On December 2, 2014, 180 tablets of methadone 10mg and 90 tablets of carisoprodol 350mg; on December 29, 2014, 180 tablets of methadone 10mg, 90 tablets of carisoprodol 350mg, and 90 tablets of alprazolam 2mg; on January 20, 2015, 90 tablets of Lyrica 100mg; on January 26, 2015, 210 tablets of methadone 10mg, 90 tablets of carisoprodol 350mg, and 90 tablets of alprazolam 2mg; on February 23, 2015, 210 tablets of methadone 10mg, 90 tablets of carisoprodol 350mg, 90 tablets of alprazolam 2mg, and 90 tablets; on March 20, 2015, 210 tablets of methadone 10mg, 90 tablets of carisoprodol 350mg, 90 tablets of alprazolam 2mg, and 90 tablets of Lyrica 100mg; on April 20, 2015, 210 tablets of methadone 10mg, 90 tablets of carisoprodol 350mg, and 90 tablets of alprazolam 2mg; on May 11, 2015, 90 tablets of Lyrica 100mg; on May 18, 2015, 210 tablets of methadone 10mg, 90 tablets of carisoprodol 350mg, and 90 tablets of alprazolam 2mg; on June 5, 2015, 90 tablets of Lyrica 100mg; on June 15, 2015, 210 tablets of methadone 10mg, 90 tablets of carisoprodol 350mg, and 90 tablets of alprazolam 2mg; on July 7, 2015, 150 tablets of methadone 10mg, 90 tablets of carisoprodol 350mg, and 90 tablets of alprazolam 2mg; on August 4, 2015, 90 tablets of Lyrica 100mg; on August 10, 2015, 90 tablets of carisoprodol 350mg and 90 tablets of alprazolam 2mg; on August 12, 2015, 180 tablets of methadone 10mg. RD, at 4–5.

[14] On cross-examination, Dr. Alverson conceded that her concern regarding prescriptions from two separate doctors would be alleviated by learning that they were partners at the same clinic. Tr. 514–15.

[15] The parties stipulated that Respondent filled the following prescriptions from Dr. U.I.: On April 28, 2015, 90 tablets of carisoprodol 350mg, 120 tablets of hydrocodone-acetaminophen 10–325mg, and 60 tablets of alprazolam 1mg to [female] M.A.; on April 30, 2015, 60 tablets of carisoprodol 350mg, 90 tablets of hydrocodone-acetaminophen 10–325mg, and 60 tablets of alprazolam 1mg to T.K.; on May 1, 2015, 30 tablets of zolpidem tartrate 10mg, 30 tablets of lorazepam 1mg, 60 tablets of hydrocodone-acetaminophen 10–325mg, and 60 tablets of carisoprodol 350mg to J.K. RD, at 5.

[16] The parties stipulated that on August 13, 2015, Respondent dispensed 84 tablets of oxycodone 15mg to patient T.M., 112 tablets of oxycodone 30mg to patient P.I., and 112 tablets of oxycodone 30mg to patient J.C. based on prescriptions issued by Dr. S.H. RD, at 5.

[17] The parties stipulated that on September 23 and 24, 2015, Respondent dispensed 30 tablets of carisoprodol 350mg and 30 tablets of hydrocodone-acetaminophen 7.5–325mg to A.C. RD, at 5.

[18] The parties stipulated that Respondent that on October 11, 2014, Respondent dispensed 90 tablets of oxycodone 30mg to R.D., and on October 6, 2014, Respondent dispensed 120 tablets of hydrocodone-acetaminophen 10–325mg and 90 tablets of alprazolam 2mg to R.D. RD, at 5–6.

stores within the district. *Id.* at 532. The CVS stores shared the same policies and procedures and computer programs. *Id.* at 535–36. Their pharmacy computer program performed many pharmacist functions automatically, including a ''medication conflict check,'' a drug interaction check, and a therapeutic duplication check. *Id.* at 536. When the program recognized a problem with a prescription, the interactive program required the pharmacist to check a box designating how the pharmacist resolved the issue, such as, ''review of patient history,'' ''medication review,'' and ''prescriber consult,'' before the system would permit a prescription to be filled. The CVS software also allowed the pharmacists to make patient notes and automatically reported each prescription dispensed to the PDMP. *Id.* at 541. PIC Davison reported that although the combination of an opioid and a benzodiazepine would trigger an alert for ''therapeutic duplication,'' CVS had no official policy restricting the filling of that drug combination between 2011 and 2013. *Id.* at 538.

PIC Davison left CVS in 2013 in preparation for opening her own pharmacy. *Id.* at 538. She opened Respondent Pharmacy, Heavenly Care Pharmacy, on May 26, 2014, as the Pharmacist-in-Charge. *Id.* at 539, 693. PIC Davison developed the policies and procedures for the pharmacy by borrowing from ''care pharmacy'' association and from CVS. *Id.* at 540. She purchased her pharmacy software system from Abacus. *Id.* Although similar to the CVS software, PIC Davison testified the Abacus software became unreliable in automatically reporting dispensed prescriptions to the PDMP. *Id.* at 541. After discussions with DEA officials regarding missing PDMP data, which included a three-week lapse in reporting to the PDMP, PIC Davison began manually reporting to the PDMP. *Id.* at 541–42, 619, 753–55. PIC Davison explained that the Respondent Pharmacy also submitted a file to the PDMP that included data from the time the pharmacy opened. *Id.* at 753–55.

PIC Davison described her understanding of her record-keeping responsibilities as an ongoing process, prompted by the visits to her pharmacy by DEA. *Id.* at 558–60, 812. PIC Davison conceded that she had not properly documented the ordering and receipt of controlled substances to the pharmacy through inadvertence, computer issues, prioritizing patient consultation over record-keeping, and procrastination. *Id.* at 560–80, 675, 689–92. PIC Davison apologized for her ''lack of documentation [causing] all of this uproar.'' *Id.* at 691.

PIC Davison's testimony then addressed the specific prescriptions the Government identified in the Order to Show Cause and the ''red flags'' on those prescriptions that Dr. Alverson discussed in her testimony. *See* Tr. 591–671. PIC Davison described her personal interactions with the subject patients. PIC Davison testified that she was certain or ''pretty sure'' that she had contacted the prescribing physicians for all patients other than patient R.D. (the patient who presented the forged prescription). *Id.* at 608–09, 620–28, 630–31, 635, 640, 651, 659, 666, 670, 751. PIC Davison described her discussions with the doctors in her testimony but was largely unable to produce any contemporaneous documentation of those discussions.[19] *Id.;* GX 19, 22 (Respondent's responses to Government subpoenas requesting the documentation). For some of the patients, she conceded that no documentation existed and that she made a mistake not to document her investigations. *Id.* at 602, 608–09. For other patients, PIC Davison testified that the documentation would have been written on the original prescription, usually on the first fill script, but that those prescriptions were seized by the DEA, and were not offered into evidence. *Id.* at 634–35, 637–38, 641, 663–64, 673.[20] PIC Davison stated she now records her notes both on the original prescription and electronically in her patient notes. *Id.* at 674.

PIC Davison testified that she checked the PDMP before filling prescriptions for some, but not all, of the subject patients.[21] For male patient M.A., PIC Davison could not recall if she had searched the PDMP prior to filling his prescriptions, but when shown the record of her PDMP searches, which she had produced for the hearing, conceded the record showed she did not conduct a search. *Id.* at 744–45; RX 1, at 39 and 40. PIC Davison also said that she did not check the PDMP before filling the forged prescription for patient R.D. Tr. 795. PIC Davison affirmatively testified that she checked the PDMP for patients C.W., A.C., and one of Dr. S.H.'s patients, patient T.M. Tr. 609, 652, 658, 670. On cross examination, the DEA attorney questioned PIC Davison on her decisions to fill certain prescriptions for C.W. and A.C. after having viewed their prescription history in the PDMP. For C.W., PIC Davison testified that she did not recall seeing on the PDMP report that C.W. had received ten months of alprazolam in the prior five months. She explained that perhaps there was a software error, or that she had only reviewed the previous 30 days of the patient's history, or maybe that she just did not notice it. *Id.* at 764–66. For Patient A.C., PIC Davison testified that she had checked the PDMP report on A.C. on July 14, 2015, and had declined to fill one of A.C's pain medication prescriptions, because it was too early for a refill according to the PDMP. *Id.* at 670. PIC Davison also stated that the Government may have improperly attributed PDMP data to patient A.C., because the PDMP report used by the Government compiled data from patient profiles with the same name and birthdate but with four different street addresses in Bessemer, Alabama. *Id.* at 788–91.

As to the two patients with the same last name, living at the same address, PIC Davison did not recognize that coincidence as being concerning, as family members often see the same physician, but stated that after her interactions with DI Two, she now knows it is something a pharmacy should explore. *Id.* at 640–47; *see* Tr. 421; GX 14. Regarding the three patients who apparently came to the pharmacy together with similar prescriptions, yet from different parts of the area, PIC Davison explained that two of the three patients, P.I. and T.M., carpooled, because P.I. had an arm amputation. Tr. 650. PIC Davison stated that both lived in Jasper, Alabama. *Id.* at 665.[22] P.I. and T.M. had difficulty finding their prescribed medications, which were available at the Respondent Pharmacy. *Id.* at 651. The third of the trio, J.C., was a local individual, who frequented a commercial cleaning business a few doors down from the Respondent Pharmacy. *Id.* at 665–67. For these reasons, the appearance of these three individuals arriving at the Respondent Pharmacy at the same time did not raise any concerns for PIC Davison. *Id.* at 668–69; *see id.* at 427–28; GX 15. PIC Davison explained that she ''figured that perhaps the doctor [at the pain

[19] There was a handwritten note on one of patient C.W.'s prescriptions documenting PIC Davison's discussion with the doctor regarding a missing dosage on a prescription. Tr. 612; *see* GX 12, at 17.

[20] This testimony was permitted over the Government's objection that it was not properly noticed within the Respondent Pharmacy's Prehearing Notices. Tr. 663. However, the ALJ determined that Respondent Pharmacy's Prehearing statements provided adequate notice that this was part of its defense. Tr. 663; ALJX 17, at Ex. A 2, 15; GX 19, 47.

[21] PIC Davison stated on cross that ''at first, I wasn't using the PDMP because it wasn't being reported daily.'' Tr. 758.

[22] However, according to the scripts in evidence, P.I. lived in Jasper at the time her script was filled, while T.M. lived in Quinton. GX 15.

management clinic] scheduled them all the same day.'' [23] Tr. 669.

PIC Davison testified that she gave less scrutiny to prescriptions from pain management clinics, because she thought they had procedures to detect abuse and diversion, such as pill counts and urine analysis. *Id.* at 653–54, 784–85. Similarly, PIC Davison acknowledged she did not scrutinize transfers from other pharmacies as she did new patients. She reported that she had confidence that prescriptions filled at other pharmacies were proper, explaining that all pharmacists are under the same obligation and liability to perform their jobs as she. *Id.* at 628. PIC Davison said she now scrutinizes transfers as she would a new patient. *Id.* at 629.

The ALJ found that PIC Davison's testimony lacked credibility. RD, at 58. He stated that ''[i]n testifying as to factual matters regarding the initial inventory, the timing and extent of her purported investigations, and documentation of her investigations, [PIC] Davison's testimony was marked with a level of equivocation, implausibility, and inconsistency . . . .'' *Id.* I concur.

E. Allegations That Respondent Filled Prescriptions Without Investigating and Resolving Red Flags

The Government alleged that Respondent filled prescriptions that displayed red flags of abuse and diversion without resolving those red flags in violation of the pharmacist's corresponding responsibility to assess the legitimacy of the prescription. To support its allegations, the Government presented hard copies of prescriptions; copies of Respondent's electronic profiles for these patients; and the expert testimony of Dr. Alverson regarding the red flags presented by the patients' prescriptions. Respondent disputes the allegations and argues that she upheld her corresponding responsibility to assess the legitimacy of all of the subject prescriptions. In defense of these allegations, PIC Davison testified at the hearing regarding the due diligence that she conducted on the prescriptions and presented written summaries of her investigations in response to a Government subpoena and in a prehearing statement.[24]

As Dr. Alverson explained in her expert testimony regarding the standards of practice for an Alabama pharmacist, which is summarized in further detail *supra* at I.C.3, pharmacists are required under Alabama law to review each prescription for, among other things, therapeutic duplication, drug-drug interactions, incorrect dose/duration, and clinical abuse/misuse of medications. Ala. Admin. Code 680–X–2–.21. The law also requires pharmacists to maintain patient medication profiles, which includes the pharmacists' comments on consultation with the patient. *Id.*

Dr. Alverson identified various red flags that pharmacists are trained to be aware of to identify suspicious and unlawful prescriptions, which include patients traveling significant or unusual distances, patterns from prescribers who repeatedly issue prescriptions or groupings of prescriptions for drugs susceptible to abuse or misuse (''pattern prescribing''), doctor or pharmacy shopping, different family members who receive substantially similar prescriptions, prescribers issuing prescriptions for large quantities of narcotics or other controlled substances, and prescriptions that are therapeutically duplicative or other combinations that do not make clinical sense with each other or do not make sense for the patient. Dr. Alverson testified that, at the time the subject prescriptions were filled, an Alabama pharmacist would be expected to know about the red flags she identified and emphasized that the Alabama Code of Professional Conduct requires a pharmacist to stay abreast of developments in the field, including patterns of abuse and diversion. *Id.* at 343–44; GX 24; Ala. Admin. Code 680–X–2–.22. She further testified that when such red flags are present, Alabama pharmacists, acting in the normal course of their professional practice and in fulfillment of their corresponding responsibility, will investigate the circumstances, document their investigation, and decline to fill the prescription if they cannot resolve the red flags. Pharmacists will generally document the investigation as part of the ''comments'' maintained within the patient profiles the pharmacist is required by law to maintain, but they can also put the documentation on the prescriptions themselves.

The Government and Respondent Pharmacy presented conflicting testimony on two overarching factual matters relevant to Respondent's investigation and resolution of red flags, or lack thereof, for the prescriptions at issue. First, Respondent claims to have conducted due diligence investigations for all of the prescriptions at issue, but the Government suggests that any reported investigation by Respondent Pharmacy occurred after the fact, following the initiation of the Agency investigation. The Government supported this allegation by eliciting testimony demonstrating how the Respondent Pharmacy's explanations changed in reaction to the Government's filings. The Government subpoenaed certain of Respondent Pharmacy's patient records in February 2016 and May 2016, including any records Respondent Pharmacy held regarding the subject prescriptions. GX 18; Tr. 721. Respondent Pharmacy did not provide any records with contemporaneous documentation of investigations for any of the subject prescriptions in response, instead providing a single document describing its due diligence as to these patients in narrative form and the relevant patient profiles (the profiles required by Alabama law) none of which contained pharmacist comments. *See* GX 19; GX 22; Tr. 723. The Respondent Pharmacy's due diligence, described in Government Exhibit 19, were mostly in summary form, and except for one prescribing physician, did not include calls to the prescribing doctor as part of its due diligence. In fact, for a number of patients, PIC Davison reported, ''I cannot remember anything about this patient.'' GX 19.

The Government noted that following the Respondent Pharmacy's review of Dr. Alverson's report, the Respondent Pharmacy bolstered its claimed due diligence in its Prehearing statement to include steps described by Dr. Alverson

[23] Based on the copies of the prescriptions, which were submitted into evidence and stipulated by the parties to be true and correct copies, the prescriptions for P.I. and T.M were issued on the same day, July 30, 2015. The prescription for J.C. was issued the following day, July 31, 2015. The three patients did not bring the prescriptions to Respondent Pharmacy to be filled until August 13, 2015, approximately two weeks after the prescriptions were issued. GX 15.

[24] In addition to the testimony and evidence described below regarding the subject prescriptions, PIC Davison also supplied testimony and medical articles related to correlations between race and prescribing of controlled substances. *See* Tr. 679–686; RX 2. PIC Davison testified that these articles demonstrated that the medical establishment was less likely to prescribe opioid pain medications to Black patients. Tr. 684–86. In the course of her testimony and in Respondent's Prehearing Statement, PIC Davison stated some of the patients with prescriptions at issue in this case are Black, some white, and did not provide testimony on the race of others. *See, e.g.,* ALJX 17, Ex. A. PIC Davison testified, however, that the information in the articles did not influence the scrutiny she applied to prescriptions for controlled substances and that she engaged in the same level of scrutiny regardless of the race of the patient. Tr. 798–801. PIC Davison stated that she does not consider the race of the patient when determining whether an investigation is necessary when presented with prescriptions for controlled substances; therefore, I conclude that this evidence is irrelevant to the allegations that PIC Davison failed to properly investigate and document her investigation into any red flags presented by the subject prescriptions.

as necessary due diligence. Govt Posthearing, at 22–24; Tr. 728–39, 778–81.

Respondent Pharmacy categorically denies this allegation and detailed investigations on several of the subject patients in PIC Davison's testimony. Respondent Pharmacy argues that its claims of extensive, timely investigations were uncontroverted and should be accepted as credible. The ALJ, however, found, and I agree, that PIC Davison's testimony was ''sometimes implausible and inconsistent'' and described her testimony of one patient investigation as ''misleading and equivocating.'' RD, at 58.

I agree with the ALJ's finding that it is more believable than not that Respondent Pharmacy's investigations were not as timely or extensive as PIC Davison testified. RD, at 48. *See Wilbur-Ellis Co.* v. *M/V Captayannis ''S'',* 451 F.2d 973, 974 (9th Cir. 1971) (the court is not bound to accept uncontroverted testimony at face value if it is improbable, unreasonable, or otherwise questionable) (citing *Quock Ting* v. *United States,* 140 U.S. 417, 420–21 (1891)); *Koivunen* v. *States Line,* 371 F.2d 781, 783 (9th Cir. 1967) (evidence of witnesses, especially those who have a biased or prejudiced interest in the result of the trial in which they testify, need not be accepted at face value). Respondent Pharmacy has provided no documentary evidence in support of its claims of timely investigation. Furthermore, as the ALJ found, the propensity of the subject prescription forgery ring to concentrate their efforts at Respondent Pharmacy strongly suggests that the criminal diversion community had identified Respondent Pharmacy ''as a location where investigation was minimal and diversion would likely be successful.'' RD, at 48. *See* Tr. 431 (testimony from Dr. Alverson that patients seeking legitimate pain management do not tend to travel in groups, but that those not seeking legitimate pain management do, because they learn which pharmacies will fill their prescriptions).

As to the second preliminary matter, Respondent Pharmacy alleged in its Prehearing Statement that PIC Davison noted the results of her investigations on the initial prescriptions of the patients (first fill prescriptions), however, these prescriptions were seized by DEA, and while they were not listed as evidence, they were not returned to her. *See* ALJX 17, Ex. A, at 2, 15. At the hearing, however, PIC Davison was less certain about recording the results of her patient investigations on the initial prescriptions and only conditionally indicated that *if* she recorded her investigation, it would have been on the initial prescription, or in her patient notes. Tr. 634–35, 637–38, 663–64, 673, 805.

The Government did not offer all of the subject ''missing'' first fill prescriptions into evidence. In past cases, this Agency has applied the ''adverse inference rule'' against parties that failed to produce records. *See, e.g., Pharmacy Doctors Enterprises d/b/a Zion Clinic Pharmacy,* 83 FR 10,876, 10,890 (2018) pet. for rev. denied, 789 F. App'x 724 (11th Cir. 2019). As the D.C. Circuit explained, ''[s]imply stated, the rule provides that when a party has relevant evidence within his control which he fails to produce, that failure gives rise to an inference that the evidence is unfavorable to him.'' *Int'l Union, United Auto., Aerospace & Agric. Implement Workers of Am. (UAW)* v. *Nat'l Labor Relations Bd.,* 459 F.3d 1329, 1336 (D.C. Cir. 1972). *See also Huthnance* v. *District of Columbia,* 722 F.2d 371, 378 (D.C. Cir. 2013). In this case, however, I agree with the ALJ that the Respondent Pharmacy's conditional assertion of favorable evidence under the sole control of the Government is insufficient to justify an adverse inference. RD, at 43 (citing *Beau Bashers,* 76 FR 194,401, 19,404 (2011); *UAW* v. *NLRB,* 459 F.2d at 1335–39). The credibility of Respondent's conditional assertions of favorable evidence is also drawn into question by the first fill prescriptions the Government did produce, none of which contained documentation of Respondent's alleged investigations. Furthermore, PIC Davison failed to produce any prescriptions with documentation of an investigation for any prescription filled at Respondent Pharmacy—documentation that she was required to make as an Alabama pharmacist—and conceded that she failed to document the results of her investigation for several of the subject prescriptions, relying instead on her memory.

1. Prescriptions for Patients M.A., C.W., and D.B.

The Government alleged that from December 2014 through August 2015, Respondent filled prescriptions for patients M.A. (male), C.W., and D.B. for large quantities of narcotics, in combinations reflecting therapeutic duplication, in combinations known to be susceptible to abuse or diversion, and unlikely to be issued for legitimate medical purposes by prescribers operating within the bounds of their profession. The Government further alleged that Respondent filled these prescriptions without appropriate investigation, documentation, and resolution of these circumstances in violation of its corresponding responsibility. ALJX 1, at 3.

In regard to patient M.A. (male), Dr. Alverson testified that his prescriptions presented multiple red flags: Therapeutic duplication; a rapid increase in the quantity of a prescribed opioid; the prescriber switching which drug was for maintenance and which for breakthrough pain; and repeated refills of a drug contrary to FDA approval. Dr. Alverson opined the prescribing pattern for M.A. was inconsistent with accepted pharmaceutical standards and posed a danger to the patient. Tr. 379, 502–03. She further found no contemporaneous documentation on the record that PIC Davison had conducted any investigation of the red flags.[25] PIC Davison acknowledged at the hearing that she did not document her investigation, but testified that she determined the prescriptions were appropriate based on conversations with the patient and the prescribing physician which revealed M.A. was a delivery driver who suffered from chronic back pain.[26] *Id.* at 593–96.

For patient C.W., Dr. Alverson testified that the patient's prescriptions presented several red flags including controlled substances prescribed by different doctors, the combination of an opiate and a benzodiazepine or ''drug cocktail'' popular with drug abusers, an unusual increase in medication amounts, and a three-month gap in treatment. *Id.* at 393, 396–98, 401–404. PDMP data for C.W. that Respondent Pharmacy submitted into evidence also revealed red flags including that C.W. had frequented multiple pharmacies and received 10 months of alprazolam in the five months prior to transferring his prescription to Respondent Pharmacy. Tr. 761–62; RX 1, at 14–16. Despite the evidence of red flags, there was no evidence that Respondent

[25] In its Prehearing Statement, Respondent wrote that any documentation for PIC Davison's investigation of patient M.A. (male) would be on the original fill prescription. The Government introduced the original fill prescription into evidence. It contained no documentation by PIC Davison. *See* GX 11.

[26] In its Prehearing Statement, Respondent stated that PIC Davison had contacted the prescribing physician to confirm the diagnosis and validity of the prescription and to discuss safety and possible therapeutic duplication. GX 47, at 4. During the hearing, however, PIC Davison's testimony on this matter wavered. She testified that she spoke with the prescribing physician on the phone regarding M.A.'s consecutive therapies and ''why Soma was prescribed with two different narcotics,'' Tr. 727–28, but later admitted that she could only specifically recall calling the doctor to discuss a change in the prescription from extended-release to immediate-release oxycodone, Tr. 751.

Pharmacy undertook any investigation. PIC Davison said she conducted due diligence on C.W.'s prescriptions by talking with the patient, who told her he was a factory worker doing repetitive actions, and that she was ''pretty sure'' she called the prescribing doctor before filling C.W.'s prescriptions for the first time. Tr. 608. PIC Davison also suggested that the PDMP report she viewed in December 2014, when C.W. came to Respondent Pharmacy, could have looked different than the one she offered into evidence at the hearing, but she offered no evidence to support her claim. *Id.* at 763–66.

For patient D.B., Dr. Alverson testified that the patient's prescriptions evinced several red flags including doctor shopping and the opioid/benzodiazepine ''cocktail.'' *Supra* I.C.3.c. PIC Davison discussed the investigation she conducted on patient D.B., but yet again conceded she failed to properly document it. Tr. 620–28, 630. PIC Davison testified that she was not suspicious that D.B. paid for her carisoprodol prescription with cash, while her other prescriptions were covered by insurance or Medicare. Tr. 768–69, 810; RX 1, at 27.

For both C.W. and D.B., PIC Davison argued that at the time the subject prescriptions were filled, 2014–15, the opioid/benzodiazepine drug combination was not known to be a red flag and that a reasonable pharmacist at the time would not necessarily be suspicious of prescriptions with that drug combination. To support her argument, PIC Davison submitted evidence that the U.S. Department of Health and Human Services (HHS) issued guidelines in March 2016 regarding the risks of opioid pain medications, after the subject prescriptions were issued. *See* RX 2, at 9. However, Dr. Alverson, who Respondent conceded was a renowned expert in the field, testified that while HHS did not issue those guidelines or add a ''black box'' [27] warning to benzodiazepines that they should not be combined with an opioid until 2016, the dangers of the ''cocktail,'' and its propensity for abuse, were well known in the pharmacy community in 2014. Tr. 420, 494. She further testified that when reviewing the subject prescriptions, she applied the standards of professional practice that were applicable at the time of the dispensations. *Id.* at 460–73. I credit Dr. Alverson's testimony on this matter and find that, at the time Respondent Pharmacy dispensed the subject prescriptions to C.W. and D.B., an Alabama pharmacist should have been aware of the risks posed by an opioid/alprazolam drug combination.

Based on the evidence in the record, I find that Respondent filled prescriptions for patients M.A. (male), C.W., and D.B. that raised red flags and that PIC Davison knew or should have known that the prescriptions raised red flags.[28] I further find that, even if these red flags were resolvable, there was no credible evidence that Respondent addressed or resolved them before filling the prescriptions. I cannot, and do not, place any weight on PIC Davison's testimony that she resolved the red flags, because she produced no contemporaneous documentary evidence to support her claim that she attempted to and, in fact, did resolve them before filling the prescriptions and because the ALJ found, and I agree, that her testimony on this matter was not credible. *See* RD, at 56.

2. Prescriptions Issued by Dr. U.I.

From April 2015 to August 2015, Respondent Pharmacy filled prescriptions issued by prescriber U.I. RD, at 5. The Government alleged that three patients of Dr. U.I. ''presented prescriptions that indicated a pattern of prescribing the same combinations of controlled substances to patient after patient, combinations including large quantities of narcotics and combinations known to be susceptible to abuse or diversion and unlikely to be issued for legitimate purposes by prescribers operating within the bounds of their profession.'' ALJX 1, at 4. The Government additionally alleged that ''these patterned prescriptions were presented by patients who shared the same home address and last name, issued within one date of one another.'' *Id.* The Government further alleged that Respondent filled the prescriptions with red flags from Dr. U.I. to numerous patients without appropriate investigation, documentation, and resolution of the alleged red flags. *Id.*

To support these allegations, the Government submitted prescriptions into evidence from Dr. U.I. for patients M.A. (female), T.K, and J.K. GX 14. Dr. Alverson testified that these prescriptions showed red flags. Tr. 421. All three patients were prescribed a combination of an opioid, benzodiazepine, and a muscle relaxant—a drug ''cocktail'' known to be susceptible to diversion and abuse—and a red flag in and of itself. Dr. Alverson testified that a pattern of prescriptions from a prescriber for this ''cocktail'' is also a red flag because the ''cocktail'' is rarely prescribed for legitimate medical reasons and further, that it would be extraordinarily rare for two people living at the same address to receive this ''cocktail'' for legitimate purposes. Tr. 421–22.

PIC Davison testified that she was ''pretty sure'' she had investigated the prescriptions from Dr. U.I. by calling the doctor, Tr. 635–43,[29] but she did not claim to have conducted any due diligence on prescriptions from Dr. U.I. in either her response to the Government's subpoena, GX 19, or in the Prehearing statement, where she summarized the due diligence she conducted on the subject prescriptions, GX 47, at 8. During the hearing, PIC Davison stated that two patients sharing an address and receiving similar controlled substances ''would raise a flag,'' but also testified that at the time she did not think it was a red flag for two patients with the same last name, living at the same address, to receive prescriptions for the same doctor, because, in her experience, family members often see the same physician. She conceded, however, that she learned this circumstance should be investigated by pharmacies during her discussions with DI One. Tr. 645–47.

Based on the evidence in the record, I find that Respondent filled prescriptions from prescriber U.I. that raised red flags that PIC Davison knew or should have known that the prescriptions raised red flags. I further find that, even if these red flags were resolvable, there was no credible evidence that Respondent addressed or resolved them before filling the

[27] Dr. Alverson testified that a ''black box'' warning is a type warning that is required to be placed on the package insert for certain drugs and is formatted with a black border around that text. Tr. 419.

[28] In a prehearing statement, Respondent argued that M.A., C.W., and D.B. had the same or similar prescriptions filled at other area pharmacies before or after they were patients at Respondent Pharmacy and that this demonstrates the ''common prescribing practices amongst the physicians in the area.'' GX 47, at 5–7. Respondent supported this argument with data from the PDMP that it presented as evidence during the hearing. RX 1, at 1–17, 43–58. The best that this evidence shows, however, is that the red flags presented by M.A., C.W., and D.B.'s prescriptions may be resolvable with proper investigation. At worst, it shows that in some cases the patients had to go to several pharmacies to receive the same combination of drugs they received from Respondent Pharmacy. I will not fully explore this argument because Respondent seems to have abandoned it by failing to elicit testimony at the hearing and not discussing it in its Posthearing brief.

[29] PIC Davison testified that she would have written any documentation of her investigations on the first fill script of the patients M.A. (female) and T.K. but that the DEA had taken those scripts and not submitted them into evidence. Tr. 638–42. As discussed, *supra,* I do not give weight to PIC Davison's testimony on this matter. The Government did submit copies of the front and back of the first fill script from patient J.K., which did not contain any documentation of an investigation by Respondent. GX 14 at 5–6.

prescriptions. I cannot, and do not, place any weight on PIC Davison's testimony that she resolved the red flags because she produced no contemporaneous documentary evidence to support her claim that she attempted to and, in fact, did resolve them before filling the prescriptions and because the ALJ found that the testimony was not credible. *See* RD, at 56.

3. Prescriptions Issued by Dr. S.H.

On August 13, 2015, Respondent filled three different prescriptions for oxycodone presented by three different patients from Dr. S.H. in Moody, Alabama. RD, at 5. The Government alleged the patients traveled unusual distances to obtain and fill the prescriptions, and that the timing of the prescription fills indicates the patients may have traveled together, and that despite these circumstances, Respondent ''filled the prescriptions without appropriate investigation, documentation, and resolution of these circumstances.'' ALJX 1, at 4.

The Government presented testimony at the hearing that Moody, Alabama, where the prescribing physician was located, is on the southeast-side of Birmingham and approximately a 40-minute drive from Respondent Pharmacy; that Jasper, Alabama, where one of the patients resided, is on the north-side of Birmingham and approximately a 50-minute drive from Respondent Pharmacy; and that Quinton, Alabama, where a second patient resided, is proximate to Jasper. Tr. 428–29. The third patient resided in Bessemer, Alabama, the same city as Respondent Pharmacy. The Government presented prescriptions from the patients with dispensing labels showing they were filled at Respondent Pharmacy within minutes of one another. GX 15. Dr. Alverson testified that it is a red flag for patients from three different cities to visit the same doctor in a fourth city ''quite a distance from where they live,'' to receive prescriptions from that prescriber for the same controlled substance, and then to take those prescriptions to the same pharmacy at the same time (and at a pharmacy that is distant from the residence of two of the three patients). Tr. 429–32. She further testified that patients seeking legitimate pain management care do not tend to travel in groups, but that it is a common practice for patients abusing or diverting drugs to do so, because ''patients who are seeking drugs usually learn pretty quickly the physicians that will write those prescriptions for them, and they learn which pharmacies will fill those prescriptions . . . . With no questions asked.'' *Id.* at 431–32.

PIC Davison testified that she ''sort of, but not really'' found it suspicious that the three patients from Dr. S.H. arrived at her pharmacy at the same time because she ''figured that perhaps the doctor scheduled them all the same day'' and the two patients from Jasper and Quinton carpooled (one was an amputee without transportation) and the third was a local resident, who frequented a cleaner by the pharmacy. Tr. 667–69; GX 47, at 9. She stated that the two patients who carpooled came to her pharmacy because they were unable to find another pharmacy with their medication (oxycodone) in stock. Tr. 650–58; GX 47, at 8–9. PIC Davison further testified that she investigated the prescriptions by calling the pain management clinic where Dr. S.H. worked to validate the prescriptions and checking the PDMP, Tr. 651–53, 658–59, but she equivocated on whether or not she documented her investigations, which she asserted would have been on prescriptions the DEA had seized and not returned, Tr. 662–66. PIC Davison conceded that she generally conducted less due diligence on prescriptions from pain clinics like the subject prescriptions. Tr. 654.

Based on the evidence in the record, I find that Respondent filled prescriptions from prescriber S.H. that raised red flags and that PIC Davison knew or should have known that the prescriptions raised red flags. Carpooling explains why two of the patients arrived at the same time, but it does not explain the unusual distances they traveled or why the third patient arrived at the pharmacy with them. PIC Davison's explanation that she was not suspicious of them all arriving together, because she assumed the doctor had seen the patients on the same day also lacks credibility—Respondent Pharmacy filled the prescriptions approximately two weeks after they were prescribed.[30] I further find that, even if these red flags were resolvable, there was no credible evidence that Respondent addressed or resolved them before filling the prescriptions. I cannot, and do not, place any weight on PIC Davison's testimony that she resolved the red flags because she produced no contemporaneous documentary evidence to support her claim that she attempted to and, in fact, did resolve them before filling the prescriptions and because the ALJ found that the testimony was not credible. *See* RD, at 56.

4. Patient A.C.

On September 23 and 24, 2015, Respondent filled prescriptions for patient A.C. for 30 tablets of carisoprodol 350 mg, identified as a 7-day supply, and 30 tablets of hydrocodone-acetaminophen 7.5–325mg, identified as a 4-day supply. RD, at 5. The Government alleged that patient A.C. ''presented prescriptions for a high volume of narcotics for a small period of time'' and were ''non-periodic in nature'' and ''presented prescriptions from two different doctors in the prior month.'' ALJX 1, at 4–5. The Government further alleged that investigation of these circumstances would have revealed that A.C. ''had presented numerous prescriptions from different prescribers to different pharmacies,'' but that Respondent had filled A.C.'s prescriptions without appropriate investigation, documentation, and resolution of the circumstances. *Id.*

Dr. Alverson testified that A.C.'s prescriptions had several red flags. She stated that A.C.'s records were suggestive of doctor and pharmacy shopping and that if PIC Davison had reviewed the PDMP data before dispensing the prescription of hydrocodone to A.C. on September 24, 2015, PIC Davison would have seen that A.C. had filled five different prescriptions for hydrocodone in the previous month. Tr. 434–38, GX 16 and 28. Dr. Alverson testified that the red flags for A.C.'s prescriptions were so egregious that, in her opinion, an Alabama pharmacist acting in accordance with appropriate professional standards could not resolve them. Tr. 440.

PIC Davison argues that the subject prescription was appropriately dispensed based on the investigation she conducted. PIC Davison spoke in detail regarding information she learned directly from A.C.; however, her testimony regarding the rest of her investigation was inconsistent. PIC Davison testified that she had called a Dr. S. to verify A.C.'s prescriptions, but the prescriptions at issue were prescribed by a different doctor, Dr. C. Tr. 670, *see* GX 16. Then on cross examination, PIC Davison implied that she had spoken with Dr. C.[31] Tr. 792. Additionally, during the hearing, PIC Davison speculated the Government and

[30] The three patients' prescriptions were written on July 29 and 30, 2015. The patients had the prescriptions filled at Respondent Pharmacy on August 13, 2015. *See* GX 15.

[31] When asked if she would fill the subject prescription today, PIC Davison replied ''I know after talking with Dr. [C.] then, yes, I would've filled it.''

Dr. Alverson may have improperly attributed PDMP data to patient A.C. because the PDMP report used by the Government compiled data from patient profiles with the same name and birthdate but with four different street addresses in Bessemer, Alabama. Tr. 788–91. Yet, PIC Davison also testified that she declined to fill a prescription for A.C. in July of 2015 based on the same PDMP data. Tr. 670.

Based on the evidence in the record, I find that Respondent filled prescriptions for patient A.C. that raised red flags and that PIC Davison knew or should have known that the prescriptions raised red flags. I further find that, even if these red flags were resolvable—and there was credible testimony from Dr. Alverson that they were not—there was no credible evidence that Respondent addressed or resolved them before filling the prescriptions. I cannot, and do not, place any weight on PIC Davison's testimony that she resolved the red flags, because she produced no contemporaneous documentary evidence to support her claim that she attempted to and, in fact, did resolve them before filling the prescriptions and because her testimony was inconsistent and the ALJ found that it was not credible. RD, at 56.

5. Patient R.D.

On October 11, 2014, Respondent filled a prescription for a narcotic for Patient R.D. The Government alleged the patient presented this prescription days after filling another prescription for a large volume of narcotics and that the prescriber specialized in obstetrics and gynecology (an unusual fact since R.D. was a male) and that despite these circumstances, Respondent ''filled the prescription without appropriate investigation, documentation, and resolution of these circumstances.'' ALJX 1, at 5. The Government also presented testimony that the prescription was a forgery. *See* Tr. 142.

Dr. Alverson testified that it is a red flag that Patient R.D. received a month's supply of a narcotic within a week of receiving a month's supply of another narcotic and that an Alabama pharmacist would be expected to investigate and resolve the red flag before filling the second (the October 11) prescription. Tr. at 441. Dr. Alverson further testified that a brief investigation would have revealed that the ''prescribing doctor'' was an obstetric gynecologist—another red flag as Patient R.D. is male. *Id.* at 445. PIC Davison conceded at the hearing that she had not conducted any investigation before filling Patient R.D.'s October 11, 2104 prescription. Tr. 795–96.

Based on the evidence in the record, I find that Respondent filled a prescription for patient R.D. that raised red flags and that PIC Davison knew or should have known that the prescription raised red flags. I further find that Respondent did not investigate or resolve the red flags—which were unresolvable as the prescription was a forgery—before filling the prescription.

In sum, I find that between October 2014 and September 2015, Respondent filled prescriptions that presented red flags that an Alabama pharmacist acting in the usual course of her professional practice and in fulfillment of her corresponding responsibility should have recognized, investigated, documented, and resolved prior to filling the prescriptions. I further find that Respondent did not conduct proper investigations of these prescriptions before filling them and did not document the results of any investigation she did conduct as is standard practice for an Alabama pharmacist and required by Ala. Admin. Code 680–X–2–.21.

II. Discussion

The Government alleged that the Respondent Pharmacy's registration should be revoked because the Respondent Pharmacy has materially falsified its renewal application and has committed acts that would render its registration inconsistent with the public interest as provided in 21 U.S.C. 823(f). The gravamen of the Government's allegations and evidence in this case focuses on allegations that Respondent Pharmacy provided false and material responses in the renewal application for registration and that it violated federal and state laws relating to controlled substances when it improperly filled prescriptions and failed to properly maintain certain records.[32]

A. Materially False Statement in Renewal Application

The Government's allegation that Respondent Pharmacy materially falsified its renewal application arose with the Respondent Pharmacy's application to renew its registration during the pendency of this action. In the renewal application, Respondent Pharmacy answered ''No'' to the question: ''[h]as the applicant ever surrendered (for cause) or had a federal controlled substance registration revoked, suspended, restricted, or denied, or is any such action pending?'' GX 26, at 1. The Government alleged that Respondent materially falsified its renewal application on the basis of its ''No'' response to the above question.[33]

Pursuant to 21 U.S.C. 824(a)(1), a registration ''may be suspended or revoked . . . upon a finding that the registrant (1) has materially falsified any application filed pursuant to or required by subchapter or subchapter II of this chapter . . . .'' There is no question that Respondent knew or should have known that it submitted a registration renewal application with a false response to the question asking if the applicant had an action pending to have a federal controlled substance registration revoked. *Supra* I.A. Respondent, however, argued that its false response to that question was not material and therefore cannot serve as a ground to revoke its registration. First, Respondent argued that DEA had issued the OSC and was obviously aware that there was a pending revocation of Respondent's registration. Resp Posthearing, at 6. Second, Respondent argued that, even if DEA were deceived, ''that deception would not have had an effect on the renewal, which in this case was automatic.'' *Id.* I reject Respondent's arguments, as the ALJ did, for the reasons that follow. *See* RD, at 28–29.

Respondent's submission of a renewal application containing a false response to a liability question is material, because such false information is ''predictably capable of affecting, *i.e.,* ha[s] a natural tendency to affect, the

[32] In Respondent's Prehearing statement and in the prehearing conversation she had with Dr. Alverson, PIC Davison implied that DEA may not have treated her fairly based on her race, Tr. 329; Resp Prehearing, at 23, but Respondent did not actively pursue this issue as a defense during the hearing, Tr. 686–87. Before the hearing, the ALJ advised the parties that if the issue was pursued, he would consider it within the context of ''unequal treatment'' by the Agency and asked Respondent's counsel if he planned to pursue a defense of unfair or unequal treatment by the Agency. Tr. 19. Respondent Counsel responded that he agreed with the ALJ that the legal issue presented would be one of disparate impact but stated that he would not know if Respondent would pursue disparate impact as a defense until after hearing the testimony at the hearing. Tr. 20–21. After the hearing, Respondent filed a Posthearing Brief with the ALJ that presented Respondent's arguments and defenses against the Government's case. Respondent did not allege unequal treatment in that brief. Because Respondent did not pursue the defense at hearing or in its Posthearing Brief, I consider Respondent to have abandoned the defense and will not consider it in my decision.

[33] This allegation does not appear in the Order to Show Cause because it did not arise until after the OSC was issued. The Government did, however, clearly include the allegation in its Supplemental Prehearing Statement, Respondent did not challenge the timeliness of the allegation, *see, e.g.,* Resp Prehearing Statement, and the allegation was fully litigated during the hearing, *see* RD, at 25. The ALJ found Respondent received sufficient notice of the allegation, and the allegation was properly before him. *Id.* at 26. I concur.

official decision.'' *Kungys* v. *United States,* 485 U.S. 759, 771 (1988). All of the form's liability questions implicate at least one of the factors I am required to consider in carrying out my registration-related responsibilities under 21 U.S.C. 823(f). Respondent's false response to liability question number two is material because of this question's connection to the second, third, and fourth factors listed in section 824(f) and, therefore, my ability to carry out my statutory responsibilities. 21 U.S.C. 823(f). Thus, I reject Respondent's argument that ''the omission was not material because it had no capacity to affect the official decision.'' Resp Post Hearing, at 6.

I also reject Respondent's argument that ''not only could the failure to alert the DEA what the DEA was doing possibly deceive the DEA, but even if it could, then that deception would not have had an effect on the renewal, which in this case was automatic.'' [34] *Id.* First, having an ''effect on the renewal'' plays no role in the assessment of ''materiality.'' As Respondent acknowledges in its Post Hearing Brief, the Supreme Court made this clear decades ago when it stated that ''[i]t has never been the test of materiality that the misrepresentation or concealment would *more likely than not* have produced an erroneous decision, or even that it would *more likely than not* have triggered an investigation.'' *Kungys,* 485 U.S. at 771 [emphases in original]. Second, while some Agency decisions mention deception,[35] they mention it in the context of determining the appropriate sanction, not in determining whether a falsity is material. I decline Respondent's suggestion that I disregard Supreme Court precedent by injecting the notion of deception into my assessment of materiality.

Respondent additionally argues that an existing registration is renewed automatically, thereby precluding any affirmative finding of materiality. Respondent misreads 21 CFR 1301.36(i).[36] Nothing in it grants a registrant the automatic renewal of its registration. The renewal of Respondent's registration is not ''automatic,'' and I disagree with Respondent that 21 CFR 1301.36(i) is relevant to whether or not Respondent's false submission is material.

For the reasons stated above, I find that Respondent's false response on its renewal application is material, which is an independent ground for revocation pursuant to section 824(a)(1).

B. Public Interest Factors

Section 304(a) of the Controlled Substances Act provides that ''[a] registration . . . to . . . dispense a controlled substance . . . may be suspended or revoked by the Attorney General upon a finding that the registrant . . . has committed such acts as would render [its] registration under section 823 of this title inconsistent with the public interest as determined under such section.'' 21 U.S.C. 824(a). In the case of a practitioner, which includes a pharmacy, the CSA requires the Agency consider the following factors in determining whether Respondent's registration would be inconsistent with the public interest:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The [registrant's] experience in dispensing, or conducting research with respect to controlled substances.

(3) The [registrant's] conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety. 21 U.S.C. 823(f).

The DEA considers these public interest factors separately. *Ajay S. Ahuja, M.D.,* 84 FR 5479, 5488 (2019); *Robert A. Leslie, M.D.,* 68 FR 15,227, 15,230 (2003). Each factor is weighed on a case-by-case basis. *Morall* v. *Drug Enf't Admin.,* 412 F.3d 165, 173–74 (D.C. Cir. 2005). Any one factor, or combination of factors, may be decisive. *David H. Gillis, M.D.,* 58 FR 37,507, 37,508 (1993). Thus, there is no need to enter findings on each of the factors. *Hoxie* v. *Drug Enf't Admin.,* 419 F.3d 477, 482 (6th Cir. 2005). Furthermore, there is no requirement to consider a factor in any given level of detail. *Trawick* v. *Drug Enf't Admin.,* 861 F.2d 72, 76–77 (4th Cir. 1988). The balancing of the public interest factors ''is not a contest in which score is kept; the Agency is not required to mechanically count up the factors and determine how many favor the Government and how many favor the registrant. Rather, it is an inquiry which focuses on protecting the public interest . . . .'' *Jayam Krishna-Iyer, M.D.,* 74 FR 459, 462 (2009). When deciding whether registration is in the public interest, the DEA must consider the totality of the circumstances. *See generally Joseph Gaudio, M.D.,* 74 FR 10,083, 10,094–95 (2009) (basing sanction on all evidence on record).

In the adjudication of a revocation of a DEA registration, the Government has the burden of proving that the requirements of revocation are satisfied. 21 CFR 1301.44(e). When the Government has met its *prima facie* case, the burden then shifts to the Respondent to show that, given the totality of the facts and circumstances on the record, revoking registration would not be appropriate. *Med. Shoppe-Jonesborough,* 73 FR 364, 387 (2008).

While I have considered all of the public interest factors, the Government's case invoking the public interest factors of 21 U.S.C. 824(f) seeks the revocation of the Respondent Pharmacy's registration based primarily on conduct most aptly considered under Public Interest Factors Two and Four.[37] The Government also alleged certain ''other conduct which threatens the public health and safety,'' which is properly considered under Factor Five. I find that the Government's evidence with respect to Factors Two and Four satisfies its *prima facie* burden of showing that Respondent's continued registration would be ''inconsistent with the public interest.'' 21 U.S.C. 823(f). I further find that Respondent failed to provide sufficient evidence to rebut the Government's *prima facie* case.

[34] Respondent's argument that DEA's acceptance of its renewal application is ''automatic'' is baseless and I reject it. *Infra.*

[35] *See e.g., Daniel A. Glick, D.D.S.,* 80 FR 74,800, 74,808 (2015) (lack of intent to deceive can be a ''relevant consideration []'').

[36] 21 CFR 1301.36(i) states, in part, that ''[i]n the event that an applicant for reregistration (who is doing business under a registration previously granted and not revoked or suspended) has applied for reregistration at least 45 days before the date on which the existing registration is due to expire, and the Administrator has issued no order on the application on the date on which the existing registration is due to expire, the existing registration of the applicant shall automatically be extended and continue in effect until the date on which the Administrator so issues his/her order . . . .''

[37] There is nothing in the record to suggest that a state licensing board made any recommendation regarding the disposition of the Respondent Pharmacy's DEA registration (Factor One). However, the fact that a state has not acted against a registrant's license is not dispositive in this administrative determination as to whether continuation of a registration is consistent with the public interest. *E.g., Holiday CVS LLC dba CVS Pharmacy Nos 219 and 5195,* 77 FR 62,316, 62,340 (2012); *Patrick W. Stodola, M.D.,* 74 FR 20,727, 20,730 (2009). Likewise, the record contains no evidence that the Respondent Pharmacy, its owner, or any pharmacist or key employee of pharmacy has been convicted of (or charged with) a crime related to controlled substances (Factor Three). However, as Agency cases have noted, there are a number of reasons why a person who has engaged in criminal misconduct may never have been convicted of an offense under this factor. *Dewey C. MacKay, M.D.,* 75 FR 49,956, 49,973 (2010), *pet. for rev. denied, MacKay* v. *Drug Enf't Admin.,* 664 F.3d 808 (10th Cir. 2011). Agency cases have therefore held that ''the absence of such a conviction is of considerably less consequence in the public interest inquiry'' and is therefore not dispositive. *Id.*

Specifically, I find that the record contains substantial evidence that Respondent's Pharmacist-in-Charge, PIC Davison, violated her corresponding responsibility when she dispensed multiple prescriptions. I also find there is substantial evidence on the record that Respondent violated multiple federal and state recordkeeping requirements.

1. Factors Two and Four—The Respondent's Experience in Dispensing Controlled Substances and Compliance With Applicable Laws Related to Controlled Substances

Evidence is considered under Public Interest Factors Two and Four when it reflects a registrant's compliance (or non-compliance) with laws related to controlled substances and registrant's experience dispensing controlled substances. Established violations of the Controlled Substances Act, DEA regulations, or other laws regulating controlled substances at the state or local level are cognizable when considering if a registration is consistent with the public interest. As DEA has held in the past, a registrant's ''ignorance of the law is no excuse'' for actions that are inconsistent with responsibilities attendant upon a registration. *Daniel A. Glick, D.D.S.,* 80 FR 74,800, 74,809 (2015) (quoting *Sigrid Sanchez, M.D.,* 78 FR 39,331, 39,336 (2013)). Under Agency precedent, ''[a]ll registrants are charged with knowledge of the CSA, its implementing regulations, as well as applicable state laws and rules.'' *Id.* at 74,809 (internal citations omitted). Agency precedent has also consistently held that the registration of a pharmacy may be revoked as the result of the unlawful activity of the pharmacy's owners, majority shareholders, officers, managing pharmacist, or other key employee. *EZRX, LLC,* 69 FR 63,178, 63,181 (2004); *Plaza Pharmacy,* 53 FR 36,910, 36,911 (1988).[38]

In this case, the Government alleged and presented evidence that the Respondent Pharmacy's pharmacist, in violation of 21 CFR 1306.04(a), failed to exercise her corresponding responsibility to assess the legitimacy of numerous controlled substance prescriptions she filled. ALJX 1, at 2–5. The Government also alleged that, in violation of 21 CFR 1306.06, the Respondent Pharmacy's pharmacist failed to dispense those same prescriptions for controlled substances within the lawful bounds of the pharmacy profession. *Id.* Additionally, the Government alleged and presented evidence that the Respondent Pharmacy failed to maintain an initial inventory required under federal law pursuant to 21 CFR 1304.11, or an initial inventory and an annual inventory required under Alabama law pursuant to Ala. Admin. Code 680–X–3–.08. ALJX 1, at 5 and 6. The Government also alleged and presented evidence that the Respondent Pharmacy failed to notate whether individual controlled substances that it ordered were actually received, and if so, on what date they were received, in the CSOS, on DEA Form 222s, and on its invoices. *Id.* at 6. Perhaps as a result of those alleged recordkeeping violations, the Government also alleged that an audit revealed ''significant discrepancies'' in the amounts of certain controlled substances at the pharmacy compared with the amounts the Respondent Pharmacy's records indicated should have been present. *Id.* Finally, the Government alleged and presented evidence that the Respondent Pharmacy inaccurately reported certain information to the Alabama PDMP, undermining the purpose of that database. *Id.* at 7. These allegations and the evidence of record are addressed below.

a. Unlawful Dispensing Allegations

According to the CSA's implementing regulations, a lawful controlled substance order or prescription is one that is ''issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice.'' 21 CFR 1306.04(a). While the ''responsibility for the proper prescribing and dispensing of controlled substances is upon the prescribing practitioner, . . . a corresponding responsibility rests with the pharmacist who fills the prescription.'' *Id.* The regulations establish the parameters of the pharmacy's corresponding responsibility.

> An order purporting to be a prescription issued not in the usual course of professional treatment . . . is not a prescription within the meaning and intent of . . . 21 U.S.C. 829 . . . and the person knowingly filling such a purported prescription, as well as the person issuing it, shall be subject to the penalties provided for violations of the provisions of law relating to controlled substances.

Id. ''The language in 21 CFR 1306.04 and caselaw could not be more explicit. A pharmacist has his own responsibility to ensure that controlled substances are not dispensed for non-medical reasons.'' *Ralph J. Bertolino, d/b/a Ralph J. Bertolino Pharmacy,* 55 FR 4729, 4730 (1990) (citing *United States* v. *Hayes,* 595 F.2d 258 (5th Cir. 1979), *cert. denied,* 444 U.S. 866 (1979); *United States* v. *Henry,* 727 F.2d 1373 (5th Cir. 1984) (reversed on other grounds)). As the Supreme Court explained in the context of the CSA's requirement that schedule II controlled substances may be dispensed only by written prescription, ''the prescription requirement . . . ensures patients use controlled substances under the supervision of a doctor so as to prevent addiction and recreational abuse . . . [and] also bars doctors from peddling to patients who crave the drugs for those prohibited uses.'' *Gonzales* v. *Oregon,* 546 U.S. 243, 274 (2006).

To prove a pharmacist violated his corresponding responsibility, the Government must show that the pharmacist acted with the requisite degree of scienter. *See* 21 CFR 1306.04(a) (''[T]he person *knowingly* filling [a prescription issued not in the usual course of professional treatment] . . . shall be subject to the penalties provided for violations of the provisions of law relating to controlled substances.'') (emphasis added). DEA has also consistently interpreted the corresponding responsibility regulation such that ''[w]hen prescriptions are clearly not issued for legitimate medical purposes, a pharmacist may not intentionally close his eyes and thereby avoid [actual] knowledge of the real purpose of the prescription.'' *Bertolino,* 55 FR at 4730 (citations omitted); *see, also JM Pharmacy Group, Inc. d/b/a Pharmacia Nueva and Best Pharmacy Corp.,* 80 FR 28,667, 28,670–72 (2015) (applying the standard of willful blindness in assessing whether a pharmacist acted with the requisite scienter). Pursuant to their corresponding responsibility, pharmacists must exercise ''common sense and professional judgment'' when filling a prescription issued by a physician. *Bertolino,* 55 FR at 4730. When a pharmacist's suspicions are aroused by a red flag, the pharmacist must question the prescription and, if unable to resolve the red flag, refuse to fill the prescription. *Id.; Medicine Shoppe-Jonesborough,* 300 F. App'x 409, 412 (6th Cir. 2008) (''When pharmacists' suspicions are aroused as reasonable professionals, they must at least verify the prescription's propriety, and if not satisfied by the answer they must refuse to dispense.'').

[38] The Order to Show Cause alleged that ''Respondent'' violated its corresponding responsibility. It is undisputed that Respondent is owned and operated by Santonia Davison, who is also Respondent's pharmacist-in-charge and Respondent's only pharmacist. Thus, for purposes of finding and attributing liability in this case, I find that the actions and inactions of Respondent's Owner and PIC were the actions and inactions of Respondent.

Here, the Government does not claim that Respondent dispensed the subject prescriptions having actual knowledge that the prescriptions lacked a legitimate medical purpose. Rather, the Government argues that Respondent violated the corresponding responsibility rule when she dispensed controlled substance prescriptions while ''repeatedly ignor[ing] obvious and apparent signs of abuse and diversion—signs that a professional pharmacist, operating in the bounds of the profession with eyes open to such indicia, would detect and resolve.'' Govt Posthearing, at 37.

As I found above, Respondent dispensed prescriptions for controlled substances without resolving red flags presented by the prescriptions, including the red flags of drug cocktails, multiple customers filling prescriptions from the same prescriber for the same drugs (''pattern prescribing''), customers with the same last name and street address presenting the same prescriptions within a short period of time, traveling unusual distances, doctor shopping, pharmacy shopping, therapeutic duplication, and unusual increases in drug quantities. Prior Agency decisions have found that prescriptions with the same red flags at issue here were so suspicious as to support a finding that the pharmacists who filled them violated the Agency's corresponding responsibility rule due to actual knowledge of, or willful blindness to, the prescriptions' illegitimacy. *See, e.g., Zion Clinic Pharmacy,* 83 FR at 10,898 (long distances; pattern prescribing; customers with the same street address presenting the same prescriptions on the same day; drug cocktails; cash payments; early refills); *Hills Pharmacy,* 81 FR 49,816, 49,836–39 (2016) (multiple customers filling prescriptions written by the same prescriber for the same drugs in the same quantities; customers with the same last name and street address presenting similar prescriptions on the same day; two short-acting opiates prescribed together; long distances; drug cocktails); *The Medicine Shoppe,* 79 FR 59,504, 59,507, 59,512–14 (2014) (unusually large quantity of a controlled substance; pattern prescribing; drug cocktails); *Holiday CVS,* 77 FR at 62,317–22 (long distances; multiple customers filling prescriptions written by the same prescriber for the same drugs in the same quantities; customers with the same last name and street address presenting virtually the same prescriptions within a short time span); *East Main Street Pharmacy,* 75 FR 66,149, 66,163–65 (2010) (long distances; lack of individualized therapy or dosing; drug cocktails; early fills/refills; other pharmacies' refusals to fill prescriptions). The Government also presented credible testimony that PIC Davison knew, or should have known, there were red flags on the prescriptions at the time they were dispensed. Alabama law requires pharmacists to review all new prescriptions, and refill prescriptions where appropriate, for, among other things, therapeutic duplication, drug-disease contraindication, incorrect dosage/duration, and clinical abuse/misuse. Ala Admin. Code 680–X–2–.21. Dr. Alverson testified that an Alabama pharmacist is trained to and should have recognized the red flags on the subject prescriptions, which included red flags explicitly named in Alabama law, and that an Alabama pharmacist exercising her corresponding responsibility and acting in the usual course of professional practice will not dispense controlled substances without investigating, documenting the investigation, and resolving any red flags. Furthermore, PIC Davison's comments to Dr. Alverson that the subject patients were receiving the same controlled substances from another pharmacy before they came to Respondent Pharmacy and ''[w]hatever problems they had when they got to [Respondent Pharmacy], they had those problems before they got to [Respondent Pharmacy]'' reflects an abdication of PIC Davison's corresponding responsibility.

Accordingly, I find the Government has proven by substantial evidence that Respondent filled prescriptions for controlled substances that it knew were not prescribed for legitimate medical purposes, or was willfully blind to such, in violation of its corresponding responsibility under 21 CFR 1306.04(a) and outside the usual course of its professional practice in violation of 21 CFR 1306.06.

In its Posthearing Brief, Respondent contended that the evidence produced during the hearing ''demonstrated that the prescriptions at issue were neither per-se unreasonable or issued without an appropriate investigation'' [39] and that Respondent, therefore, did not violate its corresponding responsibility. Resp Posthearing, at 1. I disagree. First, as discussed *supra,* PIC Davison's testimony regarding the extent of her investigations on the subject prescriptions lacked credibility and was unsupported by any documentation. Second, it was Dr. Alverson's expert testimony that some of the subject prescriptions—those with combinations of oxycodone, hydrocodone, and alprazolam, all prescribed in high doses—were sufficiently dangerous that they ''on their face were invalid.'' Tr. 487. Dr. Alverson also testified that there were red flags on patient A.C.'s prescriptions that, in her expert opinion, were unresolvable and were, in fact, so egregious that if presented with the prescription, she not only would have declined to fill it, she would have notified the police. *Id.* at 439–40. PIC Davison's decisions to dispense these prescriptions despite the unresolvable red flags indicate that she either did not conduct the thorough investigation she claims to have conducted or was willfully blind to the results of her own investigation. It is also uncontroverted that Respondent conducted no investigation before filling forged prescriptions for patient R.D.

Finally, Respondent has argued that the Government's case must fail because the Government did not produce any of the subject physicians, or physicians' representatives, to rebut PIC Davison's testimony that she had contacted the prescribing physicians to verify the subject prescriptions were legitimate and medically necessary given the conditions of the patients. Resp Posthearing, at 2. Respondent did not elaborate on its argument or cite any legal precedent for it, and it is contrary to Agency decisions. *See, e.g., Zion Clinic Pharmacy,* 83 FR at 10,899. Accordingly, I reject it.[40]

b. Recordkeeping Allegations

In addition to its mandate that controlled substances be dispensed properly, the CSA also recognizes that controlled substances are fungible and that a truly closed system requires that

[39] In its Posthearing Brief, Respondent seemed to agree with the Government that the subject prescriptions had red flags, but it is difficult to make a blanket statement on Respondent's acknowledgement of the red flags identified by Dr. Alverson because PIC Davison's testimony at the hearing was equivocal. For example, she described two patients from the same household presenting substantially similar prescriptions from the same prescriber as a circumstance that ''would raise a flag'' but then said that she did not find the circumstances suspicious because it was common for family members to see the same doctor. Tr. 646–47. In its Posthearing Brief, however, Respondent did not contest any of the red flags identified by Dr. Alverson. Instead, Respondent only argued that PIC Davison had properly investigated all subject prescriptions by calling the issuing physicians to verify the validity and medical necessity of the prescription.

[40] Furthermore, as discussed *supra* at I.E., I do not place any weight on PIC Davison's testimony that she adequately investigated and resolved the red flags on the subject prescriptions because she produced no contemporaneous documentary evidence to support her claim and because the ALJ found, and I agree, that the testimony was not credible.

certain records and inventories be kept by all registrants who either generate or take custody of controlled substances in any phase of the distribution chain until they reach the ultimate user. *Satinder Dang, M.D.,* 76 FR 51,424, 51,429 (2011) (''Recordkeeping is one of the central features of the CSA's closed system of distribution.'') (internal citations omitted); *Paul H. Volkman,* 73 FR 30,630, 30,644 (2008), *pet. for rev. denied* 567 F.3d 215, 224 (6th Cir. 2009) (''Recordkeeping is one of the CSA's central features; a registrant's accurate and diligent adherence to this obligation is absolutely essential to protect against the diversion of controlled substances.'').

The OSC alleged that Respondent violated multiple federal regulations and Alabama state laws related to the maintenance of records. The CSA requires registrants like Respondent to ''maintain, on a current basis, a complete and accurate record of each [controlled] substance . . . received, sold, delivered, or otherwise disposed of,'' 21 U.S.C. 827(a), in accordance with and with such relevant information as required by the CSA implementing regulations, 21 U.S.C. 827(b). The State of Alabama also imposes separate recordkeeping requirements on pharmacies.

i. Inventories

Registrant pharmacies are required to make an initial inventory of controlled substances ''on hand'' on the date they first engage in dispensing of controlled substances. 21 CFR 1304.11(b). ''In the event a person commences business with no controlled substances on hand, he/she shall record this fact as the initial inventory.'' *Id.* The initial inventory must be available for at least two years from the date of the inventory for inspection and copying by the DEA. 21 CFR 1304.04(a).

DI Two requested the Respondent Pharmacy's initial inventory during the May 20, 2015 administrative inspection. PIC Davison was unable to produce the initial inventory and conceded at the hearing that she did not know she was supposed to have an initial inventory. *Supra* I.B.2. After the July 6, 2015 meeting with the DEA, PIC Davison emailed DI One and representatives of the Alabama Board of Pharmacy a computer-generated record, entitled ''Narcotic Sales Report,'' which included a list of the schedule III through V controlled substances procured by Respondent Pharmacy from Cardinal Health, the pharmacy's sole pharmaceutical distributer, from May 1, 2014 through May 31, 2014. GX 7, at 58–59. PIC Davison wrote ''Initial Inventory'' at the top of the report before faxing it.

PIC Davison's *post hoc* attempts to create an initial inventory do not meet the requirements of 21 CFR 1304.11(b). Even assuming the ''Narcotic Sales Report'' record was in the pharmacy during the May 20, 2015 inspection as PIC Davison claims (a claim which is refuted by DI Two whose testimony the ALJ found credible), there is no evidence that the report was created when the Respondent Pharmacy commenced dispensing controlled substances, and PIC Davison testified that she did not mark the report as an ''initial inventory'' until after the July 6, 2015 meeting with the DEA. The report also does not meet the requirements for an initial inventory because it does not have a specific date or a notation of whether it was taken on the open or close of business on that date. I find, therefore, that there is substantial evidence that Respondent Pharmacy violated 21 CFR 1304.11(b) by failing to create and maintain a record of an initial inventory.

Alabama state law, like under federal law, also required Respondent to conduct an inventory on the ''date it first engages in dispensing of controlled substances.'' Ala. Admin. Code 680–x–3–.08(3). After the initial inventory, Respondent was required to conduct an annual inventory of controlled substances on or around January 15 of each calendar year. Ala Admin. Code 680–X–3–.08(1). The inventories must be signed and dated and indicate whether they were taken as of the close or opening of business. Ala. Admin. Code 680–x–3–.08(4).

Respondent did not produce either the initial or the January 15 inventory required by state law at the May 20, 2015 inspection, *supra* I.B.2, and PIC Davison conceded during the hearing that she did not conduct an inventory on or about January 15, 2015, as required by state law, Tr. 714. I therefore find that there is substantial evidence that Respondent did not conduct the required inventories in violation of 680–x–3–.08 of the Alabama Administrative Code.

ii. Allegations Respondent Violated Regulations Related to Schedule II Orders

The Government alleged that Respondent violated DEA recordkeeping regulations for ordering schedule II controlled substances in both its paper and electronic ordering systems. ALJX 1, at 6. Specifically, the Government alleged that on sixteen electronic records of controlled substances ordered by Respondent through the CSOS between March 24, 2015 and May 19, 2015, Respondent did not indicate that the orders were received and that on fifteen records of controlled substances ordered by Respondent on DEA Form 222s from November 13, 2014 to March 10, 2015, Respondent did not notate whether the orders were received. *Id.* (citing 21 CFR 1305.13(e) and 1305.22(g)).

As support for the allegation that Respondent did not properly maintain DEA Form 222s, the Government submitted copies of 15 ''purchaser's Copy 3'' of order forms Respondent submitted to its distributer. GX 3. Under DEA's regulations, ''[t]he purchaser must record on Copy 3 of the DEA Form 222 the number of commercial or bulk containers furnished on each item and the dates on which the containers are received by the purchaser.'' 21 CFR 1305.13(e). PIC Davison testified that she received the fifteen orders, *supra* I.B.2., but the DEA Form 222s for the orders do not have a record of the date received or the number of items received, GX 3. Respondent thus violated 21 CFR 1305.13(e).

As support for the allegation that Respondent did not properly maintain records or receipt of orders made electronically in the CSOS, the Government submitted print-outs of Respondent's CSOS orders from March 13, 2015 to May 19, 2015. GX 2. Sixteen of the twenty orders are not recorded as ''Received.'' *Id.* Under DEA regulation 21 CFR 1305.22(g), ''[w]hen a purchaser receives a shipment [of controlled substances from an electronic order], the purchaser must create a record of the quantity of each item received and the date received'' and ''the record must be electronically linked to the original order and archived.'' PIC Davison testified that Respondent Pharmacy received the sixteen orders not recorded as ''Received,'' *supra* I.B.2, but the CSOS does not have a record of the date received or the number of items received, GX 3. Respondent thus violated 21 CFR 1305.22(g).

iii. Allegation Respondent Violated Schedule III–V Orders Recordkeeping Requirements

Under 21 CFR 1304.22(a)(2)(iv) and (c), Respondent Pharmacy was required to maintain a record of each order of controlled substances that included the date of receipt, the quantity acquired, and the name, address, and registration number of the person from whom the substances were acquired. The Government alleged that Respondent violated this requirement by failing to record the date and amount of controlled substances ''actually

received.'' ALJX 1, at 6 (citing 21 CFR 1304.21(d)). To support this allegation, the Government submitted 64 invoices for orders of schedule III–V controlled substances from Respondent Pharmacy.[41] GX 4. The invoices all listed the name, address and registration number of the person from whom the substances were acquired and the quantity of substances and date shipped. On some of the receipt invoices, Respondent had circled the quantity shipped, which DI Two inferred could indicate the amount received was correct, but on other receipt invoices, there were no circled quantities. Tr. 50–51; GX 4. PIC Davison did sign the invoices, which she testified she did to document receipt of the order and confirm that the quantity and date listed on the invoice were correct. Tr. 578; GX 4.

I find that PIC Davison's signature on the invoices was insufficient to meet the record requirements of 21 CFR 1304.22(a)(2)(iv) and that, therefore, Respondent violated the regulation. The regulation requires registrants to record the date of receipt and quantity acquired. The invoices from Respondent Pharmacy do contain the date and quantity *shipped* but they do not list the date r*eceived,* and the regulation and the Pharmacy Manual, which was introduced at the hearing and which PIC Davison testified she used to develop her policies and procedures, clearly state that the registrant must ''record[] the date the drugs were received and confirm that the order is accurate.'' GX 50. While the regulation does not specify the manner in which the registrant must make the notations in the record, Respondent Pharmacy failed to meet this requirement because it did not record the date of receipt on the invoices in any manner and can only argue that it confirmed the accuracy of the order on the invoices where the quantities were circled.

iv. Audit Discrepancies

The Agency has also considered a pharmacy registrant's inability to account for controlled substances under Factor Four. *Ideal Pharmacy Care, Inc.,* 76 FR 51,415, 51,416 (2011). Under the CSA, every registrant ''distributing, or dispensing a controlled substance or substances shall maintain, on a current basis, a complete and accurate record of each such substance . . . received, sold, delivered, or otherwise disposed of by [it].'' 21 U.S.C. 827(a)(3). In evaluating shortages under Factor Four, the Agency has held that, ''[w]hether the shortages are attributable to outright diversion by either pharmacy or store employees, theft, or the failure to maintain accurate records, does not matter.'' *Ideal Pharmacy Care,* 76 FR at 51,416. As the Agency has explained, the ''inability to account for [a] significant number of dosage units creates a grave risk of diversion.'' *Fred Samimi,* 79 FR 18,698, 18,712 (2014). The Agency has also made it clear that it is not only concerned with shortages, but that overages are equally indicative that a pharmacy registrant has ''failed to maintain complete and accurate records as required by the CSA.'' *Superior Pharmacy I & Superior Pharmacy II,* 81 FR 31,310, 31,341 (2016); *see also Hills Pharmacy,* 81 FR at 49,843–45 (considering allegations of overages and shortages).

The audit of six oft-diverted controlled substances at the Respondent Pharmacy revealed dramatic discrepancies with both shortages and overages of drugs. The Respondent Pharmacy conceded most of the discrepancies, but explained that they resulted from her unfamiliarity with her drug supplier's computer software and the wrong inventory list being mistakenly downloaded at the time of the audit. This explanation provides no defense. The Respondent Pharmacy is obliged to ''maintain, on a current basis, a complete and accurate record of each controlled substance,'' 21 CFR 1304.21(a), and to make its records readily available for review by DEA, s*ee* 21 CFR 1304.04(a). Additionally, even Respondent's own ''self-audit,'' which PIC Davison testified she made using an inventory report she did not produce during the DEA audit, contained discrepancies for four of the six audited controlled substances.

I find, therefore, there is substantial evidence to support the allegation that Respondent Pharmacy failed to keep a current and accurate record of controlled substances, pursuant to 21 CFR 1304.21(a).

v. Twenty-One Day Absence of PDMP Inputs

Under Alabama state law, a licensed pharmacy is required to report each dispensation of a controlled substance to the Alabama Prescription Drug Monitoring Program. Ala. Code § 20–2–213; Tr. 507–08. Dr. Alverson testified that from November 10, 2014, until December 1, 2014, the Respondent Pharmacy made no reports of dispensing controlled substances to the PDMP, despite the presence of original prescriptions evidencing the filling of controlled substances during that period. Tr. 393–95. *See* Tr. 174; GX 10, at 36; GX 12; GX 22, at 23.

PIC Davison explained that she ''guessed'' this lapse was due to a software glitch in Respondent Pharmacy's computer system. Tr. 754. This provides no defense for Respondent Pharmacy's failure to report for three weeks and its failure to make any corrective measures until prompted to do so by the Alabama Board of Pharmacy.[42] Respondent Pharmacy has a legal responsibility to report each controlled substance dispensation. In his Recommended Decision, the ALJ noted that the long lapse begs the questions: ''why did the lapse go on for so long; why did the Respondent Pharmacy not quickly correct the lapse? It suggests the Respondent Pharmacy was not checking the PDMP frequently.'' RD, at 56.

Accordingly, I find that Respondent Pharmacy failed to submit records to the PDMP in violation of Alabama law.

2. Factor Five

Under Factor Five, the Administrator is authorized to consider ''other conduct which may threaten the public health and safety.'' 21 U.S.C. 823(f)(5). This factor encompasses ''conduct which creates a probable or possible threat (and not only an actual [threat]) to public health and safety.'' *Jacobo Dreszer, M.D.,* 76 FR 19,386, 19,401 n.2 (2011). The Government argues that Respondent Pharmacy's inaccurate reporting to the Alabama Prescription Drug Monitoring Program and the confusion that the inaccurate reporting caused threatened public safety and weigh in favor of revocation under Factor Five.

The record reveals that the Respondent Pharmacy did submit incorrect information to the Alabama PDMP on several occasions. DI One had received a call from a local doctor, Dr. F., complaining that the Respondent Pharmacy had filled a prescription and attributed it to Dr. F. on the PDMP, which this doctor had not prescribed. Tr. 157–60; GX 8. DI One retrieved the original prescription from the Respondent Pharmacy, which identified

[41] The Government submitted copies of 69 invoices but conceded at the hearing and in the Government's Posthearing Brief that only 64 of the invoices contained orders for controlled substances. Govt Posthearing, at 3.

[42] It is not clear from PIC Davison's testimony when or how she learned of the three week gap in reporting, but her testimony strongly implies she did not know about it until she was alerted by the Alabama Board of Pharmacy. ''Q [from DEA Attorney Hill]: 'When were you alerted to the fact that you had stopped reporting any controlled substances to PDMP?' A [from PIC Davison]: 'I cannot tell you at this point. I've had numerous run-ins with the Board of Pharmacy, you guys from several cases. I can't actively tell you that particular date, but when we did learn about it, we submitted the file.''' Tr. 755.

a different doctor as prescriber, yet the pharmacy label incorrectly identified Dr. F. as the prescriber. Tr. 162–68. DI One also found instances where duplicate prescriptions were entered into the PDMP by the Respondent Pharmacy and where Respondent Pharmacy had input prescriptions under a prescriber DEA number with insufficient digits. *Id.* at 172–73; *see* GX 10, at 36 and 40. But there is also evidence in the record that the PDMP is subject to error, delayed reporting, and correction. Dr. Alverson testified that a pharmacy cannot correct a PDMP entry itself and must contact the PDMP staff with the correction. Tr. 412, 506. She further testified that the pharmacy is under no obligation to ensure the correction was made, Tr. 507, and DI One testified that she did not, as part of her investigation, contact the PDMP to determine if Respondent Pharmacy had submitted corrected information for any of the incorrect entries, Tr. 272.

The Government concedes that stray errors in PDMP reports would not render a registration inconsistent with the public interest and argues only that such errors should be considered to ''threaten the public health safety'' under Factor Five when they are ''sufficiently persistent and widespread that they are credibly said to impede regulatory investigations.'' Govt Posthearing, at 47 n.23. The Government has failed to meet the standard it set for itself. While I agree with the Administrative Law Judge's assessment that errors within the PDMP compromise the important role the program plays in the state in preventing the abuse and diversion of controlled substances, RD, at 56, the handful of PDMP submission errors by Respondent Pharmacy that are supported by evidence on the record were not so widespread or egregious in this case that they threatened the public health and safety.

The Government has demonstrated that Respondent's *omissions* to the PDMP were sufficiently persistent and widespread that they could pose a threat to public health and safety, but in this case, those failures were a violation of state law and were considered under Factor Four. Because Factor Five only implicates ''such other conduct,'' it necessarily follows that conduct considered in Factors One through Four may not be considered under Factor Five. *Holiday CVS,* 77 FR at 62,345. Accordingly, Factor Five does not weigh for or against revocation.

3. Summary of the Public Interest Factors

As found above, Respondent Pharmacy filled controlled substance prescriptions for nearly a dozen patients in violation of its corresponding responsibility and outside the usual course of professional practice. 21 CFR 1306.04, 1306.06. It also violated numerous federal and state record keeping regulations related to controlled substances. Thus, I conclude that Respondent has engaged in misconduct which supports the revocation of its registration. I therefore hold that the Government has established a *prima facie* case that Respondent's continued registration ''would be inconsistent with the public interest.'' 21 U.S.C. 823(f).

III. Sanction

Where, as here, the Government has met its *prima facie* burden of showing that Respondent's continued registration is inconsistent with the public interest due to its violations pertaining to controlled substance dispensing and recordkeeping, the burden shifts to Respondent to show why it can be entrusted with the responsibility carried by its registration. *Garret Howard Smith, M.D.,* 83 FR 18,882, 18,910 (2018) (citing *Samuel S. Jackson,* 72 FR 23848, 23853 (2007)). DEA cases have repeatedly found that when a registrant has committed acts inconsistent with the public interest, ''the Respondent is required not only to accept responsibility for [the established] misconduct, but also to demonstrate what corrective measures [have been] undertaken to prevent the reoccurrence of similar acts.'' *Holiday CVS,* 77 FR at 62,339 (internal quotations omitted). *See, also, Hoxie* v. *DEA,* 419 F.3d 477, 483 (6th Cir. 2005); *Ronald Lynch, M.D.,* 75 FR 78,745, 78,749, 78,754 (2010) (holding that respondent's attempts to minimize misconduct held to undermine acceptance of responsibility); *Medicine Shoppe-Jonesborough,* 73 FR 364, 387 (2008) (noting that the respondent did not acknowledge recordkeeping problems, let alone more serious violations of federal law, and concluding that revocation was warranted). The issue of trust is necessarily a fact-dependent determination based on the circumstances presented by the individual respondent; therefore, the Agency looks at factors, such as the acceptance of responsibility and the credibility of that acceptance as it relates to the probability of repeat violations. *Jeffrey Stein, M.D.,* 84 FR 46,968, 46,972 (2019). A registrant's candor during the investigation and hearing is an important factor in determining acceptance of responsibility and the appropriate sanction, *Garret Howard Smith, M.D.,* 83 FR at 18,910 (collecting cases); as is whether the registrant's acceptance of responsibility is unequivocal, *Lon F. Alexander, M.D.,* 82 FR 49,704, 49,728 (2017) (collecting cases).[43]

In determining whether and to what extent a sanction is appropriate, consideration must be given to both the egregiousness of the offense established by the Government's evidence and the Agency's interest in both specific and general deterrence. *Wesley Pope,* 82 FR 14,944, 14,985 (2017) (citing *Joseph Gaudio,* 74 FR 10,083, 10,095 (2009)); *David A. Ruben, M.D.,* 78 FR 38,363, 38,364 (2013). *Cf. McCarthy* v. *SEC,* 406 F.3d 179, 188–89 (2d Cir. 2005) (upholding SEC's express adoption of ''deterrence, both specific and general as a component in analyzing the remedial efficacy of sanctions.''). Normal hardships to the practitioner and even to the surrounding community that are attendant upon the lack of registration are not relevant considerations. *Linda Sue Cheek, M.D.,* 76 FR 66,972, 66,973 (2011).

Here, the ALJ recommended that I find that Respondent did not ''meet[] the evidence with an acceptance of responsibility.'' RD, at 57. PIC Davison testified during the hearing that she took responsibility for many of the established violations but her acceptance was equivocal, did not cover the full scope of her violations, and lacked credibility. PIC Davison acknowledged many of her recordkeeping failures but did not acknowledge the impropriety of a single dispensing of a controlled substance at issue in this case.[44] Dr. Alverson's fact testimony, which the ALJ found credible, also belied PIC Davison's acceptance of responsibility at the hearing. Just a month before the hearing, PIC Davison was eschewing her

[43] Here, the Respondent Pharmacy testified that there were five instances, out of the 69 alleged invoice violations for orders of schedule III–V controlled substances, in which the Government had mistakenly included non-controlled substances. The Government credibly explained the cause of the charging error and amended the charges accordingly. The ALJ did not consider this legal challenge by the Respondent as compromising her potential acceptance of responsibility, RD, at 58, and neither will I.

[44] The closest PIC Davison came to acknowledging that she improperly filled a prescription was to say that if presented with female M.A.'s prescription today she would *perhaps* not fill it based on 2016 guidelines on the dangers of opioid and benzodiazepine combinations, but Dr. Alverson testified that the danger was widely known in the pharmacy community when PIC Davison filled female M.A.'s prescription. See Tr. 420, 773–75.

professional responsibility telling Dr. Alverson that whatever problems her patients had with controlled substances, they already had those problems when they arrived at her pharmacy.

PIC Davison also failed to recognize the real harm that could result to her patients and the public from her violations and minimized the severity of her misconduct. She seemed more concerned with preventing another DEA investigation than preventing diversion repeatedly testifying that she was sorry her violations ''caused all this uproar.'' Tr. 691–92.

Additionally, the ALJ found that PIC Davison was not fully candid during the investigation and hearing, which tends to rebut any acceptance of responsibility. The ALJ stated that ''[i]n testifying as to factual matters regarding the initial inventory, the timing and extent of her purported investigations, and documentation of her investigations, PIC Davison's testimony was marked with a level of equivocation, implausibility, and inconsistently that profoundly undermined her efforts to diminish her culpability.'' RD, at 58. For example, Respondent conceded that it failed to properly document PIC Davison's due diligence investigations as to some of the subject patients, while suggesting to have properly documented her investigation as to other patients; however, the ALJ specifically found that PIC Davison's testimony regarding her documentation of investigations was not always credible. *Id.* Finally, PIC Davison's false statements on her registration renewal application, which were made during the pendency of the instant matter, undermine any claims of contrition and her argument that she can be trusted with the responsibilities of a registration.

In Respondent's favor, PIC Davison testified that she has undertaken corrective measures to prevent the reoccurrence of violations of her regulatory and professional responsibilities. She has instituted new policies to remedy Respondent Pharmacy's numerous recordkeeping violations including contemporaneous electronic notations of communications with physicians, up to date ordering processes for all controlled substances, and manual input of PDMP information to avoid errors. The ALJ also found that PIC Davison's in-hearing ''impromptu evaluation of patient cases demonstrated that she was fully aware of her responsibilities to investigate suspicious prescriptions, and the steps she reported she would take to investigate largely mirrored those recommended by Dr. Alverson.'' RD, at 60. The ALJ was skeptical, however, that PIC Davison ''would consistently honor her commitment to regulatory compliance . . . in light of her conflicting priorities.'' *Id.* (referencing PIC Davison's repeated statements that she prioritized patient consultation over documentation and other legal requirements). He also referred to her remedial measures as ''dilatory.'' *Id.* at 58. I am similarly skeptical that PIC Davison will consistently comply with her new recordkeeping procedures. The record demonstrates that for some of the established recordkeeping violations, such as the improperly documented paper and electronic orders of schedule II substances, PIC Davison was aware of and capable of fulfilling her obligations, but she chose not to prioritize compliance. ''Past performance is the best predictor of future performance,'' *Leo R. Miller, M.D.,* 53 FR 21,931, 21,932 (1998); and the ALJ found, and I agree, that the allegations sustained on the record in this matter ''exhibit a near deliberate policy to de-prioritize the Respondent Pharmacy's record-keeping and corresponding prescription investigation responsibilities,'' RD, at 60.

The ALJ recommended that ''the record supports the imposition of a sanction.'' RD, at 58. I agree that is the appropriate result on the record in this case.

Respondent has not presented sufficient mitigating evidence to assure me that it can be entrusted with the responsibility carried by a DEA registration. As the ALJ noted in his Recommended Decision ''[t]he Respondent Pharmacy's case is characterized by non-compliance *ab initio.* The Respondent Pharmacy opened for business without a demonstrated commitment to regulatory compliance, both in [PIC] Davison's corresponding responsibility and its record-keeping, and only appears to have become compliant with the prospect of losing its registration.'' RD, at 59. The evidence shows that PIC Davison committed extensive violations of federal and state recordkeeping requirements, filled prescriptions that were not issued for a legitimate medical purpose in violation of her corresponding responsibility, and, perhaps most egregiously, continued to fill prescriptions lacking a legitimate medical purpose even after multiple discussions with DEA and state pharmacy board officials regarding her regulatory noncompliance. She also continued to violate federal law after the initiation of the proceedings to revoke her registration by submitting false statements on her registration renewal and falsification on an application for registration cannot be tolerated. *Peter A. Ahles, M.D.,* 71 FR at 50,099; *Hoxie,* 419 F.3d at 483.

Regarding general deterrence, the Agency bears the responsibility to deter similar misconduct on the part of others for the protection of the public at large. *David A. Ruben,* 78 FR at 38,385. I agree with the ALJ's conclusion that ''the Agency's interest in general deterrence is . . . best served here by the revocation of the Respondent Pharmacy's COR.'' RD, at 60. Based on the number and variety of the established violations in this case, a sanction less than revocation would send a message to the regulated community that ''due diligence is not a required condition precedent to operating as a registrant.'' *Zion Clinic Pharmacy,* 83 FR at 10,903.

The ALJ recommended revocation as the appropriate sanction. RD, at 60. A balancing of the statutory public interest factors, coupled with consideration of the Respondent Pharmacy's failure to accept full responsibility, the absence of record evidence of timely and committed remedial measures to guard against recurrence, and the Agency's interest in deterrence, supports the conclusion that the Respondent Pharmacy should not continue to be entrusted with a registration. The Respondent Pharmacy's false statements within its registration renewal application also supply an independent ground for revocation pursuant to section 824(a)(1). Accordingly, I shall order the sanctions the Government requested, as contained in the Order below.

IV. Order

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 824(a), I hereby revoke DEA Certificate of Registration FH4377291 issued to Heavenly Care Pharmacy. Further, pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 823(f), I hereby deny any pending application of Heavenly Care Pharmacy to renew or modify this registration. This order is effective September 28, 2020.

Timothy J. Shea,

Acting Administrator.

[FR Doc. 2020–18975 Filed 8–27–20; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

201st Meeting of the Advisory Council on Employee Welfare and Pension Benefit Plans; Notice of Teleconference Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, the 201st open meeting of the Advisory Council on Employee Welfare and Pension Benefit Plans (also known as the ERISA Advisory Council) will be held via a teleconference on Thursday, September 17, and Friday, September 18, 2020.

The two-day meeting will begin at 9:00 a.m. and end at approximately 5:30 p.m. each day with a one-hour break for lunch. The purpose of the open meeting is for Advisory Council members to hear testimony from invited witnesses and to receive an update from the Employee Benefits Security Administration (EBSA).

The Advisory Council will study the following topics: (1) Considerations for recognizing and addressing participants with diminished capacity, and (2) Examining top hat plan participation and reporting. Descriptions of these topics, once finalized, will be available on the ERISA Advisory Council's web page at *https://www.dol.gov/agencies/ebsa/about-ebsa/about-us/erisa-advisory-council.*

The agenda for the meeting, which will include the schedule of witness testimony and the EBSA update, will be available on the ERISA Advisory Council's web page at *https://www.dol.gov/agencies/ebsa/about-ebsa/about-us/erisa-advisory-council* approximately one week prior to the meeting.

Organizations or members of the public wishing to submit a written statement may do so on or before Thursday, September 10, 2020, to Christine Donahue, Executive Secretary, ERISA Advisory Council. Statements should be transmitted electronically as an email attachment in text or pdf format to *donahue.christine@dol.gov.* Statements transmitted electronically that are included in the body of the email will not be accepted. Relevant statements received on or before September 10, 2020, will be included in the record of the meeting. No deletions, modifications, or redactions will be made to the statements received, as they are public records.

Individuals or representatives of organizations wishing to address the ERISA Advisory Council should forward their requests to the Executive Secretary no later than September 10, 2020, via email to *donahue.christine@dol.gov* or by telephoning (202) 693–8641. Oral presentations will be limited to ten minutes, time permitting, but an extended statement may be submitted for the record.

Individuals who need special accommodations should contact the Executive Secretary no later than September 10, 2020, via email to *donahue.christine@dol.gov* or by telephoning (202) 693–8641.

For more information about the meeting, contact the Executive Secretary via email to *donahue.christine@dol.gov* or by telephoning (202) 693–8641.

Signed at Washington, DC this 25th day of August, 2020.

Jeanne Klinefelter Wilson,

Acting Assistant Secretary, Employee Benefits Security Administration.

[FR Doc. 2020–19034 Filed 8–27–20; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Office of the Secretary

Senior Executive Service; Appointment of Members to the Performance Review Board

Title 5 U.S.C. 4314(c)(4) provides that Notice of the Appointment of the individual to serve as a member of the Performance Review Board of the Senior Executive Service shall be published in the **Federal Register**.

The following individuals are hereby appointed to serve on the Department's Performance Review Board:

Permanent Membership

Chair—Deputy Secretary
Vice-Chair—Assistant Secretary for Administration and Management
Alternate Vice-Chair—Chief Human Capital Officer

Rotating Membership—Appointments Expire on 09/30/21

BLS Nancy Ruiz De Gamboa, Associate Commissioner for Administration
EBSA Amy Turner, Deputy Assistant Secretary
ETA Nicholas Lalpuis, Regional Administrator, Dallas
MSHA Patricia Silvey, Deputy Assistant Secretary
OASAM Geoffrey Kenyon, Deputy Assistant Secretary for Budget
OSHA Galen Blanton, Regional Administrator, Boston
OSHA Loren Sweatt, Principal Deputy Assistant Secretary
SOL Kate O'Scannlain, Solicitor of Labor
VETS Ivan Denton, Director, National Programs
WHD Patrice Torres, Associate Director, Administrative Operations

Rotating Membership—Appointment Expires on 09/30/23

ETA Debra Carr, Deputy Administrator, Office of Job Corps
OLMS Lorenzo Harrison, Director, Office of Program Operations
VETS John Lowry, Assistant Secretary

FOR FURTHER INFORMATION CONTACT: Mr. Demeatric Gamble, Chief, Division of Executive Resources, Room N2453, U.S. Department of Labor, Frances Perkins Building, 200 Constitution Ave. NW, Washington, DC 20210, telephone: (202) 693–7694.

Signed at Washington, DC on 21st day of August 2020.

Bryan Slater,

Assistant Secretary for Administration and Management.

[FR Doc. 2020–18907 Filed 8–27–20; 8:45 am]

BILLING CODE 4510–04–P

OFFICE OF MANAGEMENT AND BUDGET

OMB Sequestration Update Report to the President and Congress for Fiscal Year 2021

AGENCY: Executive Office of the President, Office of Management and Budget.

ACTION: Notice of availability of the OMB Sequestration Update Report to the President and Congress for FY 2021.

SUMMARY: OMB is issuing the *OMB Sequestration Update Report to the President and Congress for Fiscal Year 2021* to report on the status of the discretionary caps and on the compliance of pending discretionary appropriations legislation with those caps.

DATES: August 20, 2020.

ADDRESSES: The OMB Sequestration Report to the President and Congress is available on-line on the OMB home page at: *https://www.whitehouse.gov/omb/legislative/sequestration-reports-orders/.*

FOR FURTHER INFORMATION CONTACT: Thomas Tobasko, 6202 New Executive Office Building, Washington, DC 20503, Email address: *ttobasko@omb.eop.gov,* telephone number: (202) 395–5745, FAX number: (202) 395–4768. Because of delays in the receipt of regular mail related to security screening,

respondents are encouraged to use electronic communications.

SUPPLEMENTARY INFORMATION: Section 254 of the Balanced Budget and Emergency Deficit Control Act of 1985 requires the Office of Management and Budget (OMB) to issue a Sequestration Update Report by August 20th of each year. For fiscal year 2020, the report finds enacted appropriations to be at or below the caps after accounting for enacted supplemental appropriations. For fiscal year 2021, the report finds that actions to date by the House of Representatives for the 12 annual appropriations bills for fiscal year 2021 would breach the non-defense cap under OMB estimates if they were enacted into law. The Senate has not yet begun consideration of its 2021 appropriations bills; therefore, an evaluation of Senate compliance cannot be made at this time. Finally, the report contains OMB's Preview Estimate of the Disaster Relief Funding Adjustment for FY 2021.

Russell T. Vought,

Director.

[FR Doc. 2020–18941 Filed 8–27–20; 8:45 am]

BILLING CODE 3110–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Arts Advisory Panel Meetings

AGENCY: National Endowment for the Arts.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, as amended, notice is hereby given that 1 meeting of the Arts Advisory Panel to the National Council on the Arts will be held by teleconference or videoconference.

DATES: See the **SUPPLEMENTARY INFORMATION** section for individual meeting times and dates. All meetings are Eastern time and ending times are approximate:

ADDRESSES: National Endowment for the Arts, Constitution Center, 400 7th St. SW, Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Further information with reference to these meetings can be obtained from Ms. Sherry Hale, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506; *hales@arts.gov,* or call 202/682–5696.

SUPPLEMENTARY INFORMATION: The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of September 10, 2019, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of title 5, United States Code.

The upcoming meeting is:

Folk and Traditional Arts (review of applications): This meeting will be closed.

Date and time: September 21, 2020; 11:30 a.m. to 1:30 p.m.

Dated: August 25, 2020.

Sherry Hale,

Staff Assistant, National Endowment for the Arts.

[FR Doc. 2020–18950 Filed 8–27–20; 8:45 am]

BILLING CODE 7537–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. IA–20–008; NRC–2020–0195]

In the Matter of Joseph Shea, Tennessee Valley Authority, Chattanooga, TN

AGENCY: Nuclear Regulatory Commission.

ACTION: Order; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an Order prohibiting involvement in NRC-licensed activities to Mr. Joseph Shea, Vice President Nuclear Technology Innovation at Tennessee Valley Authority (TVA), for 5 years. The NRC has determined that Mr. Joseph Shea engaged in deliberate misconduct when he played a significant role in the decisionmaking process to place a former employee on paid administrative leave on October 15, 2018 and terminate the former employee on January 14, 2019, in part, for engaging in protected activity. The Order is effective on the date of issuance.

DATES: The Order was issued on August 24, 2020.

ADDRESSES: Please refer to Docket ID NRC–2020–0195 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2020–0075. Address questions about NRC docket IDs in *Regulations.gov* to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* Order IA–20–008, issued to Mr. Joseph Shea on August 24, 2020, is available in ADAMS under Accession No. ML20219A676.

FOR FURTHER INFORMATION CONTACT: Ian Gifford, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001; telephone: 301–287–9216, email: *Ian.Gifford@nrc.gov.*

SUPPLEMENTARY INFORMATION: The text of the Order is attached.

Dated: August 24, 2020.

For the Nuclear Regulatory Commission.

George A. Wilson,

Director, Office of Enforcement.

Attachment—Order Prohibiting Involvement in NRC-Licensed Activities

United States of America Nuclear Regulatory Commission

In the Matter of Joseph Shea

IA–20–008

Order Prohibiting Involvement in NRC-Licensed Activities Immediately Effective

I.

Mr. Joseph Shea is employed as Vice President Nuclear Technology Innovation at the Tennessee Valley Authority (TVA). TVA holds Browns Ferry Units 1, 2 and 3 License Nos. DPR–33, DPR–52, and DPR–68 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to Part 50 of Title 10 of the *Code of Federal Regulations* (10 CFR), on December 20, 1973, June 28, 1974 and July 2, 1976, respectively. The units are located on the Licensee's site in Athens, Alabama. TVA holds Sequoyah Units 1 and 2 License Nos. DPR–77 and DPR–79 issued by the NRC pursuant to 10 CFR part 50, on September 17, 1980 and September 15, 1981, respectively. The units are located on the Licensee's site in Soddy-Daisy, Tennessee. TVA holds Watts Bar Units 1 and 2 License Nos.

NPF–90 and NPF–96 issued by the NRC pursuant to 10 CFR part 50, on February 7, 1996 and October 22, 2015, respectively. The units are located on the Licensee's site in Spring City, Tennessee. The licenses authorize the operation of these facilities in accordance with the conditions specified therein.

II.

On January 21, 2020, an investigation was completed by the U.S. Nuclear Regulatory Commission (NRC) Office of Investigations (OI) related to TVA (OI Report No. 2–2019–015). The purpose of the investigation was to determine whether a former corporate employee was the subject of employment discrimination for engaging in a protected activity in violation of Title 10 of the *Code of Federal Regulations* (10 CFR) 50.7, ''Employee Protection.''

Based on the evidence developed during the investigation and subsequent staff analysis, it appeared that Mr. Joseph Shea, as the Vice President of Regulatory Affairs at TVA, engaged in deliberate misconduct, in violation of 10 CFR 50.5, ''Deliberate Misconduct,'' that caused an NRC licensee to be in violation of 10 CFR 50.7, ''Employee Protection.'' Specifically, the NRC determined that a former corporate employee was placed on paid administrative leave on October 15, 2018, and terminated on January 14, 2019, by Mr. Joseph Shea, in part, for engaging in protected activity, including raising concerns about a chilled work environment. The former employee engaged in protected activity when expressing concerns to Mr. Joseph Shea regarding the chilled work environment that the former Director of Corporate Nuclear Licensing (CNL) was creating. Further, Mr. Joseph Shea received a copy of the TVA Office of General Counsel (OGC) draft report prepared by the TVA OGC attorney that identified the concerns of the former employee. Additionally, in a (internal TVA) complaint that the former Director of CNL provided to Mr. Joseph Shea on or about March 9, 2018, the former Director of CNL identified the former employee as the source of a chilled work environment complaint made to the NRC.

The former employee suffered an adverse action when Mr. Joseph Shea played a significant role in the decisionmaking process to place the former employee on administrative leave and terminate the former employee. There is a nexus between the former employee's protected activity of raising concerns about a chilled work environment and the termination of the former employee. Mr. Joseph Shea stated during the predecisional enforcement conference that Mr. Joseph Shea terminated the former employee for being ''disrespectful'' to the former Director of CNL. However, the examples used in the TVA OGC report as evidence that the former employee was ''disrespectful'' to the former Director of CNL were: 1) raising concerns about a chilled work environment in a TVA OGC interview; and 2) raising concerns about reprisal from the former Director of CNL directly to Mr. Joseph Shea. Mr. Joseph Shea admitted that he did not counsel the former employee about the asserted disrespectful behavior.

The NRC has determined that Mr. Joseph Shea played a significant role in the decisionmaking process to place the former employee on paid administrative leave on October 15, 2018 and terminate her on January 14, 2019, in part, for engaging in protected activities. Accordingly, the NRC has determined that Mr. Joseph Shea's actions were deliberate and violated the requirements in 10 CFR 50.5, ''Deliberate Misconduct.'' The NRC considers deliberate violations of 10 CFR 50.7, ''Employee Protection,'' significant because of the potential that individuals might not raise safety issues for fear of retaliation.

III.

Based on the above, Mr. Joseph Shea, the Vice President Nuclear Technology Innovation at TVA, engaged in deliberate misconduct, in violation of 10 CFR 50.5, ''Deliberate Misconduct,'' that caused the Licensee to be in violation of 10 CFR 50.7, ''Employee Protection.'' The NRC must be able to rely on TVA and its employees to comply with NRC requirements, including the requirement prohibiting discrimination against an employee for engaging in protected activities.

Consequently, given the significance of the underlying issues, Mr. Joseph Shea's position within TVA that has a very broad sphere of influence, and the deliberate nature of the actions, the NRC lacks the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public will be protected if Mr. Joseph Shea were permitted at this time to be involved in NRC-licensed activities. Therefore, Mr. Joseph Shea is prohibited from any involvement in NRC-licensed activities for a period of 5 years. Furthermore, pursuant to 10 CFR 2.202, the significance of Mr. Joseph Shea's wrongdoing described above is such that this Order be immediately effective. Mr. Joseph Shea is required to notify the NRC of his first employment in NRC-licensed activities following the prohibition period.

IV.

Accordingly, pursuant to sections 103, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, and 10 CFR 50.5, it is hereby ordered, immediately effective upon the date of issuance, that:

1. Mr. Joseph Shea is prohibited for 5 years from engaging in, supervising, directing, or in any other way conducting NRC-licensed activities. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC.

2. If Mr. Joseph Shea is currently involved with another licensee in other NRC-licensed activities, he must immediately cease those activities, and inform the NRC of the name, address, and telephone number of the employer, and provide a copy of this Order to the employer.

3. For a period of 1 year after the 5-year period of prohibition has expired, Mr. Joseph Shea shall, within 20 days of acceptance of his first employment offer involving NRC-licensed activities, as defined in paragraph IV.1 above, provide notice to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, the name, address, and telephone number of the employer or the entity where he is, or will be, involved in the NRC-licensed activities. In the notification, Mr. Joseph Shea shall include a statement of his commitment to compliance with regulatory requirements and the basis why the Commission should have confidence that he will now comply with applicable NRC requirements.

The Director, Office of Enforcement, or designee, may, in writing, relax, rescind, or withdraw any of the above conditions upon demonstration by Mr. Joseph Shea of good cause.

V.

In accordance with 10 CFR 2.202, Mr. Joseph Shea must submit a written answer to this Order under oath or affirmation within 30 calendar days of its issuance. Mr. Joseph Shea's failure to respond to this Order could result in additional enforcement action in accordance with the Commission's Enforcement Policy. In addition, Mr. Joseph Shea and any other person adversely affected by this Order, may request a hearing on this Order within 30 calendar days of its issuance. Where good cause is shown, consideration will

be given to extending the time to answer or request a hearing. A request for extension of time must be directed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555–001, and include a statement of good cause for the extension.

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.

If a person other than Mr. Joseph Shea requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d) and (f).

If a hearing is requested by Mr. Joseph Shea or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearings. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained. Pursuant to 10 CFR 2.202(c)(2)(i), Mr. Joseph Shea or any other person adversely affected by this Order, may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion,

unfounded allegations, or error. In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 30 calendar days from the date this Order is issued without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. AN ANSWER OR A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

For the Nuclear Regulatory Commission.

George A. Wilson,

Director, Office of Enforcement.

[FR Doc. 2020–18928 Filed 8–27–20; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–824; OMB Control No. 3235–0500 [Corrected collection number]]

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:
Rule 608

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the existing collection of information provided for in Rule 608 (17 CFR 242.608) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*). The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Rule 608 specifies procedures for filing or amending national market system plans (''NMS Plans''). Self-regulatory organizations (''SROs'') filing a new NMS Plan must submit the text of the NMS Plan to the Commission, along with a statement of purpose, and, if applicable, specified supporting materials that may include: (1) A copy of all governing or constituent documents, (2) a description of the manner in which the NMS Plan, and any facility or procedure contemplated by the NMS Plan, will be implemented, (3) a listing of all significant phases of development and implementation contemplated by the NMS Plan, including a projected completion date for each phase, (4) an analysis of the competitive impact of implementing the NMS Plan, (5) a description of any written agreements or understandings between or among plan participants or sponsors relating to interpretations of the NMS Plan or conditions for becoming a plan participant or sponsor, and (6) a description of the manner in which any facility contemplated by the NMS Plan shall be operated. Participants or sponsors to the NMS Plan must ensure that a current and complete version of the NMS Plan is posted on a designated website or a plan website after being notified by the Commission that the NMS Plan is effective. Each plan participant or sponsor must also provide a link on its own website to the current website to the current version of the NMS Plan.

The Commission estimates that the creation and submission of a new NMS Plan and any related materials would result in an average aggregate burden of approximately 850 hours per year (25 SROs × 34 hours = 850 hours). The Commission further estimates an average aggregate burden of approximately 125 hours per year (25 SROs × 5 hours = 125 hours), for each of the SROs to keep a current and complete version of the NMS Plan posted on a designated website or a plan website, and to provide a link to the current version of the NMS Plan on its own website. In addition, the Commission estimates that the creation of a new NMS Plan and any related materials would result in an average aggregate cost of approximately $150,000 per year (25 SROs × $6,000 = $150,000).

SROs proposing to amend an existing NMS Plan must submit the text of the amendment to the Commission, along with a statement of purpose, and, if applicable, the supporting materials described above, as well as a statement that the amendment has been approved by the plan participants or sponsors in accordance with the terms of the NMS Plan. Participants or sponsors to the NMS Plan must ensure that any proposed amendments are posted to a designated website or a plan website after filing the amendments with the Commission and that those websites are updated to reflect the current status of the amendment and the NMS Plan. Each plan participant or sponsor must also provide a link on its own website to the current version of the NMS Plan. The Commission estimates that the creation and submission of NMS Plan amendments and any related materials would result in an average aggregate burden of approximately 11,050 hours per year (25 SROs × 442 hours = 11,050 hours). The Commission further estimates an average aggregate burden of approximately 124 hours per year (25 SROs × 4.94 hours = 123.5 hours rounded up to 124) for SROs to post any pending NMS Plan amendments to a designated website or a plan website and to update such websites to reflect the current status of the amendment and the NMS Plan. In addition, the Commission estimates that the creation of a NMS Plan amendment and any related materials would result in an average aggregate cost of approximately $325,000 per year (25 SROs × $13,000 = $325,000).

Finally, to the extent that a plan processor is required for any facility contemplated by a NMS Plan, the plan participants or sponsors must file with the Commission a statement identifying the plan processor selected, describing the material terms under which the plan processor is to serve, and indicating the solicitation efforts, if any, for alternative plan processors, the alternatives considered, and the reasons for the selection of the plan processor. The Commission estimates that the preparation and materials related to the selection of a plan processor would result in an average aggregate burden of approximately 283 hours per year (25 SROs × 11.33 hours = 283.33 rounded down to 233). In addition, the Commission estimates that the preparation and submission of materials related to the selection of a plan processor would result in an average aggregate cost of approximately $8,333 per year (25 SROs × $333.33 = $8,333.33 rounded down to $8,333).

The above estimates result in a total annual industry burden of approximately 12,432 hours (850 + 125 + 11,050 + 124 + 283) and a total annual industry cost of approximately $483,333 ($150,000 + $325,000 + $8,333).

Compliance with Rule 608 is mandatory. The text of the NMS Plans and any amendments will not be confidential, but published on a designated website or a plan website. To the extent that Rule 608 requires the SROs to submit confidential information to the Commission, that information will be kept confidential subject to the provisions of applicable law.[1] The SROs are required by law to retain the records and information that are collected pursuant to Rule 608 for a period of not less than 5 years, the first 2 years in an

[1] *See, e.g.,* 5 U.S.C. 552 *et seq.;* 15 U.S.C. 78x (governing the public availability of information obtained by the Commission).

easily accessible place.[2] Rule 608 does not affect this existing requirement.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o Cynthia Roscoe, 100 F Street NE, Washington, DC 20549, or send an email to: *PRA_Mailbox@sec.gov.*

Dated: August 18, 2020.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–18402 Filed 8–27–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: 2:00 p.m. on Wednesday, September 2, 2020.

PLACE: The meeting will be held via remote means and/or at the Commission's headquarters, 100 F Street NE, Washington, DC 20549.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's website at *https://www.sec.gov.*

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meeting.

The subject matter of the closed meeting will consist of the following topic:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Resolution of litigation claims; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting agenda items that may consist of adjudicatory, examination, litigation, or regulatory matters.

CONTACT PERSON FOR MORE INFORMATION: For further information; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

Dated: August 26, 2020.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2020–19156 Filed 8–26–20; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 85 FR 52166, August 24, 2020

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: Wednesday, August 26, 2020 at 10:00 a.m.

CHANGES IN THE MEETING: The following item will not be considered during the Open Meeting on Wednesday, August 26, 2020:

- Whether to adopt amendments to the definition of ''accredited investor'' in Commission rules and the definition of ''qualified institutional buyer'' in Rule 144A under the Securities Act to update and improve the definition to identify more effectively investors that have sufficient financial sophistication to participate in certain private investment opportunities. The amendments are the product of years of efforts by the Commission and its staff to consider and analyze possible approaches to revising the accredited investor definition.

CONTACT PERSON FOR MORE INFORMATION: For further information; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

Dated: August 25, 2020.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2020–19076 Filed 8–26–20; 11:15 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #16553 and #16554; ARKANSAS Disaster Number AR–00115]

Presidential Declaration Amendment of a Major Disaster for Public Assistance Only for the State of Arkansas

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Arkansas (FEMA–4556–DR), dated 07/10/2020.

Incident: Severe Storms and Straight-line Winds.

Incident Period: 04/12/2020.

DATES: Issued on 08/21/2020.

Physical Loan Application Deadline Date: 09/08/2020.

Economic Injury (EIDL) Loan Application Deadline Date: 04/12/2021.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Arkansas, dated 07/10/2020, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Monroe, Phillips.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Cynthia Pitts,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2020–18946 Filed 8–27–20; 8:45 am]

BILLING CODE 8026–03–P

[2] *See* 17 CFR 240.17a–1(b).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #16603 and #16604; CALIFORNIA Disaster Number CA–00325]

Presidential Declaration Amendment of a Major Disaster for the State of California

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of California (FEMA–4558–DR), dated 08/22/2020.

Incident: Wildfires.

Incident Period: 08/14/2020 and continuing.

DATES: Issued on 08/24/2020.

Physical Loan Application Deadline Date: 10/21/2020.

Economic Injury (EIDL) Loan Application Deadline Date: 05/24/2021.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of California, dated 08/22/2020, is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans): Monterey

Contiguous Counties (Economic Injury Loans Only):

California: Fresno, Kings, San Luis Obispo.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Cynthia Pitts,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2020–18945 Filed 8–27–20; 8:45 am]

BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #16603 and #16604; CALIFORNIA Disaster Number CA–00325]

Presidential Declaration of a Major Disaster for the State of California

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of California (FEMA–4558–DR), dated 08/22/2020.

Incident: Wildfires.

Incident Period: 08/14/2020 and continuing.

DATES: Issued on 08/22/2020.

Physical Loan Application Deadline Date: 10/21/2020.

Economic Injury (EIDL) Loan Application Deadline Date: 05/24/2021.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 08/22/2020, applications for disaster loans may be filed at the address listed above or other locally announced locations. The following areas have been determined to be adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans):

Lake, Napa, San Mateo, Santa Cruz, Solano, Sonoma, Yolo.

Contiguous Counties (Economic Injury Loans Only):

California: Alameda, Colusa, Contra Costa, Glenn, Marin, Mendocino, Monterey, Sacramento, San Benito, San Francisco, Santa Clara, Sutter.

The Interest Rates are:

For Physical Damage:	
Homeowners With Credit Available Elsewhere	2.375
Homeowners Without Credit Available Elsewhere	1.188
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	3.000
Non-Profit Organizations With Credit Available Elsewhere	2.750
Non-Profit Organizations Without Credit Available Elsewhere	2.750
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	3.000
Non-Profit Organizations Without Credit Available Elsewhere	2.750

The number assigned to this disaster for physical damage is 166035 and for economic injury is 166040.

(Catalog of Federal Domestic Assistance Number 59008)

Cynthia Pitts,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2020–18947 Filed 8–27–20; 8:45 am]

BILLING CODE 8026–03–P

SOCIAL SECURITY ADMINISTRATION

[Docket No: SSA–2020–0044]

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes revisions of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, email, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers.

(OMB), Office of Management and Budget, Attn: Desk Officer for SSA, Fax: 202–395–6974, Email address: *OIRA_Submission@omb.eop.gov.*

(SSA), Social Security Administration, OLCA, Attn: Reports Clearance Director, 3100 West High Rise, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–966–2830, Email address: *OR.Reports.Clearance@ssa.gov.*

Or you may submit your comments online through *www.regulations.gov,* referencing Docket ID Number [SSA–2020–0044].

I. The information collections below are pending at SSA. SSA will submit them to OMB within 60 days from the date of this notice. To be sure we consider your comments, we must receive them no later than October 27, 2020. Individuals can obtain copies of the collection instruments by writing to the above email address.

1. Statement of Income and Resources—20 CFR 416.207, 416.301–416.310, 416.704, and 416.708—0960–0124. SSA collects information about income and resources for Supplemental

Security Income (SSI) claims and redeterminations on the SSA–8010–BK. SSA uses the information to make initial or continuing eligibility determinations for SSI claimants or recipients who are subject to deeming. The respondents are people whose income and resources SSA may deem (consider to be available) to SSI applicants or recipients.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Average wait time in field office (minutes) **	Total annual opportunity cost (dollars) ***
SSA–8010–BK (Intranet)	1,855,340	1	20	618,447	$10.73 *	24 **	$14,599,056 ***
SSA–8010–BK (Paper)	61,380	1	20	20,460	10.73 *	24 **	482,979 ***
Totals	1,916,720			638,907			15,082,035 ***

* We based this figure on average DI payments based on SSA's current FY 2020 data (*https://www.ssa.gov/legislation/2020Fact%20Sheet.pdf*).

** We based this figure on the average FY 2020 wait times for field offices, based on our current management information data.

*** This figure does not represent actual costs that we are imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. There is no actual charge to respondents to complete the application.

2. Request for Evidence from Doctor and Request for Evidence from Hospital—20 CFR 404.401–404.1599 and 20 CFR 416.901–416.99(d)—0960–0722. Sections 223(d)(5) and 1614(a)(3)(H)(i) of the Social Security Act (Act) require claimants to furnish medical evidence of their disability when filing a disability claim. SSA uses Forms HA–66 and HA–67 to request evidence from medical sources, which claimants identify as having information relative to their impairments, or ability to do work-related activities. In addition to accepting manual paper responses, SSA sends a barcode with the HA–66 and HA–67, allowing respondents to fax the information directly into the electronic claims folder rather than submitting it manually. SSA uses the information to determine eligibility for benefits, and to pay medical sources for furnishing the information. The respondents are medical sources, doctors, and hospitals that evaluate the claimants.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Total response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Total annual opportunity cost (dollars) **
HA–66—Paper Version	3,060	22	67,320	15	16,830	$40.21	$676,734 **
HA–66—Electronic Version (ERE or barcode)	8,940	22	196,680	15	49,170	40.21	1,977,126 **
HA–67—Paper Version	3,060	22	67,320	15	16,830	40.21	676,734 **
HA–67—Electronic Version (ERE or barcode)	8,940	22	196,680	15	49,170	40.21	1,977,126 **
Totals	24,000		528,000		132,000		5,307,720 **

* We based this figures on average on medical sources and doctor's salaries, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes290000.htm*).

** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. There is no actual charge to respondents to complete the application.

3. Social Security's Public Credentialing and Authentication Process —20 CFR 401.45 and 402—0960–0789.

Background

Authentication is the foundation for secure, online transactions. Identity authentication is the process of determining, with confidence, that someone is who he or she claims to be during a remote, automated session. It comprises three distinct factors: Something you know; something you have; and something you are. Single-factor authentication uses one of the factors, and multi-factor authentication uses two or more of the factors.

SSA's Public Credentialing and Authentication Process

SSA offers consistent authentication across SSA's secured online services. We allow our users to request and maintain only one User ID, consisting of a self-selected username and password, to access multiple Social Security electronic services. Designed in accordance with the OMB Memorandum M–04–04 and the National Institute of Standards and Technology (NIST) Special Publication 800–63, this process provides the means of authenticating users of our secured electronic services and streamlines access to those services.

SSA's public credentialing and authentication process:

- Issues a single User ID to anyone who wants to do business with the agency and meets the eligibility criteria;
- Partners with an external Identity Services Provider (ISP) to help us verify the identity of our online customers;
- Complies with relevant standards;
- Offers access to some of SSA's heaviest, but more sensitive, workloads online while providing a high level of confidence in the identity of the person requesting access to these services;
- Offers an in-person process for those who are uncomfortable with or unable to use the internet process;
- Balances security with ease of use; and
- Provides a user-friendly way for the public to conduct extended business with us online instead of visiting local servicing offices or requesting information over the phone. Individuals have real-time access to their Social Security information in a safe and secure web environment.

Public Credentialing and Authentication Process Features

We collect and maintain the users' personally identifiable information (PII) in our Central Repository of Electronic Authentication Data Master File Privacy Act system of records, which we published in the **Federal Register** (75 FR 79065). The PII may include the users' name; address; date of birth; Social Security number (SSN); phone number; and other types of identity information [*e.g.,* address information of persons from the W–2 and Schedule Self Employed forms we receive electronically for our programmatic purposes as permitted by 26 U.S.C. 6103(l)(1)(A)]. We may also collect knowledge-based authentication data, which is information users establish with us or that we already maintain in our existing Privacy Act systems of records.

We retain the data necessary to administer and maintain our e-Authentication infrastructure. This includes management and profile information, such as blocked accounts; failed access data; effective date of passwords; and other data allowing us to evaluate the system's effectiveness. The data we maintain also may include archived transaction data and historical data.

We use the information from this collection to identity proof and authenticate our users online, and to allow them access to their personal information from our records. We also use this information to provide second factor authentication. We are committed to expanding and improving this process so we can grant access to additional online services in the future.

Offering online services is not only an important part of meeting SSA's goals, but is vital to good public service. In increasing numbers, the public expects to conduct complex business over the internet. Ensuring SSA's online services are both secure and user-friendly is our priority.

We awarded a competitively bid contract to an ISP, Equifax,[1] to help us verify the identity of our online customers. We use this ISP, in addition to our other authentication methods, to help us prove, or verify, the identity of our customers when they are completing online or electronic transactions with us.

Social Security's Authentication Strategy

We remain committed to enhancing our online services using authentication processes that balance usability and security. We will continue to research and develop new authentication tools while monitoring the emerging threats.

The following are key components of our authentication strategy:

- Enrollment and Identity Verification—Individuals who meet the following eligibility requirements may enroll:
  - Must have a valid email address;
  - Must have a valid Social Security number (SSN);
  - Must have a domestic address of record (includes military addresses); and
  - Must be at least 18 years of age.

  We collect identifying data and use SSA and ISP records to verify an individual's identity. Individuals have the option of obtaining an enhanced, stronger, User ID by providing certain financial information (*e.g.,* Medicare wages, self-employed earnings, or the last eight digits of a credit card number) for verification. We also ask individuals to answer out-of-wallet questions so we can further verify their identities. Individuals who are unable to complete the process online can present identification at a field office to obtain a User ID.
- Establishing the User Profile—The individual self-selects a username and password, both of which can be of variable length and alphanumeric. We provide a password strength indicator to help the individual select a strong password. We also ask the individual to choose challenge questions for use in restoring a lost or forgotten username or password.
- Provide a Second Factor—We ask the individual to provide a text message enabled cell phone number or an email address. We consider the cell phone number or email address the second factor of authentication. We send a security code to the individual's selected second factor. We require the individual to confirm its receipt by entering the security code online. Subsequently, each time the individual attempts to sign in to his or her online account, we will also send a message with a one-time security code to the individual's selected second factor. The individual must enter the security code along with his or her username and password. The code is valid for only 10 minutes. If the individual does not enter the code within 10 minutes, the code expires, and the individual must request another code.
- Enhancing the User ID—If individuals opt to enhance or upgrade their User IDs, they must provide certain financial information for verification. We mail a one-time-use upgrade code to the individual's verified residential address. When the individual receives the upgrade code in the mail, he or she can enter this code online to enhance the security of the account. With extra security, we continue to require the individuals to sign in using their username, password, and a one-time security code we send to their second factor email address or cell phone number (whichever the users listed in their account).
- Sign in and Use—Our authentication process provides an individual with a User ID for access to our sensitive online Social Security services. Second factor authentication requires the individual to sign in with a username, password, and a one-time security code sent to the individual's selected second factor. SSA expanded its existing capabilities to require second factor authentication for every online sign in. We also allow for maintenance of the second factor options. An individual who forgets the password can reset it automatically without contacting SSA.

Social Security's Enrollment Process

The enrollment process is a one-time only activity. SSA requires the individuals to agree to the ''Terms of Service'' detailed on our website before we allow them to begin the enrollment process. The ''Terms of Service'' inform the individuals what we will and will not do with their personal information, and the privacy and security protections we provide on all data we collect. These

[1] Equifax is a global information solutions provider. Equifax's solutions help Social Security to manage risk and mitigate fraud.

terms also detail the consequences of misusing this service.

To verify the individual's identity, we ask the individual to give us minimal personal information, which may include:

- Name;
- SSN;
- Date of birth;
- Address—mailing and residential;
- Telephone number;
- Email address;
- Financial information;
- Cell phone number; and
- Selecting and answering password reset questions.

We send a subset of this information to the ISP, who then generates a series of out-of-wallet questions back to the individual. The individual must answer all or most of the questions correctly before continuing in the process. The exact questions generated are unique to each individual. This collection of information, or a subset of it, is mandatory for respondents who want to do business with SSA via the internet. We collect this information via the internet, on SSA's public-facing website. We also offer an in-person identification verification process for individuals who cannot, or are not willing, to register online. For this process, the individual must go to a local SSA field office and provide identifying information. We do not ask for financial information with the in-person process.

We only collect the identity verification information one time, when the individual registers for a credential. We ask for the User ID (username and password) every time an individual signs in to our automated services. If individuals opt for the enhanced or upgraded account, they also either receive an email message or a text message on their cell phones (this serves as the second factor for authentication) each time they sign in. The respondents are individuals who choose to use the internet or Automated Telephone Response System to conduct business with SSA.

Type of Request: Revision of an OMB-approved information collection.

Modality of LI≤ completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Average wait time in field office (minutes) **	Total annual opportunity cost (dollars) ***
Internet registration	7,875,448	1	8	1,050,060	$25.72 *	.....	$27,007,543 ***
Internet Sign-Ins	53,985,814	1	1	899,764	25.72 *	.....	23,141,930 ***
Intranet Registration (RCS)	2,295,983	1	8	306,131	25.72 *	24 **	31,494,757 ***
Totals	64,157,245	.....	.....	2,255,955	.....	.....	81,644,230 ***

* We based this figures on average U.S. citizen's hourly salary, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes_stru.htm*).

** We based this figure on the average FY 2020 wait times for field offices, based on our current management information data.

*** This figure does not represent actual costs that we are imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. There is no actual charge to respondents to complete the application.

II. SSA submitted the information collections below to OMB for clearance. Your comments regarding these information collections would be most useful if OMB and SSA receive them 30 days from the date of this publication. To be sure we consider your comments, we must receive them no later than September 28, 2020. Individuals can obtain copies of these OMB clearance packages by writing to *OR.Reports.Clearance@ssa.gov.*

1. Letter to Landlord Requesting Rental Information—20 CFR 416.1130(b)—0960–0454. SSA uses Form SSA–L5061 to obtain rental subsidy information, which enables SSA to determine and verify an income value for such subsidies. SSA uses this income value as part of determining eligibility for SSI and the correct amount of SSI payable to the claimant. SSA bases an individual's eligibility for SSI payments, in part, on the amount of countable income the individual receives. Income includes in-kind support and maintenance in the form of room or rent, such as a subsidized rental arrangement. SSA requires claimants to assist in obtaining this information to prevent a delay or overpayment with their SSI payments. We collect this information only if the SSI applicant or recipient is the parent or child of the landlord (respondent). For most respondents, we collect this information once per year or less, via telephone or face-to-face personal interview. The claims representative records the information in our SSI Claims System, and we require verbal attestation in lieu of a wet signature. However, if the claims representative is unable to contact the respondent via the telephone or face-to-face, we print and mail a paper form to the respondent for completion. The respondent completes, signs, and returns the form to the claims representative. Upon receipt, the claims representative documents the information in the SSI Claims System or, for non-SSI Claims System cases, faxes the form into the appropriate electronic folder and shreds the paper form. The respondents are landlords related to the SSI beneficiaries as a parent or child.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Average wait time in field office (minutes) **	Total annual opportunity cost (dollars) ***
SSA–L5061	71,280	1	10	11,880	$25.72 *	24 **	$1,038,883 ***

* We based this figure on average U.S. worker's hourly wages, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes_nat.htm*).

** We based this figure on the average FY 2020 wait times for field offices, based on SSA's current management information data.

*** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

2. Marital Relationship Questionnaire—20 CFR 416.1826—0960–0460. SSA uses Form SSA–4178, Marital Relationship Questionnaire, to determine if unrelated individuals of the opposite sex who live together are misrepresenting themselves as husband and wife. SSA needs this information to determine whether we are making correct payments to couples and individuals applying for, or currently receiving, SSI Income payments. The respondents are applicants for, and recipients of, SSI payments.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Average wait time in field office (minutes) **	Total annual opportunity cost (dollars) ***
SSI Claims System	1,275	1	5	106	$10.73 *	24 **	$6,609 ***
SSA–4178	3,825	1	5	319	10.73 *	24 **	19,840 ***
Totals	5,100			425			26,449 ***

* We based this figure on average DI payments based on SSA's current FY 2020 data (*https://www.ssa.gov/legislation/2020Fact%20Sheet.pdf*).

** We based this figure on the average FY 2020 wait times for field offices, based on SSA's current management information data.

*** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. There is no actual charge to respondents to complete the application.

3. Questionnaire for Children Claiming SSI Benefits—20 CFR 416.912(a)—0960–0499. Sections 1614 and 1631 of the Act allows SSA to determine the eligibility of an applicant's claim for SSI payments. Parents or legal guardians seeking to obtain or retain SSI eligibility for their children use Form SSA–3881–BK to provide SSA with the addresses of non-medical sources such as schools, counselors, agencies, organizations, or therapists who would have information about a child's functioning. SSA uses this information to help determine a child's claim or continuing eligibility for SSI. The respondents are the parents, guardians, or other caretakers of: (1) Applicants who appeal SSI childhood disability decisions; or (2) recipients undergoing a continuing disability review.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Average wait time in field office (minutes) **	Total annual opportunity cost (dollars) ***
SSA–3881–BK (Paper Version)	81,250	1	30	40,625	$25.72 *	24 **	$1,880,775 ***
SSA–3881–BK (Intranet Version)	43,750	1	30	21,875	25.72 *		562,625 ***
Totals	125,000			62,500			2,443,400 ***

* We based this figure on average U.S. worker's hourly wages, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes_nat.htm*).

** We based this figure on the average FY 2020 wait times for field offices, based on SSA's current management information data.

*** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. There is no actual charge to respondents to complete the application.

Dated: August 25, 2020.

Faye Lipsky,

Director, Office of Regulations and Reports Clearance, Social Security Administration.

[FR Doc. 2020–18943 Filed 8–27–20; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice: 11190]

Notice of Public Meeting for International Maritime Organization's (IMO) Facilitation Committee

The Department of State will conduct a public meeting at 9:00 a.m. on Wednesday, September 23, 2020, by way of teleconference. Members of the public may participate up to the capacity of the teleconference phone line, which will handle 500 participants. To access the teleconference line, participants should call (202) 475–4000 and use Participant Code: 839 604 42#. The primary purpose of the meeting is to prepare for the forty fourth session of the International Maritime Organization's (IMO) Facilitation Committee to be held virtually from September 28 to October 2, 2020.

The agenda items to be considered include:

—Decisions of other IMO bodies
—Consideration and adoption of proposed amendments to the Convention
—Review and update of the annex of the FAL Convention
—Application of single-window concept
—Review and revision of the IMO Compendium on Facilitation and Electronic Business
—Developing guidance for authentication, integrity and confidentiality of content
—For the purpose of exchange via a maritime single window
—Consideration of descriptions of Maritime Services in the context of e-navigation
—Development of amendments to the *Recommendations on the establishment of National Facilitation Committees* (FAL.5/Circ.2)
—Development of guidelines on creating a tool to measure domestic implementation of the FAL Convention
—Unsafe mixed migration by sea
—Consideration and analysis of reports and information on persons rescued at sea and stowaways
—Guidance to address maritime corruption
—Regulatory scoping exercise for the use of Maritime Autonomous Surface Ships (MASS)
—Technical cooperation activities related to facilitation of maritime traffic relations with other organizations
—Application of the Committee's procedures on organization and method of work
—Work program
—Any other business

Please note: The Committee may, on short notice, adjust the FAL 44 agenda to accommodate the constraints associated with the virtual meeting format. Those who plan to participate may contact the meeting coordinator, Mr. James Bull, by email at *James.T.Bull@uscg.mil,* by phone at (202) 372–1144, or in writing at 2703 Martin Luther King Jr. Ave. SE, Stop 7509, Washington, DC 20593–7509 prior to the meeting with any questions or requests for reasonable accommodation. Any requests for reasonable accommodation must be received by September 16, 2020. Requests received after that date will be considered, but might not be possible to fulfill.

Additional information regarding this and other IMO public meetings may be found at: *https://www.dco.uscg.mil/IMO.*

Jeremy M. Greenwood,

Coast Guard Liaison Officer, Office of Ocean and Polar Affairs, Department of State.

[FR Doc. 2020–19002 Filed 8–27–20; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF STATE

[Public Notice 11189]

Biennial Review Under the United States-Singapore Memorandum of Intent on Environmental Cooperation

ACTION: Notice of a biennial review under the United States-Singapore Memorandum of Intent on Environmental Cooperation, and request for comments.

SUMMARY: The U.S. Department of State is providing notice that the United States and Singapore intend to hold a biennial review under the Memorandum of Intent between the Government of the United States of America and the Government of the Republic of Singapore on Cooperation in Environmental Matters (MOI) on September 15, 2020. The purpose of the meeting is to review the results of environmental cooperation under the MOI guided by the 2018–2019 Plan of Action (POA). The United States and Singapore also expect to approve a new 2020–2021 POA.

The meeting's virtual public session will be held on September 15, 2020, from 8:15 p.m. to 9:00 p.m. (Eastern Daylight Time). The U.S. Department of State invites interested organizations and members of the public to attend the virtual public session, and to submit written comments or suggestions regarding implementation of the POA, and any related issues that should be discussed at the meeting. If you would like to attend the virtual public session, please notify Brian Bedell at the email address listed below under the heading **ADDRESSES**. Specific sign-in instructions will be provided several days in advance of the virtual public session to those who request to attend. Please include your full name and any organization or group you represent. In preparing comments, submitters are encouraged to refer to:

• 2018–2019 POA, *https://www.state.gov/remarks-and-releases-bureau-of-oceans-and-international-environmental-and-scientific-affairs/2018-2019-plan-of-action-for-environmental-cooperation-under-the-u-s-singapore-memorandum-of-intent-on-environmental-cooperation.*

• U.S.-Singapore MOI, *https://2001-2009.state.gov/g/oes/rls/or/22193.htm.*

DATES: The virtual public session of the Biennial Review will be held on September 15, 2020, from 8:15 p.m. to 9:00 p.m. (Eastern Daylight Time). We encourage that comments and suggestions be submitted in writing by September 14, 2020.

ADDRESSES: Requests for sign-in instructions to attend the virtual public session, as well as any comments or questions, should be submitted to: Brian Bedell, Office of Environmental Quality and Transboundary Issues, U.S. Department of State, by electronic mail to *BedellBT@state.gov* with the subject line ''United States-Singapore Biennial Review.''

FOR FURTHER INFORMATION CONTACT: Brian Bedell, by electronic mail at *BedellBT@state.gov.*

SUPPLEMENTARY INFORMATION: The MOI was signed on June 13, 2003. Section 3 of the MOI calls for biennial meetings to review the status of environmental cooperation and update the POA, as appropriate. The 2020–2021 POA is the seventh between the United States and Singapore under the MOI.

Zachary A. Parker,

Director, Office of Directives Management, Department of State.

[FR Doc. 2020–18931 Filed 8–27–20; 8:45 am]

BILLING CODE 4710–09–P

STATE JUSTICE INSTITUTE

SJI Board of Directors Meeting, Notice

AGENCY: State Justice Institute (SJI).

ACTION: Notice of Meeting.

SUMMARY: The SJI Board of Directors will be meeting on Monday, August 31, 2020 at 2:45 p.m. ET. The purpose of this meeting is to consider grant applications for the 4th quarter of FY 2020, and other business.

FOR FURTHER INFORMATION CONTACT: Jonathan Mattiello, Executive Director, State Justice Institute, 11951 Freedom Drive, Suite 1020, Reston, VA 20190, 571–313–8843, *contact@sji.gov.*

Jonathan D. Mattiello,

Executive Director.

[FR Doc. 2020–18908 Filed 8–27–20; 8:45 am]

BILLING CODE

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2020–0160]

Agency Information Collection Activities; Renewal of a Currently-Approved Information Collection: Licensing Applications for Motor Carrier Operating Authority

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

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the information collection request (ICR) described below to the Office of Management and Budget (OMB) for its review and approval and invites public comment. FMCSA requests approval to renew the ICR titled ''Licensing Applications for Motor Carrier Operating Authority,'' OMB Control No. 2126–0016. This ICR applies to: (1) Existing registrants (*i.e.,* entities that already have a USDOT number and/or operating authority) that are subject to FMCSA's licensing, registration, and certification regulations that wish to apply for additional authorities; and (2) Mexico-domiciled carriers that wish to operate beyond the U.S. municipalities on the U.S.-Mexico border and their commercial zones. Existing registrants seeking additional authorities must use forms OP–1, OP–1(P), OP–1(FF), and OP–1(NNA), to apply for such authority. Mexico-domiciled carriers seeking the authority described above must apply for such authority using Form OP–1(MX).

DATES: We must receive your comments on or before October 27, 2020.

ADDRESSES: You may submit comments identified by Federal Docket Management System (FDMS) Docket Number FMCSA–2020–0160 using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *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 or Courier:* U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12–140, Washington, DC, 20590–0001 between 9 a.m. and 5 p.m. e.t., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the Agency name and docket number. For detailed instructions on submitting comments, see the Public Participation heading below. 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.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov,* and follow the online instructions for accessing the dockets, or go to the street address listed above.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

Public Participation: The Federal eRulemaking Portal is available 24 hours each day, 365 days each year. You can obtain electronic submission and retrieval help and guidelines under the ''help'' section of the Federal eRulemaking Portal website. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard, or print the acknowledgement page that appears after submitting comments online. Comments received after the comment closing date will be included in the docket and will be considered to the extent practicable.

FOR FURTHER INFORMATION CONTACT: Mr. Jeff Secrist, Office of Registration and Safety Information, Chief, East and South Division, Department of Transportation, Federal Motor Carrier Safety Administration, West Building 6th Floor, 1200 New Jersey Avenue SE, Washington, DC 20590. Telephone: 202–385–2367; email: *jeff.secrist@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

FMCSA registers for-hire motor carriers of regulated commodities and of passengers, under 49 U.S.C. 13902(a); surface freight forwarders, under 49 U.S.C. 13903; property brokers, under 49 U.S.C. 13904; and certain Mexico-domiciled motor carriers, under 49 U.S.C. 13902(c). These motor carriers may conduct transportation services in the United States only if they are registered with FMCSA. Each registration is effective from the date specified and remains in effect for such period as the Secretary of Transportation (Secretary) determines by regulations.

Prior to 2015, all entities seeking authority (both first-time applicants and registered entities seeking additional authorities) were required to apply for such authority using the OP–1 series of forms, including OP–1, OP–1(P), OP–1(FF), OP–1(NNA), and OP–1(MX) (for Mexico-domiciled carriers only).

The Final Rule titled ''Unified Registration System,'' (78 FR 52608) dated August 23, 2013, implemented statutory provisions for an online registration system for entities that are subject to FMCSA's licensing, registration, and certification regulations. The Unified Registration System (URS) streamlines the registration process and serves as a clearinghouse and repository of information on motor carriers, brokers, freight forwarders, intermodal equipment providers, hazardous materials safety permit applicants, and cargo tank facilities required to register with FMCSA. When developing URS, FMCSA planned that the OP–1 series of forms—except for OP–1(MX)—would ultimately be folded into one overarching electronic application (MCSA–1), which would be used by all motor carriers seeking authority.

FMCSA began a phased rollout of URS in 2015. The first phase, which went into effect on December 12, 2015, impacts only first-time applicants seeking an FMCSA-issued registration. FMCSA had planned subsequent rollout phases for existing registrants; however, there have been substantial delays, and subsequent phases have not been rolled out to date.

On January 17, 2017, FMCSA issued a Final Rule titled ''Unified Registration System; Suspension of Effectiveness,'' which indefinitely suspended URS effectiveness dates for existing registrants only (82 FR 5292). Pursuant to this Final Rule, FMCSA is still accepting forms OP–1, OP–1(P), OP–1(FF), and OP–1(NNA) for existing registrants wishing to apply for additional authorities. Separately, FMCSA requires Form OP–1(MX) for new and existing Mexico-domiciled motor carriers that wish to operate beyond the U.S. municipalities on the U.S.-Mexico border and their commercial zones. Information collected through the URS system, utilizing the MCSA–1, does not accept registration form OP–1(MX) and continue to remains a paper form outside the URS.

Forms in the OP–1 series request information to identify the applicant,

the nature and scope of its proposed operations, a narrative description of the applicant's safety policies and procedures, and information regarding the drivers and vehicles it plans to use in U.S. operations. The OP–1 series also requests information on the applicant's familiarity with relevant safety requirements, the applicant's willingness to comply with those requirements during its operations, and the applicant's willingness to meet any specific statutory and regulatory requirements applicable to its proposed operations. Information collected through these forms aids FMCSA in determining the type of operation a company may run, the cargo it may carry, and the resulting level of insurance coverage the applicant will be required to obtain and maintain to continue its operating authority.

Changes From Previous Estimates

The previously approved version of this ICR estimated the average annual burden to be 147,124 annual burden hours, with 73,538 total annual respondents. For this renewal the estimated average annual burden is 162,476, with 81,213 total average annual respondents. The annual burden hourly increase of 15,352 is due to the increase in average annual respondents. This increase is in line with a growing U.S. economy and U.S. population for calendar years 2017, 2018 and 2019.

As discussed above, FMCSA has experienced delays in rolling out Phase II of URS (which applies to existing registrants) and has indefinitely suspended the effective date of URS requirements for such entities. Until further notice, existing registrants must still use the OP–1 series of forms to apply for additional authorities. FMCSA is assuming that this will be the case for the 3-year period covered by this ICR.

As described above, only first-time applicants seeking an FMCSA-issued registration must apply via URS. Under URS, all forms in the OP–1 series, except OP–1(MX), are folded into Form MCSA–1. Information collection activities associated with MCSA–1 are covered under a different ICR, titled ''FMCSA Registration/Updates,'' OMB Control Number 2126–0051.

Title: Licensing Applications for Motor Carrier Operating Authority.

OMB Control Number: 2126–0016.

Type of Request: Renewal of a currently approved collection.

Respondents: Carrier compliance officer or equivalent from motor carriers, motor passenger carriers, freight forwarders, brokers, and certain Mexico-domiciled motor carriers subject to FMCSA's licensing, registration and certification regulations.

Estimated Number of Respondents: 81,213.

Estimated Time per Response: 2 hours for forms OP–1, OP–1(P), and OP–1(FF); 4 hours for forms OP–1(MX) and OP–1(NNA).

Expiration Date: March 31, 2021.

Frequency of Response: Other (as needed).

Estimated Total Annual Burden: 162,476 hours.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the performance of FMCSA's functions; (2) the accuracy of the estimated burden; (3) ways for FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information. The Agency will summarize or include your comments in the request for OMB's clearance of this information collection.

Issued under the authority of 49 CFR 1.87.

Kenneth Riddle,

Acting Associate Administrator, Office of Research and Registration.

[FR Doc. 2020–18934 Filed 8–27–20; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Merchant Marine Academy Board of Visitors; Public Meeting

AGENCY: Maritime Administration, Transportation (DOT).

ACTION: Notice of public meeting.

SUMMARY: The U.S. Department of Transportation, Maritime Administration announces a meeting of the U.S. Merchant Marine Academy Board of Visitors (BOV).

DATES: The meeting will be held on September 16, 2020, from 11:00 a.m. to 2:00 p.m. EDT.

Requests to attend the meeting must be received by September 14, 2020.

Requests to submit written materials to be reviewed during the meeting must be received no later than September 14, 2020.

Requests for accommodations to a disability must be received by September 11, 2020.

USMMA will post virtual meeting access details no later than September 14, 2020, via its website and Social Media channels.

ADDRESSES: The meeting will be held through a virtual forum. General information about the committee, is available on the USMMA BOV internet website at *https://www.usmma.edu/about/leadership/board-visitors.* Meeting access information will also be available at *https://www.usmma.edu/about/leadership/board-visitors* on the date specified in the **DATES** section.

FOR FURTHER INFORMATION CONTACT: The BOV's Designated Federal Officer and Point of Contact, George Rhynedance, 516–726–6048 or *rhynedanceg@usmma.edu.* Any committee related request should be sent to the person listed in this section.

SUPPLEMENTARY INFORMATION:

I. Background

The USMMA BOV is a Federal Advisory Committee originally established as a Congressional Board by Section 51312 of Title 46, United States Code ''to provide independent advice and recommendations on matters relating to the United States Merchant Marine Academy.'' The Board was chartered under the Federal Advisory Committee Act (FACA) on October 25, 2019.

II. Agenda

At the meeting, the agenda will cover the following topics:

1. Update the Board on USMMA actions during the coronavirus disease 2019 (COVID–19) public health emergency, specifically:
   (a) The return, licensing, and graduation of the Class of 2020
   (b) The return and preparation for Sea Year of the B-Split members of the Class of 2023
   (c) The return of the Indoctrination cadre and their preparation for Indoctrination training
   (d) The reception and training of the Class of 2024
   (e) The return of the remainder of the Regiment of Midshipmen
2. Provide an update on the Real Property Master Plan
3. Provide an update on the status of the NAPA study
4. Discuss minority recruiting efforts for the Class of 2025

The agenda is about 2 hours and 15 minutes in length, with the remaining portion of the third hour held for additional discussion and questions.

III. Public Participation

This meeting is open to the public and will be held through a virtual forum. Members of the public who wish to attend in person must RSVP to the person listed in the **FOR FURTHER**

INFORMATION CONTACT section with your name and affiliation. The U.S. Department of Transportation is committed to providing equal access to this meeting for all participants. If you need alternative formats or services because of a disability, such as sign language, interpretation, or other ancillary aids, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Any member of the public is permitted to file a written statement with the BOV. Written statements should be sent to the Designated Federal Officer listed in the **FOR FURTHER INFORMATION CONTACT** section (Please contact the Designated Federal Officer for information on submitting comments via fax). Only written statements will be considered by the BOV; no member of the public will be allowed to present questions from the floor or speak during the meeting unless requested to do so by a member of the Board.

(Authority: 46 U.S.C. 51312; 5 U.S.C. 552b; 5 U.S.C. App. 2; 41 CFR parts 102–3.140 through 102–3.165)

Date: August 25, 2020.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2020–19013 Filed 8–27–20; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2020–0020; Notice 1]

Hankook Tire America Corporation, Receipt of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Receipt of petition.

SUMMARY: Hankook Tire America Corporation (Hankook) has determined that certain Hankook Dynapro MT2 tires, do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 139, *New Pneumatic Radial Tires for Light Vehicles.* Hankook filed a noncompliance report dated February 19, 2020, and subsequently petitioned NHTSA on March 11, 2020, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This notice announces receipt of Hankook's petition.

DATES: Send comments on or before September 28, 2020.

ADDRESSES: Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited in the title of this notice and may be submitted by any of the following methods:

- *Mail:* Send comments by mail addressed to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver comments by hand to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except for Federal Holidays.
- *Electronically:* Submit comments electronically by logging onto the Federal Docket Management System (FDMS) website at *https://www.regulations.gov/.* Follow the online instructions for submitting comments.
- Comments may also be faxed to (202) 493–2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that comments you have submitted by mail were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *https://www.regulations.gov/,* including any personal information provided.

All comments and supporting materials received before the close of business on the closing date indicated above will be filed in the docket and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the fullest extent possible.

When the petitions are granted or denied, notice of the decisions will also be published in the **Federal Register** pursuant to the authority indicated at the end of this notice.

All comments, background documentation, and supporting materials submitted to the docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the internet at *https://www.regulations.gov* by following the online instructions for accessing the dockets. The docket ID number for this petition is shown in the heading of this notice.

DOT's complete Privacy Act Statement is available for review in a **Federal Register** notice published on April 11, 2000 (65 FR 19477–78).

SUPPLEMENTARY INFORMATION:

I. Overview

Hankook has determined that certain Hankook Dynapro MT2 tires, do not fully comply with paragraph S5.5(f) of FMVSS No. 139, *New pneumatic radial tires for light vehicles* (49 CFR 571.139).

Hankook filed a noncompliance report dated February 19, 2020, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports,* and subsequently petitioned NHTSA on March 11, 2020, for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, *Exemption for Inconsequential Defect or Noncompliance.*

This notice of receipt of Hankook's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

II. Tires Involved

Approximately 175 Hankook Dynapro MT2 tires, size LT215/85R16, manufactured between October 20, 2019, and November 30, 2019, are potentially involved.

III. Noncompliance

Hankook explains that the noncompliance is that the subject tires were marked with the incorrect number of nylon plies in the tread; and, therefore, do not meet the requirements of paragraph S5.5(f) of FMVSS No. 139. Specifically, the tires were marked ''TREAD 2 STEEL + 2 POLYESTER + 1 NYLON; SIDEWALL 2 POLYESTER'', when they should have been marked ''TREAD 2 STEEL + 2 POLYESTER + 2 NYLON; SIDEWALL 2 POLYESTER.''

IV. Rule Requirements

Paragraph S5.5(f) of FMVSS No. 139, includes the requirements relevant to this petition. Each tire must be marked on one sidewall with the actual number of plies in the sidewall and the actual number of plies in the tread area, if different, as specified in paragraph S5.5(f).

V. Summary of Hankook's Petition

The following views and arguments presented in this section, V. Summary of Hankook's Petition, are the views and arguments provided by Hankook. The arguments presented by Hankook have not been evaluated by the Agency and do not reflect the views of the Agency. The petitioner described the subject noncompliance and stated their belief that the noncompliance is inconsequential as it relates to motor vehicle safety.

In support of its petition, Hankook submitted the following reasoning:

1. Hankook cited the definition of motor vehicle safety as cited in the National Traffic and Motor Vehicle Safety Act of 1966, saying that there are cases where a vehicle fails to meet the requirements of a safety standard, yet the impact on motor vehicle safety is so slight that an exemption from the notice and remedy requirements of the Safety Act is justified. Hankook also cited NHTSA as saying that the ''true measure of inconsequentiality to motor vehicle safety'' for a tire labeling error is that the noncompliance has no effect on the operational safety of vehicles on which the tires are mounted. *See* Goodyear Tire & Rubber Company, Grant of Petition for Decision of Inconsequential Noncompliance, 74 FR l0804 (March 12, 2009). In evaluating the effect on motor vehicle safety, Hankook says that NHTSA looks to the ''specific facts before it in a particular petition.'' *See* BMW of North America, LLC; Jaguar Land Rover North America, LLC; and Autoliv, Inc.; Decisions of Petitions for Inconsequential Noncompliance, 84 FR 19994 (May 7, 2019) (citing General Motors, LLC., Grant of Petition for Decision of Inconsequential Noncompliance, 81 FR 92963 (December 20, 2016).

2. Hankook states that for labeling and marking requirements, NHTSA looks to the underlying safety purpose of the labeling and what effect the reported noncompliance would have on consumers. ''Where a manufacturer has shown that the discrepancy with the safety requirement is unlikely to lead to any misunderstanding, NHTSA has granted an inconsequentiality exemption, especially where other sources of correct information are available.'' *See* 84 FR 19997; *see also* 69 FR 19897 (April 14, 2004) (stating that the relevant consideration in evaluating an inconsequentiality petition is ''whether an occupant who is affected by the noncompliance is likely to be exposed to a significantly greater risk than an occupant in a compliant vehicle'').

3. Hankook says that the noncompliance involves new pneumatic radial tires used on passenger vehicles that incorrectly list the ''actual number of plies in the sidewall, and the actual number of plies in the tread area.'' *See* 49 CFR 571.139 (FMVSS No. 139) S5.5(f). The incorrect ply labeling information does not affect the operational safety of vehicles on which the tires are mounted. The tires meet or exceed the performance requirements of FMVSS No. 139, and they otherwise comply with the labeling and performance requirements of FMVSS No. 139. In addition, Hankook is not aware of any warranty claims, field reports, customer complaints, or any incidents, accidents, or injuries related to the subject condition.

4. Hankook states NHTSA has granted numerous petitions for inconsequential noncompliance related to mislabeling the ply information. *See* Bridgestone Americas Tire Operations, LLC, Grant of Petition for Decision of Inconsequential Noncompliance, 78 FR 47049 (August 2, 2013); Hankook Tire America Corp, Grant of Petition for Decision of Inconsequential Noncompliance 79 FR 30688 (May 28, 2014); and Nitto Tire U.S.A., Inc., Grant of Petition for Decision of Inconsequential Noncompliance, 81 FR 17764 (March 30, 2016). In granting petitions related to incorrect ply information, the Agency has explained that, ''[a]lthough tire construction affects the strength and durability of tires, neither the Agency nor the tire industry provides information relating tire strength and durability to the number of plies and types of ply cord material in the tread sidewall.'' *See* Continental Tire the Americas, LLC, Grant of Petition for Decision of Inconsequential Noncompliance, 83 FR 36668 (July 30, 2018).

5. Hankook goes on to say that following passage of the Transportation Recall, Enhancement, Accountability, and Documentation (TREAD Act) (Pub. L. 106–414), NHTSA looked closely at the impact tire labeling had on users. After collecting comments to an Advanced Notice of Proposed Rulemaking and obtaining information from consumer focus groups, the Agency concluded that ''it is likely that few consumers have been influenced by the tire construction information (number of plies and cord material in the sidewall and tread plies) provided on the tire label when deciding to buy a motor vehicle or tire.'' *See* Cooper Tire & Rubber Company Grant of Petition for Decision of Inconsequential Noncompliance, 70 FR 53711 (September 9, 2005); *see also* Michelin North America, Inc., Grant of Petition for Decision of Inconsequential Noncompliance, 69 FR 52064 (August 24, 2004). Based on these findings, NHTSA determined that ''most consumers do not base tire purchases and vehicle operation parameters on the number of plies in the tire.'' *See* Hankook Tire America, Corp., Grant of Petition for Decision of Inconsequential Noncompliance, 69 FR 12196 (March. 15, 2004).

6. Hankook asserts that in consideration of the impact on the tire retread, repair, and recycling industries, NHTSA has concluded that the ''use of steel cord construction in the sidewall and tread is the primary safety concern of these industries,'' and that this concern is not present when the tire is correctly marked with the number of steel plies. *See* Michelin North America, Inc., Grant of Petition for Decision of Inconsequential Noncompliance, 75 FR 17828 (April 7, 2010).

7. Hankook states that based on these factors, NHTSA has routinely concluded that mislabeling the number of plies is inconsequential to vehicle safety. *See* Continental Tire North America, Grant of Petition for Decision of Inconsequential Noncompliance, 72 FR 5494 (February 6, 2007); Goodyear Tire & Rubber Company, Grant of Petition for Decision of Inconsequential Noncompliance, 74 FR 10804 (March 12, 2009); Cooper Tire & Rubber Company, Grant of Petition for Decision of Inconsequential Noncompliance, 78 FR 47050 (August 2, 2013); and Sumitomo Rubber Industries, Ltd., Grant of Petition for Decision of Inconsequential Noncompliance, 83 FR 13002 (March 26, 2018).

8. Hankook believes the same reasoning applies to the subject tires. Mislabeling the number of nylon plies does not affect the operational safety of the vehicles. Further, the subject Hankook tires correctly label the number of steel plies, alleviating the safety concern for the tire retread, repair, and recycling industries.

Hankook concluded by expressing the belief that the subject noncompliance is inconsequential as it relates to motor vehicle safety, and that its petition to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and

30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, any decision on this petition only applies to the subject tires that Hankook no longer controlled at the time it determined that the noncompliance existed.

However, any decision on this petition does not relieve equipment distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant tires under their control after Hankook notified them that the subject noncompliance existed.

Authority: 49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8.

Otto G. Matheke III,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2020–18906 Filed 8–27–20; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Department of the Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of persons that have been placed on OFAC's list of Specially Designated Nationals and Blocked Persons based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section for effective dates.

FOR FURTHER INFORMATION CONTACT: OFAC: Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The list of Specially Designated Nationals and Blocked Persons and additional information concerning OFAC sanctions programs are available on OFAC's website (*https://www.treasury.gov/ofac*).

Notice of OFAC Actions

On August 25, 2020, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authorities listed below.

BILLING CODE 4810–AL–P

Individual

1. ZHANG, Taotao (Chinese Simplified: 张涛涛), Room 1611B, 16/F, Ho King Commercial Centre, 2-16 FA Yuen Street, MongKok, Kowloon, Hong Kong; Rm. 1705, No. 158, Zhangyang Road, Pudong, Shanghai, China; DOB 14 Feb 1988; POB China; citizen China; Gender Male; National ID No. 32030419880214363X (China) (individual) [SDNTK]. Identified as a significant foreign narcotics trafficker pursuant to section 805(b)(1) of the Foreign Narcotics Kingpin Designation Act ("Kingpin Act"), 21 U.S.C. 1904(b)(1).

Entity

1. ALLYRISE TECHNOLOGY GROUP CO., LIMITED (Chinese Traditional: 聯升科技集團有限公司), Room 1611B, 16/F, Ho King Commercial Centre, 2-16 FA Yuen Street, Mongkok, Kowloon, Hong Kong; Suite 1503, 15/F, Carnival Commercial Building, 18 Java Road, North Point, Hong Kong; Commercial Registry Number 2005087 (Hong Kong) [SDNTK]. Designated pursuant to section 805(b)(3) of the Kingpin Act, 21 U.S.C. section 1904(b)(3), for being owned, controlled, or directed by, or acting for or on behalf of, Taotao ZHANG, a foreign person identified as a significant foreign narcotics trafficker pursuant to the Kingpin Act.

Dated: August 25, 2020.

Bradley T. Smith,

Deputy Director, Office of Foreign Assets Control.

[FR Doc. 2020–19022 Filed 8–27–20; 8:45 am]

BILLING CODE 4810–AL–C

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Department of the Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of persons whose property and interests in property have been unblocked and have been removed from the list of Specially Designated Nationals and Blocked Persons. Additionally, OFAC is publishing an update to the identifying information of a person currently included in the list of Specially Designated Nationals and Blocked Persons.

DATES: See **SUPPLEMENTARY INFORMATION** section for effective date.

FOR FURTHER INFORMATION CONTACT:

OFAC: Associate Director for Global Targeting, tel: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List (SDN List) and additional information concerning OFAC sanctions programs are available on OFAC's website (*https://www.treasury.gov/ofac*).

Notice of OFAC Actions

On August 25, 2020, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are unblocked and they have been removed from the SDN List under the relevant sanctions authorities listed below.

Individuals

1. MEJIA ALZATE, Jose Alejandro; DOB 30 May 1984; POB Medellin, Colombia; citizen Colombia; Cedula No. 8126905 (Colombia) (individual) [SDNTK] (Linked To: CANTERAS COPACABANA S.A.; Linked To: PROMOTORA TURISTICA SOL PLAZA S.A.; Linked To: ALMEQUIP S.A.S.).

2. AVINA BRIBIESCA, Jose, Avenida Santa Margarita numero 4950–86, Zapopan, Jalisco, Mexico; Loma del Infante Casa 25, Col. Lomas de Atemajac, Zapopan, Jalisco CP 45178, Mexico; DOB 23 Apr 1977; POB Distrito Federal, Mexico; R.F.C. AIBJ770423NG1

(Mexico); C.U.R.P. AIBJ770423HDFVRS07 (Mexico) (individual) [SDNTK] (Linked To: BONA–HABITAT, S.A. DE C.V.).

3. GONZALEZ HERNANDEZ, Ignacio, Paseo San Arturo numero 2051, Fraccionamiento Valle Real, Zapopan, Jalisco, Mexico; Morelos No. 2223, Arcos Vallarta, Guadalajara, Jalisco 44130, Mexico; DOB 16 Nov 1974; POB Guadalajara, Jalisco, Mexico; Passport 3116072917339 (Mexico); R.F.C. GOHI–741116 (Mexico); C.U.R.P. GOHI741116HJCNRG02 (Mexico) (individual) [SDNTK] (Linked To: BONA–HABITAT, S.A. DE C.V.; Linked To: URBANIZADORA NUEVA ITALIA, S.A. DE C.V.).

4. GONZALEZ LINARES, Janette Iliana, Primavera 3172, Col. Loma Bonita, Guadalajara, Jalisco CP 44980, Mexico; DOB 28 Aug 1985; POB Zapopan, Jalisco, Mexico; C.U.R.P. GOLJ850828MJCNNN02 (Mexico) (individual) [SDNTK] (Linked To: BONA–HABITAT, S.A. DE C.V.).

5. FLORES APODACA, Angelina; DOB 21 Jul 1958; Passport 040068785 (Mexico) (individual) [SDNTK].

6. BEDOYA ESPINOSA, Humberto Antonio; DOB 14 Jan 1949; POB Jerico, Antioquia, Colombia; citizen Colombia; Cedula No. 8293921 (Colombia) (individual) [SDNTK] (Linked To: PROMOTORA TURISTICA SOL PLAZA S.A.; Linked To: CANTERAS COPACABANA S.A.).

7. MEJIA ALZATE, Maria Leivy; DOB 28 Jul 1981; POB Medellin, Colombia; citizen Colombia; Cedula No. 43276113 (Colombia) (individual) [SDNTK] (Linked To: CANTERAS COPACABANA S.A.; Linked To: PROMOTORA TURISTICA SOL PLAZA S.A.; Linked To: ASESORIA Y ASISTENCIA AGROPECUARIA Y AMBIENTAL A4).

8. ROSENTHAL OLIVA, Jaime Rolando, Barrio Rio Piedras, Calle 26, Ave 45, San Pedro Sula, Honduras; DOB 05 May 1936; POB San Pedro Sula, Cortes, Honduras; Passport E337842 (Honduras); National ID No. 0501193600600 (Honduras); RTN 05011936006000 (Honduras) (individual) [SDNTK] (Linked To: INVERSIONES CONTINENTAL (PANAMA), S.A. DE C.V.; Linked To: INVERSIONES CONTINENTAL, S.A. DE C.V.; Linked To: EMPACADORA CONTINENTAL, S.A. DE C.V.; Linked To: BANCO CONTINENTAL, S.A.; Linked To: INVERCIONES CONTINENTAL, U.S.A., CORP).

Entities

1. BONA–HABITAT, S.A. DE C.V. (a.k.a. ''BONA HABITAT''), Morelos 2223, Col. Arcos Vallarta, Guadalajara, Jalisco, Mexico; Folio Mercantil No. 44338–1 (Mexico) [SDNTK].

2. ASESORIA Y ASISTENCIA AGROPECUARIA Y AMBIENTAL A4, Manizales, Caldas, Colombia; Matricula Mercantil No 125828 (Manizales) [SDNTK].

3. BANCO CONTINENTAL, S.A., Centro Comercial Nova Prisa 390, San Pedro Sula, Cortes, Honduras; 9–10 Avenida NO, Boulevard Morazan, San Pedro Sula, Cortes, Honduras; SWIFT/BIC CSPSHNTE; RTN 08019003077544 (Honduras); All branches in Honduras [SDNTK].

4. EMPACADORA CONTINENTAL, S.A. DE C.V. (a.k.a. ALIMENTOS CONTINENTAL, S.A. DE C.V.), Carretera Campo 2, San Pedro Sula, Cortes, Honduras; P.O. Box 605, San Pedro Sula, Cortes, Honduras; Zona Industrial Continental, La Lima, San Pedro Sula, Cortes, Honduras; Lomas del Toncontin, Carretera Hacia Villeda Morales a 150 metros de Tipicos La Costa, Tegucigalpa, Honduras; National ID No. 08011900307609 (Honduras); RTN 080119003076090 (Honduras) [SDNTK].

5. INVERCIONES CONTINENTAL, U.S.A., CORP, Plantation, FL, United States; Apartado 390, San Pedro Sula, Cortes, Honduras; P.O. Box 390, San Pedro Sula, Cortes, Honduras; Tax ID No. 650018270 (United States) [SDNTK].

6. INVERSIONES CONTINENTAL (PANAMA), S.A. DE C.V. (a.k.a. HOLDING INVERSIONES CONTINENTAL (PANAMA), S.A.; a.k.a. ''GRUPO CONTINENTAL''), Calle 50 con Aquilino de la Guardia, Plaza Blanco General, Piso 20, Panama, Panama; RUC #25882543162 (Panama) [SDNTK].

7. INVERSIONES CONTINENTAL, S.A. DE C.V. (a.k.a. GRUPO FINANCIERO CONTINENTAL; a.k.a. ''GRUPO FINANCIERO''), Entre la 9 y 10 Avenida, 1ra Calle, Boulevard Morazan, CC Nova, San Pedro Sula, Honduras; National ID No. 0501999514659 (Honduras); RTN 05019995146590 (Honduras) [SDNTK].

Additionally, on August 25, 2020, OFAC updated the SDN List for the following person, whose property and interests in property continue to be blocked.

Individual

From:

ROSENTHAL HIDALGO, Yani Benjamin, 5 Calle, 24 Avenida S.O. #226, San Pedro Sula, Honduras; DOB 14 Jul 1965; POB Honduras; Passport B255530 (Honduras); National ID No. 0501196506001 (Honduras); RTN 05011965060013 (Honduras) (individual) [SDNTK] (Linked To: INVERSIONES CONTINENTAL (PANAMA), S.A. DE C.V.; Linked To: INVERSIONES CONTINENTAL, S.A. DE C.V.; Linked To: EMPACADORA CONTINENTAL, S.A. DE C.V.; Linked To: BANCO CONTINENTAL, S.A.).

To:

ROSENTHAL HIDALGO, Yani Benjamin, 5 Calle, 24 Avenida S.O. #226, San Pedro Sula, Honduras; DOB 14 Jul 1965; POB Honduras; Passport B255530 (Honduras); National ID No. 0501196506001 (Honduras); RTN 05011965060013 (Honduras) (individual) [SDNTK].

Dated: August 25, 2020.

Gregory T. Gatjanis,

Associate Director, Office of Global Targeting, Office of Foreign Assets Control.

[FR Doc. 2020–19025 Filed 8–27–20; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Homeless Veterans; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C. App.2, that a virtual meeting of the Advisory Committee on Homeless Veterans will be held September 15, 2020 from 12:00 p.m. to 4:00 p.m. (Eastern Standard Time). The virtual meeting is open to the public.

The purpose of the Committee is to provide the Secretary of Veterans Affairs with an on-going assessment of the effectiveness of the policies, organizational structures, and services of VA in assisting Veterans at-risk and experiencing homelessness. The Committee shall assemble, and review information related to the needs of homeless Veterans and provide advice on the most appropriate means of providing assistance to that subset of the Veteran population. The Committee will make recommendations to the Secretary of Veterans Affairs regarding such activities.

The agenda will include briefings from officials at VA and other federal, state, and local agencies regarding services for homeless Veterans.

No time will be allocated at this virtual meeting for receiving oral presentations from the public. Interested parties should provide written comments on issues affecting homeless Veterans for review by the Committee to Mr. Anthony Love, Designated Federal Officer, Veterans Health Administration, Homeless Programs Office (10NC1),

Department of Veterans Affairs, 811 Vermont Avenue NW (10NC1), Washington, DC 20420, or at *Anthony.Love@va.gov* and *Leisa.Davis@va.gov.*

Members of the public who wish to virtually attend should contact Anthony Love (*Anthony.Love@va.gov*) and Leisa Davis (*Leisa.Davis@va.gov*) of the Veterans Health Administration, Homeless Programs Office no later than September 1, 2020, to provide their name, professional affiliation, email address, and phone number. There will also be a call-in number at 1–800–767–1750; access code: 70353#.

Dated: August 18, 2020.

Jelessa M. Burney,

Federal Advisory Committee Management Officer.

[FR Doc. 2020–18435 Filed 8–27–20; 8:45 am]

BILLING CODE P

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Part II

Department of Housing and Urban Development

Operations Notice for the Expansion of the Moving to Work Demonstration Program; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5994–N–05]

Operations Notice for the Expansion of the Moving to Work Demonstration Program

AGENCY: Office of Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: This final Operations Notice for the Expansion of the Moving to Work (MTW) Demonstration Program (MTW Operations Notice) establishes requirements for the implementation and continued operation of the MTW demonstration program pursuant to the 2016 MTW Expansion Statute, which authorizes HUD to expand the MTW demonstration program from the current size of 39 agencies to an additional 100 agencies over a period of 7 years. Under the MTW program, MTW agencies have the flexibility to apply fungibility among three core funding programs' funding streams—public housing Operating Funds, public housing Capital Funds, and HCV assistance (to include both HAP and Administrative Fees) and are also permitted to waive a number of program requirements.

This notice follows prior **Federal Register** notices for public comment and, following HUD's consideration of the comments received, revises and adds waivers and activities, which are included in the three Appendices also published in today's **Federal Register**. Appendix 1, MTW Waivers, is a simplified guide for MTW agencies seeking to develop MTW initiatives that have already been executed by existing MTW agencies. MTW agencies may implement any activity contained in Appendix I without further HUD approval as long as it is included in the MTW Supplement and implemented with the associated safe harbors. Appendix II contains instructions for written impact analyses and hardship policies. Impact analyses are required for certain activities, such as Work Requirements, Term-Limited Assistance, and Stepped Rent. Appendix II also contains procedures for the written policies MTW agencies must adopt for determining when a requirement or provision of an MTW activity constitutes a financial or other hardship for the family. Appendix III contains the method for calculating the requirement that MTW agencies house substantially the same number of families as they would have absent MTW.

This notice is final and effective immediately. This final notice also solicits additional public comments on additional activities and waivers added in this notice, and HUD will notify the public if any changes are made as a result of these additional public comments.

DATES:

Effective date: August 28, 2020.

Comment Due Date: (For material listed in section III under the subheading ''*Additional activities and waivers*'' only): October 27, 2020.

ADDRESSES: Interested persons are invited to submit comments regarding the ''additional waivers and activities'' in section III of this notice to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410–0500. Communications must refer to the above docket number and title.

Electronic Submission of Comments. HUD strongly encourages interested persons to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Interested persons may submit comments the ''additional waivers and activities'' in section III of this notice electronically through the Federal eRulemaking Portal at *www.regulations.gov.* Comments submitted electronically through the *www.regulations.gov* website can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Submission of Comments by Mail. Alternatively, interested persons may submit comments regarding the ''additional waivers and activities'' in section III of this notice to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410–0500. Communications must refer to the above docket number and title.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the notice.

No Facsimile Comments. Facsimile (fax) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an appointment to review the public comments must be scheduled in advance by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at 1–800–877–8339 (this is a toll-free number). Copies of all comments submitted are available for inspection and downloading at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Marianne Nazzaro, Director, Moving to Work Demonstration Program; email: *mtw-info@hud.gov*; telephone number 202–402–4306 (this is not a toll-free number), or visit the MTW demonstration program website at: *www.hud.gov/mtw*. Hearing- and speech-impaired persons may access this number through TTY by calling the Federal Relay Service at 800–877–8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

The Public Housing/Section 8 Moving to Work (MTW) demonstration program was first established under Section 204 of the Omnibus Consolidated Rescissions and Appropriations Act of 1996, Public Law 104–134, 110 Stat. 1321 (1996 MTW Statute) to provide statutory and regulatory flexibility to participating public housing agencies (PHAs) under three statutory objectives. Those three statutory objectives are: to reduce cost and achieve greater cost effectiveness in Federal expenditures; to give incentives to families with children whose heads of household are either working, seeking work, or are participating in job training, educational or other programs that assist in obtaining employment and becoming economically self-sufficient; and to increase housing choices for low-income families.

Section 239 of the Fiscal Year 2016 Appropriations Act, Public Law 114–113 (2016 MTW Expansion Statute), signed by the President on December 18, 2015, authorizes HUD to expand the MTW demonstration program from the current size of 39 agencies to an additional 100 agencies over a period of 7 years. This notice was originally proposed on January 23, 2017, in the **Federal Register**, at 82 FR 8056, entitled ''Operations Notice for the Expansion of the Moving to Work Demonstration Program Solicitation of Comment.'' On May 4, 2017, the notice was republished with three technical revisions and an extension of the comment period at 82

FR 20912. HUD took all comments received into consideration. On October 5, 2018, the notice was republished at 83 FR 50387 with revisions based on public comments and policy determinations and to provide an additional comment period.

II. The Public Comments

HUD received 17 public comments on the October 5, 2018 notice, from a wide variety of public commenters. Commenters included a Congressional representative, public housing agencies, trade associations, interest groups, and individuals, and HUD considered all comments received. HUD has also been considering during the process all comments submitted in response to the earlier notices. HUD thoroughly considered all public comments and accordingly is making some changes in this final notice, as stated in section III, ''This final notice.''

III. This Final Notice

HUD has reviewed and considered the feedback that was provided, and changes to this notice have been made to incorporate feedback from the three previous publications and to reflect final policy decisions. The primary changes are as follows:

- *Term of Participation:* The term of participation is now 20 years from designation.
- *Simplified Agency-Specific Waiver Request Process:* In response to feedback, the process for MTW agencies to request an Agency-Specific Waiver in order to propose additional activities that are not included as MTW Waivers has been simplified.
- *Safe Harbor Waivers:* The MTW Operations Notice describes a simplified process for MTW agencies to implement MTW activities outside of the safe harbors described in Appendix I. Additionally, certain safe harbors have been revised drawing from research of a current MDRC study on rent reform (*e.g.,* safe harbors relating to minimum rent and gross rent activities). MTW agencies may alter the safe harbors through a Safe Harbor Waiver request.
- *Impact Analysis and Hardship Policy Requirements:* Since certain safe harbors have been revised, the MTW Operations Notice eliminated one or both of the requirements for an impact analysis and hardship policy from several of the rent reform activities. In addition, to respond to concerns about transparency, two additional questions have been added to the impact analysis, which must now be appended to the yearly MTW Supplement (See section VI.7.a) to make them more accessible to the public. Finally, to respond to concerns about the low frequency of hardship use, MTW agencies will be required to discuss their hardship policy(s), which must also be appended to the MTW Supplement, with residents during intake, reexamination, and to consider their applicability should a potential termination of assistance occur due to an MTW activity.
- *Factors for Discontinuing an Activity:* In the MTW Operations Notice, HUD has clarified what factors may be considered when determining if a PHA should discontinue an activity.
- *Funding Cap for Local, Non-Traditional Activities:* The MTW Operations Notice provides a funding cap for local, non-traditional activities to be ten percent of an MTW agency's Housing Choice Voucher (HCV) Housing Assistant Payment (HAP) funding. MTW agencies may exceed the cap through the simplified Safe Harbor Waiver process.
- *Serving Substantially the Same Number of Households:* HUD's approach to the Substantially the Same (STS) requirement for MTW agencies has been updated so that the methodology differs for the public housing and HCV programs, since the funding calculation for each is significantly different. In the public housing program, MTW agencies must maintain a 96 percent occupancy rate to remain compliant with the STS requirement. In the HCV program, the number of families required to be housed is related to the amount of funding received. To be compliant with the STS requirement in the HCV program, the MTW agency will be required to house at least 90% of the families it would be able to house based on the HCV HAP dollars it receives each year. This method is the same concept, but simplified, from prior proposed iterations of the STS methodology.

Additional Activities and Waivers

Additional activities and waivers were added to Appendix I, MTW Waivers.

- Payment Standards and Rent Reasonableness
  - a. Payment Standards—Fair Market Rents (HCV)
  - b. Rent Reasonableness—Third-Party Requirement (HCV)
- Housing Quality Standards (HQS)
  - a. Pre-Qualifying Unit Inspections (HCV)
  - b. Reasonable Penalty and Incentive Payments for Landlords (HCV)
  - c. HQS—Third-Party Requirement (HCV)
  - d. Alternate Inspection Schedules (HCV)
- Project Based Vouchers (PBV)
  - a. Alternate PBV Unit Types (Shared Housing and Manufactured Housing) (HCV)
  - b. Increase PBV Housing Assistance Payment (HAP) Contract Length (HCV)
  - c. Limit Portability for PBV Units (HCV)
- The Moving On Policies waiver and associated activities were added to allow agencies to implement streamlined policies for operating a Moving On or similar strategy.
- Public Housing as an Incentive for Economic Progress (PH)
- Acquisition without Prior HUD Approval (PH)
- Deconcentration of Poverty Policy (PH)
- Incentives for Underutilized Developments as a Local, non-Traditional Activity (PH)

IV. Solicitation of Public Comments

HUD has engaged in extensive public engagement in formulating this final notice, including three prior **Federal Register** publications with opportunity for public comment. Nonetheless, HUD is providing an additional opportunity to comment on the activities and waivers that are implemented in section III of this notice under the subheading ''*Additional activities and waivers*.'' This additional opportunity for public comment does not delay the effective date of this final notice. HUD will consider any additional comments submitted going forward and will notify the public if there are any changes to the activities and waivers as a result. HUD will allow 60 days for additional public comment on the new items. HUD will provide a further **Federal Register** Notice if additional changes are made to the ''*Additional activities and waivers*.'' If there are no changes, the additional items will be implemented without further notice.

V. Environmental Impact

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The FONSI is available for public inspection on *www.regulations.gov*.

VI. MTW Operations Notice

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1. Purpose and Applicability

This Moving to Work (MTW) Operations Notice (MTW Operations Notice) establishes requirements for the implementation and continued operation of the expansion of the MTW demonstration program pursuant to Section 239 of the Fiscal Year 2016 Appropriations Act, Public Law 114–113 (2016 MTW Expansion Statute). The MTW Operations Notice applies to all public housing agencies (PHAs) designated as MTW pursuant to the 2016 MTW Expansion Statute and to any previously-designated MTW agency that elects to operate under the terms of this notice, collectively referred to in this MTW Operations Notice as an ''MTW agency.''

The MTW demonstration program allows PHAs to design and test innovative, locally-designed housing and self-sufficiency strategies for low-income families by permitting PHAs to use assistance received under Sections 8 and 9 of the Housing Act of 1937, as amended, 42 U.S.C. 1437 *et seq.* (1937 Act) more flexibly and, as approved by HUD, with certain exemptions from existing public housing and HCV program requirements.

Through the MTW Amendment to the Annual Contributions Contract(s) (ACC),[1] an MTW agency agrees to comply with the program requirements and terms and conditions detailed in the MTW Operations Notice for the term of the MTW agency's participation in the MTW demonstration. Unless otherwise explicitly provided in the MTW Operations Notice, an MTW agency's MTW program applies to all of the MTW agency's public housing units (including MTW agency-owned properties and units comprising a part of mixed-income, mixed finance communities), tenant-based HCV assistance, project-based HCV assistance under Section 8(o) of the 1937 Act, and homeownership units developed using Section 8(y) HCV assistance of the 1937 Act.

This MTW Operations Notice *does not* apply to HCV assistance that is required: (1) To make payments to other PHAs under HCV portability billing procedures; (2) to meet particular purposes for which HUD has expressly committed the assistance to the MTW agency; [2] or (3) to meet existing contractual obligations of the MTW agency to a third party (such as Housing Assistance Payment (HAP) contracts with owners under the MTW agency's HCV program), unless a third party agrees to Project-Based Voucher (PBV) activities implemented under the MTW program with the MTW agency.

Any significant updates,[3] as determined by HUD, to the MTW Operations Notice will be preceded by a public comment period. However, HUD may supplement the MTW Operations Notice with PIH Notices without public comment if it determines a need to provide more detailed guidance, including with respect to implementing future appropriations act provisions and revisions to financial policies and procedures. Further, HUD will develop informational materials to address various program elements, which HUD will post on the MTW website at *www.hud.gov/mtw*.

2. Background

a. MTW Demonstration Program

The MTW demonstration program was first established under Section 204 of Title II of section 101(e) of the Omnibus Consolidated Rescissions and Appropriations Act of 1996, Public Law 104–134, 110 Stat. 1321–281; 42 U.S.C. 1437f note (1996 MTW Statute) [4] to provide certain statutory and regulatory flexibility [5] to participating PHAs under the following three statutory objectives:

- Reduce cost and achieve greater cost effectiveness in federal expenditures;
- Give incentives to families with children where the head of household is working, seeking work, or is preparing for work by participating in job training, educational programs, or programs that assist people to obtain employment and become economically self-sufficient; and
- Increase housing choices for eligible low-income families.

To achieve these objectives, PHAs selected for participation in the MTW demonstration are given exemptions from some existing public housing and HCV rules and are offered more flexibility with how they use their federal funds. MTW agencies use this opportunity presented by the MTW demonstration to better address local housing needs and encourage self-sufficiency among those families receiving HUD-assisted housing. HUD considers the experience of MTW agencies when developing new housing policy recommendations that can positively impact assisted housing delivery for PHAs and incentivize low-income families to gain self-sufficiency across the nation.

In addition to statutory and regulatory relief,[6] MTW agencies have the

[1] OMB Approval Number 2577–0294.

[2] Mainstream Vouchers, HUD-Veterans Affairs Supportive Housing (HUD–VASH) Vouchers, Non-Elderly Disabled (NED) Vouchers, Mobility Demonstration Vouchers, Family Unification Program (FUP) Vouchers, and Foster Youth to Independence Vouchers are not part of the MTW demonstration program, however certain MTW flexibilities may be applied to these voucher types, as further described in section VI.9 of this MTW Operations Notice.

[3] Significant amendments could include adding or removing MTW Waivers found in Appendix I.

[4] ''PHAs currently operating an MTW demonstration program'' are PHAs with an active MTW Agreement as of December 15, 2015. ''PHAs currently operating an MTW program'' does not include PHAs that previously participated in the MTW demonstration and later left the demonstration.

[5] For more information on the history of the MTW demonstration program, please go to: *www.hud.gov/mtw*.

[6] For more information about the MTW demonstration program and the specific activities of

flexibility to apply fungibility among three core funding programs' funding streams—public housing Operating Funds, public housing Capital Funds, and HCV assistance (to include both HAP and Administrative Fees)—hereinafter referred to as ''MTW Funding.'' [7] Throughout participation in the MTW demonstration program, MTW agencies must continue to meet five statutory requirements established by the 1996 MTW Statute, which are described further in section VI.7.c.i of this MTW Operations Notice.

As of December 15, 2015, the date the 2016 MTW Expansion Statute was signed into law, there were 39 agencies [8] participating in the MTW demonstration program. The administrative structure for these 39 agencies is outlined in the Standard MTW Agreement, an agreement between each existing MTW agency and HUD. The 2016 MTW Expansion Statute extended the term of the Standard MTW Agreement through each of the existing MTW agencies' 2028 fiscal year.

b. 2016 Expansion of the MTW Demonstration Program

Through the demonstration expansion authorized by the 2016 MTW Expansion Statute, HUD will extend MTW flexibility to a broader range of PHAs regarding diversity of size and geographic location, balancing the flexibility inherent in MTW with the need for measurement, evaluation, and prudent oversight. Overall, in expanding the MTW demonstration, HUD intends to build on the successes and lessons learned from the demonstration thus far to improve the delivery of Federally assisted housing and promote self-sufficiency among assisted low-income families across the nation.

As the 2016 MTW Expansion Statute directs, HUD is authorized to expand the MTW demonstration program from the current level of 39 agencies to an additional 100 agencies over a period of seven years, ending in 2022. The 2016 MTW Expansion Statute requires that the 100 new MTW agencies be high-performing at the time of application to the demonstration in either HUD's Public Housing Assessment System (PHAS) or its Section Eight Management Assessment Program (SEMAP), and MTW agencies must represent geographic diversity across the country.[9] Further, the 2016 MTW Expansion Statute imposes strict size limitations [10] on these 100 PHAs and requires that five of the 100 PHAs be agencies with portfolio-wide awards under the Rental Assistance Demonstration (RAD).[11]

c. Eligibility and Selection for the Expansion of the MTW Demonstration

As required by 2016 MTW Expansion Statute, HUD intends to designate 100 new agencies for the expansion of the MTW designation in cohorts over a period of seven years, ending in 2022. For each cohort of MTW agencies selected, the 2016 MTW Expansion Statute requires HUD to direct one specific policy change to be implemented by the MTW agencies, which HUD will evaluate rigorously. MTW agencies may implement additional policy changes, as long as those policy changes do not conflict or interfere with the cohort study. As required by the 2016 MTW Expansion Statute, the HUD-appointed MTW Research Advisory Committee (the Committee), described further below, advised HUD on the policy changes to be tested through the new cohorts of MTW agencies and the methods of research and evaluation.

HUD is issuing separate PIH Notices for each cohort to solicit applications from eligible PHAs for participation in the MTW demonstration. These notices will outline the specific application submission requirements, evaluation criteria, and process HUD will use when selecting PHAs for MTW designation.

d. MTW Research Advisory Committee

The 2016 MTW Expansion Statute required HUD to form and consult with the Committee, which was established in May 2016.[12] The purpose of the Committee is to provide independent advice to HUD with respect to the policies and methods of research in the evaluation of the MTW expansion. The Committee is specifically charged with advising HUD on the following:

- Policy proposals and evaluation methods for the MTW demonstration to inform the one specific policy change required for each cohort of agencies;
- Rigorous research methodologies to measure the impact of policy changes studied;
- Policy changes adopted by MTW agencies that have proven successful and can be applied more broadly to all PHAs; and
- Statutory and/or regulatory changes (specific waivers and associated activities, and program and policy flexibility) necessary to implement policy changes for all PHAs.

The Committee has no role in reviewing or selecting the 100 PHAs to participate in the expansion of the MTW demonstration.

Based on the advice of the Committee, HUD will study, by cohort of MTW agencies, the following four policies (which are in no particular order except for the first two cohorts): Impact of MTW Flexibility on small sized PHAs; [13] Rent Reform; Work Requirements; and Landlord Incentives. HUD may determine that additional policies be studied through the MTW expansion and will consider the advice of the Committee.

existing MTW agencies, please refer to the MTW website at *www.hud.gov/mtw.*

[7] Funds awarded under Sections 8(o), 9(d), and 9(e) of the 1937 Act are eligible for expanded uses pursuant to MTW fungibility, with the exception of funds provided for specific non-MTW HCV sub-programs. Other funds a PHA may receive (*i.e.* grant funds under another obligating document) are likewise not covered by MTW flexibilities and must be tracked and reported under the applicable rules and requirements.

[8] The 39 agencies are: Alaska Housing Finance Corporation; Atlanta Housing; Housing Authority of the City of Baltimore; Boulder Housing Partners; Cambridge Housing Authority; Housing Authority of Champaign County; Charlotte Housing Authority (INLIVIAN); Chicago Housing Authority; Housing Authority of Columbus, Georgia; District of Columbia Housing Authority; Delaware State Housing Authority; Fairfax County Redevelopment and Housing Authority; Holyoke Housing Authority; Keene Housing; King County Housing Authority; Lawrence-Douglas County Housing Authority; Lexington-Fayette Urban County Housing Authority; Lincoln Housing Authority; Louisville Metropolitan Housing Authority; Massachusetts Department of Housing and Community Development; Minneapolis Public Housing Authority; Elm City Communities/Housing Authority of the City of New Haven; Oakland Housing Authority; Orlando Housing Authority; Philadelphia Housing Authority; Housing Authority of the City of Pittsburgh; Portage Metropolitan Housing Authority; Home Forward (Portland, OR); Reno Housing Authority; San Antonio Housing Authority; Housing Authority of the County of San Bernardino; San Diego Housing Commission; Housing Authority of the County of San Mateo; Housing Authority of the County of Santa Clara/City of San Jose; Seattle Housing Authority; Tacoma Housing Authority; Housing Authority of Tulare County; and Vancouver Housing Authority.

[9] Geographic diversity will be considered based on both MTW agencies designated pursuant to the 2016 MTW Expansion Statute and the existing 39 MTW agencies.

[10] No less than 50 with 1,000 or fewer aggregate housing voucher and public housing units; no less than 47 with 1,001–6,000 aggregate units; no more than 3 with 6,001–27,000 aggregate units; no PHA shall be granted MTW designation if it administers more than 27,000 aggregate units.

[11] A portfolio award is defined for these purposes as a conversion of a PHA's entire public housing inventory to RAD. All RAD conversions must be closed and the former public housing units removed from IMS/PIC in order to satisfy the portfolio-wide requirement.

[12] The Committee is governed by the Federal Advisory Committee Act (5 U.S.C. Appendix 2), which sets forth standards for the formation and use of advisory committees. More information on the Committee can be found at: *https://www.hud.gov/program_offices/public_indian_housing/programs/ph/mtw/expansion/rac.*

[13] For the purpose of the MTW expansion, small is defined as managing or administering 1,000 or fewer units.

3. Term of Participation

The term of each MTW agency's MTW designation will be twenty years (PHA fiscal years) starting from the time of its designation as an MTW agency. All waivers and associated activities provided through the MTW Operations Notice expire at the end of the MTW agency's term of participation, unless otherwise discontinued in accordance with section VI.4.f of this notice. However, if HUD determines that additional time beyond the end of the MTW agency's MTW term is needed to evaluate a cohort-specific policy change, or if the MTW agency requests to extend a particular waiver, HUD may approve an extension of any specific waiver(s).

Once an MTW agency has implemented an activity pursuant to the authority of the MTW Operations Notice, the MTW agency may continue to implement that activity throughout the term of its participation in the demonstration, subject to the terms of this notice regarding discontinuation of MTW activities, or, any amendments to this notice, or any successor notice. The MTW agency must end all activities requiring MTW-authorized waivers upon expiration of its MTW participation since HUD cannot guarantee that it will be able to extend any waivers and associated activities beyond that point. For this reason, when entering into contracts with third parties that draw upon MTW flexibility, the MTW agency must disclose that such flexibility is only available during the term of the MTW agency's participation in the MTW demonstration as permitted in this notice. An exception is third-party contracts that relate to the cohort-specific policy change and associated waiver(s).

4. Waivers

Pursuant to the 1996 MTW Statute and 2016 MTW Expansion Statute, Appendix I of this notice provides waivers of certain provisions of the 1937 Act as well as the implementing regulations. These waivers and associated activities afford MTW agencies the opportunity to use their MTW authority to pursue locally driven policies, procedures, and programs in order to further the goals of the demonstration. In addition, the MTW agency may request, and be granted, Safe Harbor Waivers and Agency-Specific Waivers, described further below, to implement innovative MTW activities unique to its community. MTW agencies may update their leases to reflect the MTW flexibilities used through these waivers. When implementing MTW waivers through MTW activities, MTW agencies must ensure assisted families are made aware of the impacts the activity(s) may have on their tenancy.

The following are the categories of waivers that MTW agencies may pursue:

- MTW Waivers—MTW agencies may conduct any permissible activity in the MTW Waivers category within the defined range of flexibility, characterized in this notice as a ''safe harbor.'' Safe harbors contain the additional requirements (beyond those specified in the activity description) the agency must follow in order to implement the activity once it is included in an approved MTW Supplement to the PHA Plan. Prior to implementation, the MTW Waivers must be included in an approved MTW Supplement to the PHA Plan (see section VI.7.a). MTW Waivers are detailed in Appendix I.
- Safe Harbor Waivers—MTW agencies may request to implement activities in a manner inconsistent with the safe harbors of an MTW Waiver's activity through the submission of a Safe Harbor Waiver request.
- Agency-Specific Waivers—MTW agencies may seek an Agency-Specific Waiver in order to implement additional activities not contained in the MTW Waivers and to request to waive a statutory or regulatory requirement not included in Appendix I.
- Cohort-Specific Waivers—MTW agencies may be provided with Cohort-Specific Waivers if additional waivers not included in Appendix I are necessary to allow for the implementation of the required cohort study. Cohort-Specific Waivers will be detailed in the applicable Selection Notice for that cohort study.

a. MTW Waivers

Appendix I, MTW Waivers, is a simplified guide for MTW agencies seeking to adopt MTW initiatives that have been implemented by existing MTW agencies; it is not intended to be the complete listing of what an MTW agency can and cannot do (see Safe Harbor Waivers and Agency-Specific Waivers). MTW agencies may implement any activity contained in Appendix I without further activity-specific HUD review and approval as long as it is included in the MTW Supplement (described in section VI.7.a of this notice) of an approved PHA Plan and implemented within the associated safe harbor(s). MTW agencies may combine activities together at the PHA level in order to create more comprehensive initiatives.

Appendix I includes the waiver name, waiver description, statutes and regulations waived, permissible activities, and safe harbors associated with each of the MTW Waivers. The waiver description defines the authorization provided to the MTW agency, subject to the terms of this notice. The list of statutes and regulations waived details the citations of the 1937 Act requirements that may be waived by an MTW agency in order to implement an activity. The list of waivers and list of activities are organized by program type (*i.e.,* public housing and/or HCV program). The safe harbors section contains the additional requirements (beyond those specified in the activity description) that the MTW agency must follow in implementing activities without further HUD approval.

b. Safe Harbor Waivers

Since the safe harbors, as written in Appendix I, may not align with local priorities or market conditions at some MTW agencies, MTW agencies may request to expand an activity that is in Appendix I outside of the listed safe harbor(s).[14] Elements that are required to be provided in the request to waive Appendix I safe harbors will be identified in the MTW Supplement form.[15]

MTW agencies must work closely with their residents and stakeholders when developing the Safe Harbor Waivers; therefore, when submitting a Safe Harbor Waiver, the MTW agency must, in addition to following the PHA Plan public process requirements, also hold a meeting to specifically discuss the Safe Harbor Waivers. The MTW agency must consider, in consultation with the Resident Advisory Board (RAB) and tenant association, as applicable, all of the comments received at the public hearing. The comments received by the public, RABs, and tenant associations must be submitted by the MTW agency, along with the MTW agency's description of how the comments were considered, as a required attachment to the MTW Supplement. This public comment and review period affords the residents and community stakeholders the opportunity to provide input on the proposed Safe Harbor Waivers prior to its submission to HUD.

Following approval of the PHA Plan and MTW Supplement, an MTW agency must update its Administrative Plan and Admissions and Continued Occupancy Policy (ACOP), as applicable, prior to implementing the Safe Harbor Waiver. Disapproval of Safe Harbor Waivers will

[14] Certain safe harbors, such as impact analyses and hardship policies, are not waivable, as noted in Appendix I.

[15] See 83 FR 50676 (October 9, 2018). HUD will publish the final form in the future.

be communicated via the approval letter of the PHA Plan and MTW Supplement. The MTW agency must follow the instructions provided by the field office in the letter regarding updating the MTW Supplement. Any such disapproval would only apply to a specific Safe Harbor Waiver, as noted in the approval letter, and would not apply to the entire PHA Plan. Where additional review time may be needed by HUD, the approval letter of the PHA Plan and MTW Supplement will state that the waiver decision is pending and the MTW agency must await further instructions from HUD prior to implementing the Safe Harbor Waiver.

Reasons that HUD may object to a Safe Harbor Waiver include, but are not limited to, the following:

- The information required in the MTW Supplement, or equivalent form as approved by OMB, is not provided or is deemed insufficient;
- The MTW agency's proposed Safe Harbor Waiver is inconsistent with requirements outside of the 1937 Housing Act or is otherwise not permissible under MTW authority;
- There are other good cause factors for objection, such as material misrepresentation, in the submission;
- The Safe Harbor Waiver conflicts with any of the five statutory MTW requirements, as determined by HUD; or
- The Safe Harbor Waiver is determined to have potential significant negative impacts on families or the MTW agency's operation of its assisted housing programs using Section 8 and 9 funds, as determined by HUD.

c. Agency-Specific Waivers

The MTW demonstration program is intended to foster innovation and HUD encourages MTW agencies, in consultation with their residents and stakeholders, to be creative in their approach to solving affordable housing issues facing their local communities. For this reason, flexibilities beyond those provided for in Appendix I may be needed. Agency-Specific Waivers may be requested if an MTW agency wishes to implement additional activities, waive a statutory or regulatory requirement not included in Appendix I.[16]

In order to pursue an Agency-Specific Waiver, an MTW agency must include the Agency-Specific Waiver request in the MTW Supplement to its PHA Plan, for HUD review and approval. In order to pursue an Agency-Specific Waiver, an MTW agency must include an Agency-Specific Waiver request, an impact analysis, and a hardship policy (if the activity poses a potential risk to the continued tenancy of households), in the MTW Supplement to its PHA Plan. Other required elements to be provided in the request will be identified in the MTW Supplement form.

Specific requirements for conducting impact analyses and creating hardship policies are provided in Appendix II. When developing Agency-Specific Waiver requests, an agency must determine whether to implement additional hardship criteria beyond the criteria contained in Appendix II. Any additional hardship criteria must be included in the waiver request.

MTW agencies must work closely with their residents and stakeholders when developing the Agency-Specific Waivers; therefore, similar to submitting Safe Harbor Waivers, when submitting an Agency-Specific Waiver, the MTW agency must not only follow the PHA Plan public process requirements, but it must also have an additional public meeting to specifically discuss the Agency-Specific Waivers.[17] The MTW agency must consider, in consultation with the RAB and tenant association, as applicable, all of the comments received at the public hearing. The comments received by the public, RABs, and tenant associations must be submitted by the MTW agency, along with the MTW agency's description of how the comments were considered, as a required attachment to the MTW Supplement. This public comment and review period provides the residents and community stakeholders the opportunity to provide input on the proposed Agency-Specific Waiver prior to its submission to HUD.

Following approval of the PHA Plan and MTW Supplement, an MTW agency must update its Administrative Plan and ACOP, as applicable, prior to implementing the Agency-Specific Waiver. Disapproval of Agency-Specific Waivers will be communicated via the approval letter of the PHA Plan and MTW Supplement; the MTW agency must follow the instructions provided by the field office in the letter regarding updating the MTW Supplement. HUD may object to an Agency-Specific Waiver for the same reasons it may object to a Safe Harbor Waiver. Any disapproval would only apply to a discrete Agency-Specific Waiver, as noted in the approval letter, and would not apply to the entire PHA Plan. In rare instances where additional review time may be needed, the approval letter of the PHA Plan and MTW Supplement will state that the waiver decision is pending and the MTW agency must await further instructions from HUD prior to implementing the Agency-Specific Waiver.

Statutory and/or regulatory waiver(s) derived from the 1937 Act or its implementing regulations that are outside those listed in Appendix I cannot be granted by the MTW Office alone; therefore, the MTW Office will coordinate the approval of those waivers with the appropriate signatory (*e.g.,* Assistant Secretary, General Deputy Assistant Secretary, etc.). HUD is committed to providing a timely review of Agency-Specific Waivers.

d. Cohort-Specific Waivers

Cohort-Specific Waivers include statutory and/or regulatory waivers and associated activities, outside of those included in Appendix I, that are unique to a specific cohort to allow them to complete their required cohort evaluation. Depending upon the evaluation design, HUD may restrict certain activities within the MTW Waivers or provide additional Cohort-Specific Waivers that are not included in Appendix I, and this would be articulated in the Selection Notice for the applicable cohort. Any restriction would only be in place during the evaluation period, as specified in the Selection Notice, and once the evaluation is concluded, the MTW agency would have access to all of the MTW Waivers. Specific policy changes to be tested through a given cohort may not require any Cohort-Specific Waivers. Any MTW activities that would impact or conflict with the cohort-specific policy change will be identified in the respective Selection Notice so that the MTW agency is aware of this potential restriction on its use of waivers before it enters the MTW demonstration program. Cohort-Specific Waivers and the associated MTW activities may only be used to the extent allowed under the applicable evaluative framework provided by HUD in the applicable Selection Notice.

e. Requirements Outside of the Scope of MTW Waiver Authority

The MTW demonstration program may only waive certain provisions of the 1937 Act and its implementing regulations. The MTW demonstration program does not permit waivers of statutes outside of the 1937 Act or regulations and requirements promulgated under authority outside of the 1937 Act. Accordingly, HUD and the MTW agencies may not waive or

[16] The MTW demonstration program may only waive certain provisions of the 1937 Act and its implementing regulations.

[17] This can be the same meeting to discuss Safe Harbor Waivers (*i.e.,* a combined meeting).

otherwise deviate from compliance with Fair Housing and Civil Rights laws and regulations, discrimination laws, labor standards, or environmental statutes and executive orders, or any other applicable statutes and regulations. Other subject matter prohibited from waivers or restricted with respect to waivers is discussed in section VI.10 of this notice. All applicable federal, state, and local requirements shall continue to apply even in the event of a conflict between such a requirement and a waiver or activity granted by this notice.

Additionally, the five statutory requirements established under the 1996 MTW Statute, hereinafter referred to as the ''five statutory MTW requirements,'' cannot be waived. The following are the five statutory MTW requirements: Very low-income requirement, reasonable rent policy, substantially the same requirement, comparable mix requirement, and housing quality standards. In implementing MTW activities, MTW agencies remain subject to all other terms, conditions, and obligations under this notice, and all other federal requirements applicable to the public housing program, the HCV program, federal funds, and PHAs.

f. Discontinuation of MTW Activity

To the extent any MTW activity conflicts with any of the five statutory MTW requirements or other applicable requirements, as determined by HUD, HUD reserves the right to require the MTW agency to discontinue the activity or to revise the activity to comply with such applicable contemporary requirements.

HUD also reserves the right to require an MTW agency to discontinue any activity derived from a waiver should it have significant negative impacts on families or the MTW agency's operation of its assisted housing programs using Section 8 and 9 funds, as determined by HUD. The factors that may be considered when determining whether an activity should be discontinued include, but are not limited to, the following: Rate of port-outs, attrition rates, occupancy and/or utilization levels, voucher leasing success rates, rent burdens, local market conditions, impact analyses, and number of hardship requests. Prior to requiring a discontinuation of an activity, HUD may take intermediary steps to work with the MTW agency and its residents to provide technical assistance, discuss the activity, and determine whether a discontinuation is in fact necessary.

In the event the MTW Operations Notice is updated to remove a specific Appendix I waiver, the MTW agency may continue to implement any activity that has been implemented related to that waiver through the term of the PHA's MTW designation, so long as it does not conflict with any of the five statutory MTW requirements (see section VI.7.c.i) or other applicable current requirements or have significant negative impacts on families or the MTW PHA's operation of its assisted housing programs using funds provided under Section 8 and 9 of the 1937 Act, as determined by HUD, as described in the preceding paragraph.

5. MTW Funding Flexibility and Financial Reporting

During the term of the demonstration, subject to changes in future years' appropriations, HUD will provide an MTW agency with public housing Operating Fund Program (OFP) grants, public housing Capital Fund Program (CFP) grants, and/or HCV HAP and Administrative Fee assistance as detailed in this notice. CFP grants may include Formula grants; Demolition or Disposition Transitional Funding (DDTF), which are included in regular Formula grants; and/or funds from older Replacement Housing Factor (RHF) grants (a program later superseded by DDTF). The HCV funding amount for MTW agencies may be increased by additional allocations of vouchers that the MTW agency is awarded over the term of its participation in the MTW demonstration. MTW Funding provided to an MTW agency, including public housing OFP grants, public housing CFP grants, and HCV HAP and Administrative Fee assistance, is subject to any laws promulgated in future years, which include without limitation: Statutes, appropriations acts, notices implementing appropriations acts, regulations, and executive orders.

a. MTW Funding Flexibility

MTW agencies will have the flexibility to apply fungibility among public housing Operating Fund, public housing Capital Fund, and HCV HAP and Administrative Fee assistance. These flexibilities expand the eligible uses of each covered funding stream, but do not negate the need for both the PHA and HUD to be able to account for the funding from its original source to the date of its ultimate eligible use [18] by the PHA, comply with federal grant and financial management requirements, and use funds effectively and efficiently for their eligible purposes. As HUD continues to implement program-specific financial management policies in its core housing programs, MTW agencies will be subject to the same requirements and procedures as non-MTW agencies. Therefore, the requirements and procedures described in this notice may change as new financial management policies are implemented over time. HUD will update existing guidance and issue new reporting requirements, as appropriate, to allow HUD to meet its monitoring and oversight responsibilities while ensuring MTW agencies fully utilize and benefit from the flexibilities established by Congress for these funds pursuant to the MTW demonstration and the 2016 MTW expansion. HUD will also update existing guidance and issue new reporting requirements, as appropriate, to ensure compliance with 2 CFR part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, including with respect to Federal financial management.

An MTW agency participating in the MTW demonstration program may flexibly use public housing Operating and Capital Funds provided under Sections 9(d) and 9(e) of the 1937 Act and HCV HAP and Administrative Fee program funds provided under Section 8 of the 1937 Act, referred to collectively as MTW Funding. Certain provisions of Sections 8 and 9 of the 1937 Act and implementing requirements are waived as necessary to implement this flexibility. Once the MTW agency receives its MTW designation through the execution of the MTW ACC Amendment, this flexibility in the use of MTW Funding does not require prior HUD approval.

The MTW agency may use MTW Funding covered by MTW flexibility for any eligible activity under Sections 9(d)(1), 9(e)(1) and Section 8(o) of the 1937 Act and for the local, non-traditional activities specified in Appendix I of this notice. All MTW agency expenditures must be consistent with the MTW agency's charter, approved 5-Year and Annual PHA Plans, and the approved MTW Supplement to the Annual PHA Plan.

Under permanent law, any reserves the MTW agency has accumulated prior to signing an MTW ACC Amendment (including public housing Operating and Capital Reserves and HCV HAP and Administrative Fee Reserves) must be used for their originally appropriated purposes and shall not be used flexibly. In HUD's fiscal year 2020 appropriations act, Congress provided temporary relief from this requirement, providing that an MTW agency may use

[18] The date of the ''ultimate eligible use'' means the date of disbursement by the PHA for an eligible purpose, which would remove the funding from the PHA's account and the PHA's control.

reserves accumulated prior to the MTW designation flexibly.[19] This additional flexibility will expire at the end of Federal fiscal year 2020 (on September 30, 2020) unless Congress includes it again in subsequent appropriations acts. MTW agencies should be aware that this relief is not permanent and may not continue into the future. MTW agencies are responsible for being aware of each year's appropriations act and shall maintain careful recordkeeping to ensure they remain in compliance with the requirement. HUD will monitor the status of this flexibility closely, and will maintain an updated web page at *https://www.hud.gov/program_offices/public_indian_housing/programs/ph/mtw/MTW-flex-reserves-status* to inform MTW agencies if this flexibility is continued by Congress.

b. Calculation of Funding

i. Public Housing Operating Grants

(a) *Funding Calculation.* The calculation of an MTW agency's Operating Fund subsidy grant eligibility will continue in accordance with operating subsidy formula law, regulations, and appropriations act requirements, as they may be amended.

(b) *Eligible Uses.* The MTW agency may use these funds for any eligible activity permissible under Section 9(e)(1) of the 1937 Act or, if the agency proposes to use the funding under its MTW flexibility, it may also use these funds for any eligible activity permissible under Section 8(o), Section 9(d)(1), and for the local, non-traditional activities specified in Appendix I of this notice.

(c) *Central Office Cost Center (COCC).* For an MTW agency's COCC, which collects fees for administrative services, an MTW agency may freely use the earned fees for any eligible activity but cannot move non fee-based funds into the COCC.

ii. Public Housing Capital Fund Formula and Grants

(a) *Funding Calculation.* The MTW agency's public housing Capital Fund formula characteristics and grant amounts, including DDTF and RHF, will continue to be calculated in accordance with public housing law, regulations, and appropriations act requirements, as they may be amended.

(b) *Financial Management Requirements Apply.* MTW agencies must continue to follow the immediate need requirements applicable to all Capital funds and may not accelerate their drawdown of Capital funds for the purpose of funding reserves or for any other purpose.[20] All Capital funds, including funds in Budget Line Item (BLI) 1410 (Administrative Costs) and BLI 1492 (MTW), must be drawn down only when funds are due and payable.

(c) *Eligible Uses.* The MTW agency may use these funds for any eligible activity permissible under Section 9(d)(1) of the 1937 Act or, if the MTW agency proposes to use the funding under its MTW flexibility, it may also use these funds for any eligible activity permissible under Section 8(o), Section 9(e)(1), and for the local, non-traditional activities specified in Appendix I of this notice. CFP funds used for activities under Section 9(d)(1) are subject to all requirements relevant to non-MTW agency CFP funding, including eligible activities and cost limits.

(d) *Requisitioning Funds.* In requisitioning Capital Fund grant funds, the MTW agency will request funds using traditional Capital Fund BLIs for funds to be used for activities under section 9(d) and using the available MTW Budget Line (BLI 1492) items for activities under section 9(e), section 8(o), or local, non-traditional activities. MTW agencies shall not use the Transfer to Operations Budget Line (BLI 1406) since funds for all non-Section 9(d) activities shall be included in the MTW Budget Line (BLI 1492). The MTW agency will provide to HUD information on all capital activities funded by the MTW Funding as necessary to ensure compliance with requirements outside the scope of MTW, including environmental review requirements and Energy and Performance Information Center (EPIC) reporting requirements.

(e) *Obligation and Expenditure Requirements.* The MTW agency remains subject to the requirements of Section 9(j) of the 1937 Act with respect to Capital Fund grants. Section 9(d) funds remain subject to the obligation and expenditure deadlines and requirements provided in Section 9(j) despite the fact that they may be used flexibly. Capital Funds awarded to MTW agencies must be obligated within two years and expended within four years of award. Funds not obligated or expended within those timeframes will be subject to recapture. As with all agencies, an MTW agency may requisition CFP funds from HUD only when such funds are due and payable, unless HUD approves another payment schedule.

iii. Housing Choice Voucher Funding

(a) *Funding Calculation.* As is the case for non-MTW PHAs under current appropriations law, the HAP renewal funding eligibility for MTW agencies will be calculated based on each MTW agency's actual expenses for the previous calendar year (known as the re-benchmark year). Unique to MTW agencies, however, the MTW agency's actual expenses are: (1) The previous Calendar Year's HAP expenses reported in the Voucher Management System (VMS), and (2) the previous CY's eligible non-HAP MTW expenses reported in VMS.[21] For both HAP and non-HAP MTW expenses, the reported expenses must have been paid from an eligible source of funds as described in paragraph (c) below in order to be included in the HAP renewal funding formula. In addition, MTW HAP renewal funding is subject to an MTW Renewal Eligibility Cap derived from the number of units authorized under the MTW agency's ACC, as described in paragraph (d) below. The lower of the total combined HAP and non-HAP expenses or the MTW Renewal Eligibility Cap will then be adjusted by the Renewal Funding Inflation Factor (RFIF) and any national proration that applies to the HCV renewal appropriation to determine the MTW agency's actual CY HAP renewal funding.

- *Example:* An MTW agency executes its MTW ACC Amendment in September 2020. In CY 2020, the MTW agency expended $3,600,000 on HAP and $400,000 on eligible non-HAP MTW expenses. The MTW agency's HCV HAP renewal funding for CY 2021 will be $4 million (assuming the HAP Renewal Eligibility Cap is greater than

[19] Section 238 of title II, division H of the *Further Consolidated Appropriations Act, 2020* (Pub. L. 116–94, approved December 20, 2019) provides: ''Any public housing agency designated as a Moving to Work agency pursuant to section 239 of (Pub. L. 114–113) may, upon such designation, use funds (except for special purpose funding, including special purpose vouchers) previously allocated to any such public housing agency under section 8 or 9 of the United States Housing Act of 1937, including any reserve funds held by the public housing agency or funds held by the Department of Housing and Urban Development, pursuant to the authority for use of section 8 or 9 funding provided under such section and section 204 of title II of the Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act, 1996 (Pub. L. 104–134), notwithstanding the purposes for which such funds were appropriated.''

[20] HUD will publish a rule that will govern the establishment and maintenance of a Capital Reserve pursuant to Section 109 of HOTMA that may give PHAs authorization to draw down funds in advance of need in certain limited circumstances.

[21] MTW funds awarded to an MTW agency under Sections 8, 9(d), and 9(e) of the 1937 Act can be utilized per statute and regulation on the eligible activities listed at Sections 9(d)(1), 9(e)(1), and 8(o) of the 1937 Act and for local, non-traditional activities.

$4 million), adjusted by the RFIF and any applicable national proration.

(b) *Eligible Uses.* The MTW agency may use these funds for any eligible activity permissible under Section 8(o) of the 1937 Act or, if the MTW agency proposes to use the funding under its MTW flexibility, it may also use these funds for any eligible activity permissible under Section 9(e)(1), Section 9(d)(1), and for the local, non-traditional activities specified in Appendix I of this notice.

(c) *HAP Renewal Sources of Funds.* The only HAP and non-HAP MTW expenses that will be included in the MTW HAP renewal formula are those paid for with the same sources of funds that would be included in the non-MTW HAP renewal formula for a non-MTW agency except as otherwise provided herein (see PIH Notice 2013–28 and any future successor notices). Accordingly, HAP expenses and non-HAP MTW expenses must be paid from the following sources of funds to be included in the HAP renewal formula calculation:

(i) HCV budget authority,

(ii) HUD-held HAP reserves (undisbursed budget authority),

(iii) PHA-held HAP reserves (*i.e.,* Restricted Net Position (RNP)),

(iv) Any funds from the HAP Set-aside (if available after PHA application and approval), and

(v) For HAP expenses only: Administrative fee reserves (*i.e.,* Unrestricted Net Position). The administrative fee reserve is an eligible source of funds to be included in the MTW agency's MTW HAP renewal calculation, but only if the administrative fee reserve is used for HAP expenses. If the MTW agency is using administrative fee reserves for HAP expenses, the MTW agency must enter the amount of the administrative fee reserves used for HAP expenses in the comments section in VMS. Non-HAP MTW expenses paid from the administrative fee reserve are not eligible for renewal funding. Furthermore, when determining HAP renewal eligibility, the use of the administrative fee reserves is always first attributed to the MTW agency's non-HAP MTW expenses incurred during the calendar year before the expenditure of those reserves may be considered to be the source of funds for HAP expenses. If HAP expenses covered by the MTW Agency's administrative fee reserve exceed non-HAP MTW expenses for the calendar year, then the difference is applied to the HAP renewal calculation. Note that there is no restriction against using administrative fee reserves for non-HAP MTW expenses, just that those non-HAP MTW expenses are not eligible for inclusion in the MTW HAP renewal calculation.

HAP expenses or non-HAP MTW expenses that were paid for with any other funding source (for example, public housing Operating Funds and Capital Funds, and current year HCV Administrative Fee funds) will not be included in the MTW agency's HCV renewal funding calculation.

(d) *HAP Renewal Eligibility Cap.* The MTW agency's renewal eligibility for all MTW Years will be limited by the HAP Renewal Eligibility Cap. The calculation multiplies (1) the MTW agency's total number of MTW-eligible ACC authorized units [22] in the re-benchmark year (the CY immediately preceding the CY for which the MTW agency's renewal eligibility is being calculated) [23] by (2) the MTW agency's pre-MTW monthly per-unit cost (PUC) inflated to the re-benchmark year.

(i) The number of MTW-eligible ACC authorized units is measured in unit months available (UMAs).[24]

(ii) The inflated pre-MTW PUC is projected using, as a base, the monthly PUC for the CY in which the MTW agency signed its MTW ACC Amendment. HUD applies the RFIF to this base PUC to estimate what the MTW agency's HCV PUC would be, had the MTW agency not joined the MTW program, as of the re-benchmark year.

After the calculation of the HAP Renewal Eligibility Cap, it is compared with the MTW agency's actual total combined HAP and non-HAP MTW expenses. The lower of these two amounts—(1) the HAP Renewal Eligibility Cap or (2) the MTW agency's actual total combined HAP and non-HAP MTW expenses adjusted by the RFIF and any national proration factor—is then used to determine the MTW agency's CY renewal funding.

(iii) Example: If an MTW agency signs its MTW ACC Amendment in September 2020, CY 2021 will be the MTW agency's first full Calendar Year in the MTW demonstration. In calculating the MTW agency's HCV renewal funding for CY 2021, the following information applies:

- The MTW PHA's average monthly PUC for CY 2019 was $700.
- The CY 2020 inflation rate is two percent.
- The number of MTW-eligible ACC authorized units during CY 2020 is 800 units. (In this example all units were under ACC as of 1/1/2020, so the number of UMAs is simply 800 units multiplied by twelve months, or 9,600 UMAs).
- The HAP Renewal Eligibility Cap for CY 2021 is calculated by first determining the estimated PUC for CY 2020, which is $714 (the monthly PUC for CY 2019 inflated for CY 2020, or $\$700 \times 1.02$). The estimated PUC for CY 2020 is then multiplied by the MTW agency's CY 2020 MTW-eligible ACC authorized UMAs [25] ($\$714 \times 9{,}600$ UMAs) to determine the HAP Renewal Eligibility Cap, which is $6,854,400.
- The HAP Renewal Eligibility Cap ($6,854,400) is then compared to the MTW agency's total combined HAP and non-HAP MTW expenses for the re-benchmark year that originated from the eligible funding sources described earlier in this notice. If the total combined HAP and non-HAP MTW expenses do not exceed $6,854,400, the MTW agency's CY 2021 renewal funding will be the total combined HAP and non-HAP MTW expenses adjusted by the RFIF and any national proration. If the total combined HAP and non-HAP MTW expenses exceed $6,854,400, the MTW agency's CY 2021 renewal funding will be $6,854,400, adjusted by the RFIF and any national proration.

(e) *Financial Management Requirements Apply.* The same financial management requirements that apply to non-MTW agencies also apply to MTW agencies (*e.g.,* Cash Management Requirements for the HCV Program with Notice PIH 2017–06 and successor notices).

(f) *Administrative Fees.* The Administrative Fee rates used to calculate fee eligibility for MTW agencies shall be established according to the same methodology used to

[22] ''MTW-eligible ACC authorized units'' means the MTW agency's number of ACC authorized units, regardless of whether the units are leased, after *excluding* the number of authorized units that would not be subject to the MTW renewal formula. In other words, special purpose vouchers that are renewed separately and are not part of the MTW HAP renewal formula are not included in the formula used to calculate the HAP Renewal Eligibility Cap. See section VI.9 of this Notice for further information on these special purpose vouchers that are renewed separately outside the MTW renewal formula.

[23] As noted above, the re-benchmark year is also the source year for the actual expense data used in the MTW agency's HAP renewal formula.

[24] Authorized units in the HCV program context are measured in terms of unit months available. For example, if an authorized unit is under ACC as of January 1, the authorized unit equals twelve unit months available for that CY. On the other hand, if the authorized unit was added to the ACC under a new funding increment effective March 1, the authorized unit is equal to ten unit months available for that CY.

[25] As noted earlier, these are the MTW agency's CY 2019 UMAs that are subject to the MTW renewal formula. UMAs attributable to special purpose vouchers such as HUD–VASH and FUP that are renewed separately are not included in this count.

establish Administrative Fee rates for all agencies, including non-MTW agencies. Under current appropriations law, as is the case for all agencies, administrative fees will be calculated on the basis of units leased as of the first day of each month; this data will be extracted from VMS at the close of each reporting cycle. Administrative fees for MTW agencies are also subject to the national proration factor and any other appropriations act requirements.

(g) *Adjustments for the First-Time Renewal of Certain Vouchers.* If the MTW agency receives incremental HCV vouchers and funding (including tenant protection vouchers), other than special purpose vouchers, renewal funding for those vouchers will be included in the MTW HCV renewal funding eligibility calculation for the following year. (See section VI.9 of this notice for further discussion of tenant protection and other special purpose vouchers.) The renewal amount for the following year is based on HAP costs reported for these increments in VMS in the prior year, which will be adjusted by the RFIF. Should the initial increment(s) be funded for less than twelve months due to lack of appropriations, HUD will adjust for the missing months upon renewal, by selecting the funded PUC for the initial increment times the number of units,[26] then adjusted by the RFIF. The aggregate renewal eligibility is always subject to the national proration factor.

(h) *Applicable Inflation Factor and Proration.* The same applicable RFIFs that apply to non-MTW agencies will be applied each CY to determine the MTW agency's HAP funding renewal eligibility. Likewise, the MTW agency's HAP funding renewal eligibility is subject to the same national proration as non-MTW agencies' renewal eligibility.

(i) *Reserves.* Reserves are subject to offsets as part of future Congressional appropriations acts.

(j) *Local, Non-Traditional Activities.* The MTW agency may spend up to ten percent of its HCV HAP funding on local, non-traditional activities, as described in Appendix I, without prior HUD approval. The MTW agency may spend more than ten percent of its HCV HAP funding on local, non-traditional activities by seeking HUD approval through a Safe Harbor Waiver.

(k) *Rental Assistance Demonstration (RAD).* Any vouchers received as part of a RAD Component I conversion shall be added to the ACC for the remainder of the CY in which they are awarded. HUD will issue a new increment of voucher funding in support of those vouchers for the first full CY following a RAD Component I conversion. In subsequent years, voucher funding for RAD-converted units will be renewed under the MTW HCV renewal funding calculation, adjusted by the Operating Cost Adjustment Factor (OCAF) and the applicable proration factor. Tenant protection vouchers provided for RAD Component II conversions are renewed in accordance with section VI.5.b.iii.g of this notice, Adjustment for the first-time renewal of certain vouchers, above. Administrative fees for RAD vouchers will be calculated based on the same methodology used to establish administrative fees for non-MTW agencies. Fees for RAD vouchers will be prorated at the same level that applies to all non-MTW agencies.

(l) *Voucher Programs Not Included in MTW Program.* Vouchers and funding provided for the following special purpose vouchers, or any new special purpose vouchers provided in future appropriations acts, whether for new allocations or renewal of existing increments, shall not be included in the HCV MTW renewal calculation: HUD–VASH, FUP, FYI, NED, and Mainstream. These vouchers will be renewed under the regular voucher renewal requirements as provided under the appropriations acts. Special purpose vouchers are discussed in more detail in section VI.9 of this notice. In addition, funding provided for the Section 8 Moderate Rehabilitation Program is not part of the MTW program and may not be used for MTW activities.

c. Financial Reporting and Auditing

MTW agencies must submit year-end unaudited financial information to the Department no later than two months after their fiscal year end using the Financial Data Schedule (FDS) contained in the Real Estate Assessment Center's (REAC) Financial Assessment Subsystem (FASS–PH), or its successor system. Current financial reporting requirements for MTW agencies are posted on the REAC website at: *https://www.hud.gov/sites/documents/DOC_11833.PDF.* These requirements may be updated in the future.

MTW agencies are also required to electronically submit their audited financial information, if applicable, to HUD no later than nine months after their fiscal year end. MTW agencies must include public housing project level financial information in the FDS and must follow the Asset Management guidelines established in PIH Notice 2007–9 Supplement to Financial Management Handbook Office of Public and Indian Housing (PIH) Revised April 2007, and any subsequent updates to this Handbook or PIH Notice. MTW agencies will conform to the cost requirements of 2 CFR part 200 and any HUD implementation thereof.

MTW agencies must procure an Independent Public Accountant (IPA) to perform an annual audit pursuant to federal requirements at 2 CFR part 200 and 24 CFR 990.190, or successor, as well as any audit compliance supplements developed specifically for use with the MTW demonstration.

Completed IPA audits must be submitted to HUD in accordance with current HUD regulations. HUD will review the IPA audits of MTW agencies to determine appropriate action relative to any findings, prepare recommendations for audit finding resolution, and follow up with MTW agencies to assure finding closure. If there are audit findings related to the MTW program itself, HUD will monitor the resolution of all audit findings.

6. Evaluation

As a condition of participating in the MTW demonstration, MTW agencies agree to cooperate fully with HUD and its contractors in the monitoring and evaluation of the MTW demonstration. MTW agencies shall keep records and submit reports and other information as required by HUD. This includes any data collection required for the use of waivers and associated activities, for the uses of MTW funds within and across funding streams, and any evaluation efforts that HUD undertakes. Any additional information requests will follow the Paperwork Reduction Act requirements. HUD envisions three types of evaluation: program-wide evaluation, cohort-specific evaluation, and ad hoc evaluation.

a. Program-Wide Evaluation

An MTW demonstration-wide evaluation would seek to assess whether or not, and to what extent, MTW agencies achieve the statutory objectives of the MTW demonstration by using federal dollars more efficiently, helping residents find employment and become self-sufficient, and/or increasing housing choices for low-income families. Program-wide evaluation would also seek to determine any effects, positive or negative, of MTW waivers and funding flexibilities on residents. HUD intends to develop a method for program-wide evaluation that is based, to the extent possible, on information already being collected through existing HUD administrative data systems, although additional

[26] The MTW PUC is equal to MTW HAP expenses divided by the number of MTW units leased. (Non-HAP MTW expenses are not included in the MTW PUC calculation).

reporting may be necessary to effectively evaluate MTW.

b. Cohort-Specific Evaluation

The specific evaluation methods and requirements for participating MTW agencies will vary in each cohort based on the policy changes to be tested in that cohort.[27] The cohort-specific policy change and evaluation methods will be described in the applicable Selection Notice such that the MTW agency is aware, in advance of application to the MTW demonstration program, of the policy it will be required to implement and the evaluation requirements. The MTW agency is required to participate in the evaluation for the full timeframe designated by HUD. HUD's Office of Policy Development and Research will take the lead on evaluating cohort-specific policy changes, and separate funds are appropriated by Congress for these evaluations. In all cases, the purpose of the evaluation will be to measure the outcomes associated with the specific policy change(s) in order to offer policy recommendations for implementing the policy change(s) across all PHAs.

c. Ad Hoc Evaluation

HUD reserves the right to request, and the MTW agency shall provide, any additional information required by law or required for the sound administration or evaluation of the MTW agency.

7. Program Administration and Oversight

In general, MTW agencies will be subject to the same planning and reporting protocols as non-MTW agencies, including the PHA Plan (5-Year Plan and Annual PHA Plan) and Capital Fund planning. MTW agencies must also report data into HUD data systems, as required.

New protocols and instruments will be developed for assessing an MTW agency's performance and will be incorporated into PHAS and SEMAP, or successor assessment systems, or an alternative assessment system developed by HUD, explained further in section VI.7.b of this MTW Operations Notice. In addition, HUD will employ standard program compliance and monitoring approaches including assessment of relative risk and on-site monitoring conducted by HUD or by entities contracted by HUD.

a. Planning and Reporting

i. The Annual PHA Plan

MTW agencies must adhere to Annual PHA Plan regulations at 24 CFR part 903, any implementing HUD Notices and guidance, as well as any succeeding regulations. The Annual PHA Plan consists of the 5-Year Plan that a PHA must submit to HUD once every five PHA fiscal years and the Annual PHA Plan that the PHA must submit to HUD for each PHA fiscal year. Annual and 5-Year Plans must be submitted in a format prescribed by HUD. Currently, submission format requirements are outlined in Notice PIH 2015–18, issued October 23, 2015, which is effective until amended, superseded or rescinded.

Any HUD assistance that the MTW agency is authorized to use under the MTW demonstration must be used in accordance with the Annual PHA Plan, as applicable.

ii. MTW Supplement to the Annual PHA Plan (Under Development)

As an MTW agency, all Annual PHA Plan information must be provided in the context of the agency's participation in the MTW demonstration. This includes taking into account the MTW Waiver(s), Safe Harbor Waiver(s), Agency-Specific Waiver(s) and Cohort-Specific Waiver(s), and associated activity(s), afforded to the MTW agency. To this end, MTW agencies will submit an MTW Supplement to the Annual PHA Plan.[28] The MTW Supplement form has not been finalized at the time of the publication of this MTW Operations Notice; it has been made available for public review and comment, per PRA requirements.[29]

Non-MTW PHAs that are qualified under 24 CFR 903.3(c) and that are not designated as troubled under PHAS and that do not have a failing score under SEMAP are exempt from the requirement to submit the Annual PHA Plan. Per this MTW Operations Notice, while MTW agencies that are qualified under 24 CFR 903.3(c) are not required to submit the Annual PHA Plan, they are required to submit the MTW Supplement on an annual basis.

MTW agencies must submit to HUD the Annual PHA Plan, including any required attachments, and the MTW Supplement no later than 75 days prior to the start of the agency's fiscal year. HUD will notify the MTW agency in writing if HUD objects to any provisions or information in the Annual PHA Plan or the MTW Supplement. When the MTW agency submits its Plan 75 days in advance of its fiscal year, HUD will respond to the MTW agency within 75 days or the Annual PHA Plan and the MTW Supplement are automatically approved.

Prior to submitting to HUD, the MTW Supplement must go through a public process along with the Annual PHA Plan. This will allow the MTW agency to inform the community of any programmatic changes and give the public an opportunity to comment. The MTW agency must have at least a 45-day public review period of its plan, after publishing a notice informing the public of its availability and conducting reasonable outreach to encourage participation in the plan process, followed by a public hearing. MTW agencies must consider, in consultation with the RABs and tenant associations, as applicable, all of the comments received at the public hearing. The comments received by the public and RABs and tenant associations must be submitted by the agency as a required attachment to the Plan. MTW agencies must also include a narrative describing their analysis of the recommendations and any decisions made based on these recommendations.

iii. Admissions and Continued Occupancy Policy and Administrative Plan

The MTW agency must update its ACOP and/or Administrative Plan, as applicable, to be consistent with the MTW activities and related waivers that it implements. The MTW agency may not implement an MTW activity or waiver until the relevant sections of the ACOP and/or Administrative Plan are updated. MTW agencies must provide HUD with electronic versions of the ACOP and/or Administrative Plan upon request. If the MTW agency implements an activity using the local, non-traditional uses of funds waiver, the MTW agency must create and update an implementing document specifically for such activity. Additionally, the MTW agency must update its ACOP and/or Administrative Plan upon terminating an MTW activity.

iv. Capital Planning and Reporting

MTW agencies must adhere to CFP regulations at 24 CFR part 905, any implementing HUD Notices and guidance, as well as any successor regulations. As noted previously, MTW agencies are funded in accordance with CFP regulations and formula funds are calculated and distributed in the same manner as non-MTW agencies.

[27] For example, some cohorts of MTW agencies may be required to participate in randomized control trials, while others may be required to participate in detailed process studies or ethnographic research.

[28] MTW agencies designated pursuant to the 2016 Expansion Statute are not required to submit the Annual MTW Plan or Annual MTW Report (*i.e.,* Form 50900).

[29] 83 FR 50676 (October 9, 2018)

MTW agencies have the authority and flexibility to utilize their CFP funds for expanded uses as part of their MTW funding flexibility. HUD will award Capital Fund grants to MTW agencies in keeping with the standard process for all PHAs. The Department will spread budget line items in eLOCCS in accordance with Annual Statements/Budgets submitted in EPIC for Capital Fund grants awarded. As with all PHAs, an MTW agency may draw down Capital Funds from HUD only when such funds are due and payable, unless HUD approves another payment schedule.[30] To the extent that the MTW agency plans to use CFP funding for other MTW-eligible (non-CFP) activities, the agency must create a separate work activity (or activities) in the EPIC system that select the ''MTW (1492)'' work category. CFP funds entered on BLI 1492 would not need to be broken out and itemized in the part II supporting pages of the HUD–50075.1. However, regardless of the BLI utilized, funds may not be drawn down until the PHA has an immediate need for the funds. An MTW agency may not accelerate drawdowns of funds in order to fund reserves or to otherwise increase locally held amounts, as discussed in section 5.a. of this notice.

An MTW agency is not required to use all or any portion of its CFP grant for non-CFP activities. To the extent that the MTW agency wishes to dedicate all or a portion of its CFP grant to specific capital improvements, the agency shall record CFP funding in work activities in EPIC as in the standard program.

v. Inventory Management System/PIH Information Center Reporting

Data from HUD's Inventory Management System/PIH Information Center (IMS/PIC), or successor systems, is critical to all aspects of program administration, including HUD monitoring and tracking of MTW agency progress in meeting the MTW statutory objectives. IMS/PIC data is used to establish funding eligibility levels for both Operating Subsidy Fund and Capital Fund grants. Further, HUD relies on IMS/PIC data to provide a thorough and comprehensive view of PHA program performance and compliance.

MTW agencies are required to submit the following information to HUD via IMS/PIC (or its successor system):

- Family data to IMS/PIC using Form HUD–50058 MTW Expansion (or successor forms) or Form HUD–50058 for special purpose voucher purposes, and in compliance with HUD's standard 50058 submission requirements for MTW agencies. MTW agencies must report information on all families receiving some form of tenant-based or project-based housing assistance, either directly or indirectly, as well as all public housing families, to be current to at least a 95 percent level.
- Current building and unit information in the development module of IMS/PIC (or successor system).
- Basic data about the PHA (address, phone number, email address, etc.).

HUD will monitor MTW agency reporting to IMS/PIC (or successor system) to ensure compliance and provide technical assistance to MTW agencies as needed. In order to participate in the MTW expansion, PHAs must have the information technology capability to upgrade their IMS/PIC software to accommodate MTW flexibilities. PHAs that currently use HUD Family Reporting Software (FRS) must upgrade their software to an approved system that supports the submission of MTW IMS/PIC data. HUD does not anticipate modifying the FRS to accommodate the submission of MTW data.

vi. Voucher Management System Reporting

MTW agencies are required to report voucher utilization in VMS, or its successor system. There are several areas in which VMS reporting is different for MTW agencies. These areas are highlighted in the VMS User's Manual (*http://portal.hud.gov/hudportal/documents/huddoc?id=instructions.pdf*) which details the VMS reporting requirements.

HUD will monitor each MTW agency's VMS reporting to ensure compliance and provide technical assistance to MTW agencies as needed.

vii. General Reporting Requirement

In addition to the reporting requirements outlined in this MTW Operations Notice, MTW agencies are required to comply with any and all HUD reporting requirements not specifically waived by HUD for participation in the MTW demonstration program.

b. Performance Assessment

Assessing the performance of PHAs (both MTW and non-MTW) helps with the delivery of services in the public housing and voucher programs and enhances trust among PHAs, assisted households, HUD, and the general public. To facilitate this effort, HUD will provide management tools for effectively and fairly assessing the performance of a PHA in essential housing operations and program administration.

Currently, HUD uses PHAS and SEMAP to assess risk and identify underperforming PHAs in the traditional public housing and voucher programs. However, since some of the MTW flexibilities make it difficult to accurately assess the performance of MTW agencies under the existing systems, HUD will develop an alternative, MTW-specific assessment system, which may be incorporated into PHAS and SEMAP (or successor assessment system(s)). MTW agencies may not opt out of the MTW-specific successor system(s). Until the successor system is implemented, HUD will monitor MTW agency performance through PHAS sub-scores. Additionally, HUD may consider data provided through other HUD systems in its assessment of an MTW agency's activities.

i. Public Housing Assessment System

MTW agencies will not be scored in PHAS unless and until such time as HUD develops an MTW-specific system that is incorporated into PHAS, or successor system, but they can elect to be scored if they choose to opt in. (MTW agencies continue to receive PHAS sub-scores even if they do not to receive the overall score.) An MTW agency will maintain its PHAS performance designation (*i.e.,* high performer, standard performer, substandard performer, troubled, Capital Fund-troubled) at the time of MTW designation, up until a successor system is established. If an MTW agency elects to receive its overall PHAS score, the agency must continue to be scored for the duration of the demonstration, or until the agency is assessed under the alternative, MTW-specific assessment system(s), whichever comes first. Once developed, all MTW agencies, including MTW agencies that elect not to receive an overall PHAS score, must be assessed under the MTW-specific assessment system(s).

Pursuant to the 1996 MTW Statute, when providing public housing, the MTW agency must ensure that the housing is safe, decent, sanitary, and in good repair, according to the physical inspection protocols established and approved by HUD. Thus, MTW agencies continue to be subject to HUD physical inspections. To the extent that HUD physical inspections reveal deficiencies, the MTW agency must continue to address these deficiencies in accordance with existing physical inspection requirements. If an MTW agency does

[30] HUD will publish a rule that will govern the establishment and maintenance of a Capital Reserve pursuant to Section 109 of HOTMA that may give PHAs authorization to draw down funds in advance of need in certain limited circumstances.

not maintain public housing adequately, as evidenced by the physical inspection performed by HUD, and is determined to be troubled in this area, HUD will determine appropriate remedial actions.

ii. Section 8 Management Assessment Program

MTW agencies will not be scored in SEMAP unless and until such time as HUD develops an MTW-specific system that is consistent with SEMAP, or successor system, but they can elect to be scored if they choose to opt in. An MTW agency will maintain its SEMAP performance designation (*i.e.,* high performer, standard performer, troubled) at the time of MTW designation, up until a successor system is established. If an MTW agency elects to receive its overall SEMAP score, the agency must continue to be scored for the duration of the demonstration, or until the agency is assessed under the MTW-specific assessment system, whichever comes first. Once developed, all MTW agencies, including MTW agencies that opt out of SEMAP, must be assessed under the MTW-specific assessment system(s).

c. Monitoring and Oversight

MTW agencies remain subject to the full range of HUD monitoring and oversight efforts including, but not limited to, annual risk assessments, on-site monitoring reviews, monitoring reviews relating to VMS reporting and rent reasonableness, review of the accuracy of data reported into HUD data systems, and use of HUD data systems to assess agency program performance, among other activities.

i. Five Statutory MTW Requirements

Throughout participation in the MTW demonstration program, all MTW agencies must continue to meet five statutory MTW requirements established under the 1996 MTW Statute. Specific enforcement processes of the five statutory MTW requirements will be included in the MTW ACC Amendment (see also, section VI.12 of this notice). HUD will monitor and determine MTW agencies' compliance with these five statutory MTW requirements as follows:

(a) *Very Low-Income Requirement.* MTW agencies must ensure that at least 75 percent of the families assisted are very low-income families, in each fiscal year, as defined in Section 3(b)(2) of the 1937 Act.

- *HUD Verification Approach:* Initial household certification data recorded in IMS/PIC will be used for both the PH and HCV programs for compliance monitoring purposes. The initial certification is comprised only of new admissions in the MTW agency's given fiscal year. Initial household certification data for families housed through local, non-traditional activities will be provided in a manner specified by the Department. An MTW agency's portfolio will then be weighted with respect to the number of households being served by each housing program type (*i.e.,* public housing, HCV, and local, non-traditional). While the verification approach for this statutory requirement will be conducted based on initial certification in the MTW agency's given fiscal year, MTW agencies must continue to assist low-income families, which MTW agencies must monitor through the reexamination process, as may be amended per Appendix I.

(b) *Reasonable Rent Policy.* MTW agencies must establish a reasonable rent policy which shall be designed to encourage employment and self-sufficiency by participating families, consistent with the purpose of this demonstration, such as by excluding some or all of a family's earned income for purposes of determining rent.

- *HUD Verification Approach:* HUD defines rent reform as any change in the regulations on how rent is calculated for a household. Upon designation into the MTW demonstration, MTW agencies are to submit their planned policy to implement a reasonable rent policy in the MTW Supplement. All activities falling under any of the activities in the Tenant Rent Policies waiver or the Alternate Reexamination Schedule waiver, as detailed in Appendix I, meet the definition of a reasonable rent policy because these activities constitute a change from regulations on how rent is calculated for a household. In addition, implementation of any voluntary alternative rent calculation that is available for all PHAs would count towards meeting this statutory requirement. Finally, an MTW agency may propose, for HUD's approval, an Agency-Specific Waiver to establish a rent policy that is different from those listed in Appendix I. If approved, this alternate rent policy approved through an Agency-Specific Waiver would also meet this statutory requirement. An MTW agency must implement one or multiple reasonable rent policies during the term of its MTW designation.[31]

(c) *Substantially the Same Requirement.* MTW agencies must continue to assist substantially the same total number of eligible low-income families as would have been served absent the MTW demonstration.

- *HUD Verification Approach:* Appendix III details the requirements for the Substantially the Same (STS) methodology which: Ensures substantially the same number of families are housed; allows for local flexibility; is responsive to changing budgetary climates; is feasible for HUD to administer; is easy for MTW agencies to predict compliance; is straightforward to understand; is calculated each year; and has publicly available results. Please refer to Appendix III for the specific requirements.

(d) *Comparable Mix Requirement.* MTW agencies must maintain a comparable mix of families (by family size) as would have been provided had the amounts not been used under the demonstration.

- *HUD Verification Approach:* In order to establish a comparable mix baseline, HUD will pull data, by family size, for occupied public housing units and leased vouchers at the time of entry into the demonstration. HUD will rely upon MTW agency-reported data into HUD systems (*i.e.,* IMS/PIC, VMS). This information will be used to establish baseline percentages, by family size, to which the agency is measured by for the remainder of participation. Following entry into the demonstration, agencies will provide comparable mix data and, if applicable, associated justifications in the MTW Supplement. HUD deems an acceptable level of variation to be no more than 10 percent from the baseline. Justifications or explanations for fluctuations greater than 10 percent are required and subject to HUD's review.

(e) *Housing Quality Standards (HQS).* MTW agencies must ensure that housing assisted under the demonstration meets HQS established or approved by the Secretary.

- *HUD Verification Approach:* In order to demonstrate that the MTW agency meets housing quality standards, HUD will verify compliance for each housing program type as follows:

- HCV—Program regulations at 24 CFR part 982 set forth basic HQS for housing assisted under the HCV program. These housing quality standards, or successor regulations, are the standards used to determine if the MTW agency is fulfilling its responsibilities to ensure owners are maintaining the units in accordance with HQS in the evaluation of an agency. MTW agencies with an HCV program must certify in the MTW Supplement that they have fulfilled their responsibilities to comply with and ensure enforcement of HQS under

[31] MTW agencies in the rent reform cohort may have prescribed deadlines to implement their reasonable rent policies.

this requirement in accordance with the HQS regulations in 24 CFR part 982, as modified where applicable through the implementation of the discrete MTW Waivers approved by HUD provided in Appendix 1 or through an Agency-Specific Waiver.

- Public Housing—HUD will verify this requirement through its review of public housing physical inspection scores. Overall scores falling below 60 percent will be identified as non-compliant with the statutory requirement.
- Local, Non-Traditional—In the MTW Supplement, MTW agencies must certify that local, non-traditional units meet HQS performance requirements (as provided in 24 CFR 982.401) as required in PIH Notice 2011–45, or successor notice.

ii. Income Integrity and Enterprise Income Verification System (EIV) Reviews

MTW agencies are required to comply with the final rule regarding EIV issued December 29, 2009, or successor, and utilize EIV for all income and employment verifications. EIV has been modified for MTW agencies so that family information submitted in IMS/PIC will not expire for 40 months in order to accommodate agencies choosing to extend recertification periods for up to three years.

MTW agencies are subject to HUD review to ensure compliance with EIV requirements as well as monitor the accuracy and integrity of the MTW agencies' income and rent determination policies, procedures, and outcomes.

iii. MTW Site Visit

HUD will periodically conduct site visits to monitor the implementation of MTW flexibilities provided under the MTW Operations Notice, provide guidance, discuss the MTW agency's activities, and offer any needed technical assistance regarding its program. The purpose of a site visit will be to monitor agency-reported MTW activities, to review the status and effectiveness of the MTW agency's strategies, to provide technical assistance, to problem-solve regarding any local barriers the agency is facing, and to identify and resolve outstanding MTW related issues.

The MTW agency shall give HUD access, at reasonable times and places, to all requested sources of information including access to files, access to units, and an opportunity to interview agency staff and assisted participants.

Where travel funding or staff resources are not available to facilitate in-person site visits, HUD may exercise the option to conduct remote site visits via telephone, videoconference, or webinar. To the extent possible, HUD will coordinate the MTW site visit with other site visits to be conducted by HUD.

iv. Housing Choice Voucher Utilization

HUD will monitor HCV utilization at MTW agencies and will ensure that HCV funds are utilized in accordance with section VI.5.b.iii and Appendix III of this notice. At its discretion, HUD may take any appropriate actions to direct an MTW agency to increase HCV leasing and utilization.

v. Public Housing Occupancy

HUD will monitor public housing occupancy rates for MTW agencies. In instances where the MTW agency's public housing occupancy rate falls below 96 percent, HUD may require, at its discretion, that the MTW agency enter into an Occupancy Action Plan to address the occupancy issues. The Occupancy Action Plan will include the cause of the occupancy issue, the intended solution, and reasonable timeframes to address the cause of the occupancy issue.

vi. Additional Monitoring and Oversight

HUD may, based on the MTW agency's risks and at HUD's discretion, conduct management, programmatic, financial, or other reviews of the MTW agency. The MTW agency shall respond to any findings with appropriate corrective action(s).

In addition, HUD will make use of all HUD data systems and available information to conduct ongoing remote monitoring and oversight actions for MTW agencies, consistent with the results of the PIH risk assessment.

8. Rental Assistance Demonstration Program

MTW agencies converting public housing program units to Section 8 assistance under the RAD program are able to retain MTW regulatory and statutory flexibilities in the management of those units, subject to RAD requirements, if the conversion is to Section 8 PBV assistance. MTW agencies converting projects under RAD to PBV may continue to undertake flexibilities except to the extent limited by RAD, as described in the RAD Notice, Notice PIH 2012–32, REV–4 or its successor notice.[32]

9. Applying MTW Flexibilities to Special Purpose Vouchers

Special Purpose Vouchers (SPVs) are specifically provided for by Congress in line item appropriations. Except for enhanced vouchers and tenant-protection vouchers (described below), SPVs are not part of the MTW demonstration and are not part of the MTW agency's total available flexible MTW Funding. The funding is renewed outside of the MTW HAP renewal formula and the funding (both the initial increment and renewal funding) for the SPVs may only be used for eligible SPV purposes. There are no MTW flexibilities available for using MTW funds to cover SPV shortfalls; MTW agencies may use non-HAP sources to cover shortfalls, following the procedures outlined in Notice PIH 2013–28, or successor. Despite SPV funding restrictions to cover regular voucher shortfalls, MTW agencies do have the ability/are permitted to use HAP reserve funds, including HAP originated reserves subject to fungibility provisions, to address SPV instances of shortfalls; where the SPVs are under the same appropriations allocation for renewal as their Section 8 vouchers.[33]

a. HUD-Veterans Affairs Supportive Housing (VASH) Vouchers

HUD–VASH vouchers have separate operating requirements and must be administered in accordance with the requirements listed at *www.hud.gov/program_offices/public_indian_housing/programs/hcv/vash.* The operating requirements waive and alter many of the standard HCV statutes and regulations at 24 CFR part 982. Unless stated in the HUD–VASH operating requirements, however, the regulatory requirements at 24 CFR part 982 and all other HUD directives for the HCV program are applicable to HUD–VASH vouchers. MTW agencies may submit a request to HUD to operate HUD–VASH vouchers in accordance with MTW administrative flexibilities.

b. Family Unification Program (FUP) Vouchers

The FUP NOFA language allows vouchers to be administered in accordance with MTW flexibilities unless MTW provisions are inconsistent with the appropriations act or requirements of the FUP NOFA. In the event of a conflict between the MTW Operations Notice and the appropriations act or FUP NOFA language, the act and NOFA govern.

[32] Notices and laws related to RAD can be found at *https://www.hud.gov/RAD/library/notices.*

[33] *https://portal.hud.gov/hudportal/documents/huddoc?id=DOC_10495.pdf.*

c. Foster Youth to Independence (FYI) Vouchers

The FYI NOFA language allows vouchers to be administered in accordance with MTW flexibilities unless MTW provisions are inconsistent with the appropriations act or requirements of the FYI NOFA. In the event of a conflict between the MTW Operations Notice and the appropriations act or FYI NOFA language, the act and NOFA govern.

d. Non-Elderly Persons With Disabilities (NED) Vouchers

The NED NOFA language allows vouchers to be administered in accordance with MTW operations unless MTW provisions are inconsistent with the appropriations act or requirements of the NED NOFA. In the event of a conflict between the MTW Operations Notice and the appropriations act or NED NOFA language, the act and NOFA govern.

e. Mainstream Vouchers

The Mainstream NOFA language allows vouchers to be administered in accordance with MTW flexibilities unless MTW provisions are inconsistent with the appropriations act or requirements of the Mainstream NOFA. In the event of a conflict between the MTW Operations Notice and the appropriations act or Mainstream NOFA language, the act and NOFA govern.

f. Enhanced Vouchers and Tenant Protection Vouchers

MTW agencies may apply any MTW flexibilities as authorized by this notice to replacement TPVs to the extent that the MTW flexibilities used do not infringe upon the protections applied to those families.[34] However, funding fungibility may only be applied to replacement TPV funds once the initial funding increment is renewed. No MTW flexibilities may be applied to relocation TPVs. MTW agencies should review PIH Notice 2020–04 and any future successor notices for more information on re-issuance of TPVs.

The statutory enhanced voucher requirements under Section 8(t) of the 1937 Act (*e.g.,* the HAP calculation) apply to an enhanced voucher family until the family either moves from the project or leaves the HCV tenant-based program for any reason. MTW agencies must follow the procedures described in Notice PIH 2013–27, or its successor notice, for a recipient of an enhanced voucher to voluntarily agree to relinquish their tenant-based assistance in exchange for PBV assistance. When an enhanced voucher family moves from the project, either after initially receiving the voucher or anytime thereafter, the Section 8(t) enhanced voucher requirements no longer apply. The voucher is then administered in accordance with the regular HCV program requirements, as modified by the agency's individual MTW waivers and MTW policies for its tenant-based HCV program.

10. Applicability of Other Federal, State, and Local Requirements

Notwithstanding the waivers and associated activities provided in this MTW Operations Notice, the following provisions of the 1937 Act continue to apply to MTW agencies and the assistance received pursuant to the 1937 Act:

- The terms ''low-income families'' and ''very low-income families'' shall continue to be defined by reference to Section 3(b)(2) of the 1937 Act (42 U.S.C. 1437a(b)(2));
- Section 12 of the 1937 Act (42 U.S.C. 1437j), as amended, shall apply to housing assisted under the demonstration, governing labor standards and community service requirements, other than housing assisted solely due to occupancy by families receiving tenant-based assistance;
- Section 18 of the 1937 Act (42 U.S.C. 1437p, as amended by Section 1002(d) of Public Law 104–19, Section 201(b)(1) of Public Law 104–134, and Section 201(b) of Public Law 104–202), governing demolition and disposition, shall continue to apply to public housing notwithstanding any use of the housing under MTW; and
- Section 8(r)(1) of the 1937 Act on HCV portability shall continue to apply unless provided as a cohort-specific waiver and associated activity(s) in an evaluative cohort as necessary to implement comprehensive rent reform and occupancy policies. Such a cohort-specific waiver and associated activity(s) would contain, at a minimum, exceptions for requests to port due to employment, education, health and safety and reasonable accommodation.

Notwithstanding anything contained in this notice, federal, state and local requirements applicable to public housing or HCV assistance other than those provisions of the 1937 Act or its implementing requirements that are specifically waived pursuant to the MTW Operations Notice will apply. MTW authority may also be limited by any laws promulgated in future years, which include without limitation: Statutes, appropriations acts, notices implementing appropriations acts, regulations, and executive orders.

The MTW ACC Amendment will place in HUD the authority and discretion to determine whether any future law conflicts with any MTW-related agreement or notice. If a future law conflicts, the future law shall be implemented. Additionally, no money damages are contemplated for action by HUD with respect to the MTW demonstration program.

If any requirement applicable to PHAs, public housing, or HCV assistance other than those provisions of the 1937 Act or its implementing requirements that may be waived pursuant to MTW authority and that are specifically waived pursuant to the MTW Operations Notice, contains a provision that conflicts or is inconsistent with any MTW Waiver, Safe Harbor Waiver, and/or Agency-Specific Waiver granted by HUD, the MTW agency remains subject to the terms of that requirement. Such requirements include, but are not limited to:

- *Requirements for Federal Funds:* Notwithstanding the flexibilities described in this notice, the public housing and voucher funding provided to MTW agencies remain federal funds and are subject to any and all other federal requirements outside of the 1937 Act (*e.g.,* including but not limited to competitive HUD NOFAs under which the MTW agency has received an award, state and local laws, federal statutes other than the 1937 Act (including appropriations acts), and OMB Circulars and requirements), as modified from time to time. The MTW agency's expenditures must comply with 2 CFR part 200 and other applicable federal requirements, which provide basic guidelines for the use of federal funds, including the requirements of this notice.
- *National Environmental Policy Act (NEPA):* MTW agencies must comply with NEPA, 24 CFR part 50 or part 58, as applicable, and other related federal laws and authorities identified in 24 CFR part 50 or part 58, as applicable. Information and guidance on the environmental review process and requirements is provided in PIH Notice 2016–22, or successor notice.
- *Fair Housing and Equal Opportunity:* As with the administration of all HUD programs and all HUD-assisted activities, fair housing, and civil rights issues apply to the administration of MTW demonstration

[34] For examples of restrictions in applying MTW flexibilities to tenant protection vouchers, please visit the MTW Special Purpose Voucher Q&A at *https://www.hud.gov/sites/dfiles/PIH/documents/SpecialPurposeVouchersQA.pdf.*

programs. This includes actions and policies that may have a discriminatory effect on the basis of race, color, sex, national origin, religion, disability, or familial status (see 24 CFR part 1 and part 100 subpart G) or that may impede, obstruct, prevent, or undermine efforts to affirmatively further fair housing. Annual PHA Plans must include a civil rights certification required by Section 5A of the 1937 Act and implemented by regulation at 24 CFR 903.7(o) and 903.15, as well as a statement of the MTW agency's strategies and actions to achieve fair housing goals outlined in an approved Assessment of Fair Housing consistent with 24 CFR 5.154. If the MTW agency does not have a HUD-accepted Assessment of Fair Housing (AFH), it must still provide a civil rights certification and statement of the MTW agency's fair housing strategies, which would be informed by the corresponding jurisdiction's AFH and the MTW agency's assessment of its own operations.

All PHAs, including MTW agencies, are obligated to comply with non-discrimination and equal opportunity laws and implementing regulation, including those in 24 CFR 5.105. Specific laws and regulations must be viewed in their entirety for full compliance, as this MTW Operations Notice does not incorporate a complete discussion of all legal authorities. For example, PHAs, including MTW agencies, are required to comply with the Fair Housing Act, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act of 1990, Architectural Barriers Act of 1968, Executive Order 11063: Equal Opportunity in Housing, Executive Order 13166: Improving Access to Services for Persons with Limited English Proficiency, HUD's Equal Access Rule (24 CFR 5.105(a)(2), Age Discrimination Act of 1975, and Title IX of the Education Amendments Act of 1972, as well as HUD and government-wide regulations implementing these authorities. MTW agencies should review PIH Notice 2011–31, or its successor, for more details.

• *Court Orders and Voluntary Compliance Agreements:* MTW agencies must comply with the terms of any applicable court orders or Voluntary Compliance Agreements that are in existence or may come into existence during the term of the MTW ACC Amendment. The MTW agency must cooperate fully with any investigation by the HUD Office of Inspector General or any other investigative and law enforcement agencies of the U.S. Government.

11. MTW Agencies Admitted Prior to 2016 MTW Expansion Statute

The 39 MTW agencies that entered the MTW demonstration prior to the 2016 MTW Expansion Statute adhere to an administrative structure outlined in the Standard MTW Agreement, an agreement between each current agency and HUD. The 2016 MTW Expansion Statute extended the term of the Standard MTW Agreement for these existing MTW agencies through each agency's 2028 fiscal year.

Some agencies that entered the MTW demonstration prior to the 2016 MTW Expansion Statute may wish to opt out of their Standard MTW Agreement and administer their MTW program pursuant to the MTW Expansion and the requirements in this MTW Operations Notice. HUD will support an existing MTW agency's request to join the MTW Expansion provided that the agency:

• Makes the change at the end of its fiscal year, so that it does not have part of a fiscal year under the Standard Agreement and part under the MTW Operations Notice;

• follows the same public comment and Board resolution process as would be required for amending the Standard MTW Agreement;

• executes its MTW ACC Amendment to authorize participation in the MTW demonstration consistent with the MTW Operations Notice; and

• executes the MTW ACC Amendment and terminates its Standard MTW Agreement, thereby becoming subject to all the terms and conditions that apply to MTW agencies admitted pursuant to the 2016 MTW Expansion Statute, including all of the provisions of this Operations Notice and the accompanying MTW ACC Amendment.

Should an existing MTW agency elect to administer its MTW program pursuant to the framework described in this MTW Operations Notice, it will not be required to implement the cohort-specific policy change associated with any of the MTW cohorts and it will not be required to participate in the evaluation of that specific policy change. All other requirements in this MTW Operations Notice will apply.

12. Sanctions, Terminations, and Default

If the MTW agency violates any of the requirements outlined in this notice, HUD is authorized to take any corrective or remedial action permitted by law. Sanctions, terminations, and default are covered in the agency's MTW ACC Amendment.

13. Administrative and Contact Information

a. Paperwork Reduction Act

The information collection requirements contained in this document are approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S C. 2501–3520). The OMB control number is 2577–0216. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

b. Contact Information

For further information, contact: Marianne Nazzaro, Director, Moving to Work Demonstration Program; email: *mtw-info@hud.gov;* telephone number 202–402–4306 (this is not a toll-free number), or visit the MTW demonstration program website at: *www.hud.gov/mtw.* Hearing- and speech-impaired persons may access this number through TTY by calling the Federal Relay Service at 800–877–8339 (this is a toll-free number).

R. Hunter Kurtz,

Assistant Secretary for Public and Indian Housing.

Appendix I

Appendix I, MTW Waivers, is a simplified guide for MTW agencies seeking to develop MTW initiatives that have already been executed by existing MTW agencies. MTW agencies may implement any activity contained in Appendix I without further HUD approval as long as it is included in the MTW Supplement (described in section VI.7 of this Notice) of an approved PHA Plan and implemented within the associated safe harbor(s). MTW activities are listed by specific waiver name in Appendix I; however, MTW agencies may use the MTW Supplement to combine activities together in order to create more comprehensive initiatives.

This appendix contains the MTW Waivers and their associated activities. The appendix includes the waiver name, waiver description, statutes and regulations waived, permissible activities, and safe harbors. The waiver description defines the authorization provided to the MTW agency, subject to the terms of this notice. The statutory and regulatory citations that may be waived by an MTW agency in order to implement an activity are included below the activity. The list of waivers and list of activities are organized by program type. The safe harbors contain the additional requirements (beyond those specified in the activity description) the agency must follow in order to implement the activity without additional HUD approval once it is included in an approved MTW Supplement to the PHA Plan. Consistent with applicable federal,

state, and local lease requirements, MTW agencies should update their leases as necessary to adopt MTW flexibilities authorized by these MTW Waivers.

Appendix I is an exclusive list of activities an MTW agency can implement without further HUD approval once it is included in the MTW Supplement of an approved PHA Plan; however, is not intended to be the complete listing of what an MTW agency can and cannot do. If an MTW agency wishes to request the ability to implement an activity in a manner inconsistent with the safe harbor(s) of an MTW activity in this appendix, the MTW agency must go through the Safe Harbor Waiver request process explained in section VI.4 of the MTW Operations Notice. If an MTW agency wishes to implement activities or request waivers not included in this appendix, it must go through the Agency-Specific Waiver process explained in section VI.4 of the MTW Operations Notice. As described in Appendix II, the MTW agency shall submit an impact analysis for all Safe Harbor Waiver requests, and the MTW agency shall describe any hardship policy, as applicable.

Safe harbors marked with an asterisk (*) cannot be waived through either the Safe Harbor Waiver process or the Agency-Specific Waiver process.

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1. Tenant Rent Policies

The agency is authorized to adopt and implement the activities listed below for setting tenant rents in public housing, including but not limited to establishing definitions of income and adjusted income that differ from those in the current 1937 Act and its implementing regulations. The agency is authorized to adopt and implement the activities listed below to establish total tenant payments (TTP) [1] in the HCV program, and/or tenant rents for tenant-based and project-based voucher (PBV) assistance that differ from the currently mandated program requirements in the 1937 Act and its implementing regulations. The agency is authorized to adopt and implement the activities listed below to calculate the tenant portion of the rent in a way that differs from the currently mandated program requirements in the 1937 Act and its implementing regulations. The agency must determine initial eligibility in accordance with 24 CFR 5.609 and must comply with section 3(b)(2) of the United States Housing Act of 1937 Act (1937 Act) (42 U.S.C. §1437). For voucher activities, the Department has developed a standard rider to the HAP contract that reflects any MTW authorizations that amend the current requirements of the HAP contract.

1.a., 1.b. Tiered Rent

Activity	1.a. *Tiered Rent (PH)*—The agency may implement changes to the tenant rent calculation to create a system based upon income bands.	1.b. *Tiered Rent (HCV)*—The agency may implement changes to the TTP calculation to create a system based upon income bands.
Statutes and Regulations Waived.	*Tiered Rent (PH)*—Certain provisions of sections 3(a)(1)–(2) of the 1937 Act and 24 CFR 5.628, 5.634(b) and 960.253.	*Tiered Rent (HCV)*—Certain provisions of sections 8(o)(2)(A)–(C) of the 1937 Act and 24 CFR 5.628.
Safe Harbors	1.a. and 1.b. i. Rents and/or TTP (as applicable) established under this system must be set using the lowest income in each band. For example, if an income band is $2,500–$5,000 then the rent for that band must be set using $2,500. ii. The agency must adopt a flat rent and/or TTP (as applicable) policy within each income band instead of calculating rent based on adjusted or gross income.	

1.c., 1.d. Stepped Rent		
Activity	1.c. *Stepped Rent (PH)*—The agency may create a stepped rent model that increases the family's rent payment on a fixed schedule in both frequency and amount. The fixed schedule/stepped rent model may be disaggregated from family income.	1.d. *Stepped Rent (HCV)*—The agency may create a stepped rent model that increases the family's TTP on a fixed schedule in both frequency and amount. The fixed schedule/stepped rent model may be disaggregated from family income.
Statutes and Regulations Waived.	*Stepped Rent (PH)*—Certain provisions of section 3(a)(1)–(2) of the 1937 Act and 24 CFR 5.628, 5.634(b) and 960.253.	*Stepped Rent (HCV)*—Certain provisions of sections 8(o)(2)(A)–(C) of the 1937 Act and 24 CFR 5.628.
Safe Harbor(s)	1.c. and 1.d. • Rent increases may not occur more than once per year. • Agency must conduct an annual impact analysis.* • Agency must exclude elderly and disabled families from rent policy.* • Agency must implement a hardship policy.* • Services, or referrals to services, must be made available by the agency or a partner organization to support preparing families for the termination of assistance, if applicable. • At the Department's request, the agency shall make available the method used to determine that rents charged to families are reasonable when compared to similar unassisted units in the market area.* • Initial rents will be set at no more than 32% of a household's gross income, or 35% of a household's adjusted income. • The PHA will establish a stepped rent increase by unit size. The increase may be no more than 4% of the Fair Market Rent for the applicable area.	
1.e., 1.f. Minimum Rent		
Activity	1.e. *Minimum Rent (PH)*—The agency may set a minimum rent that is higher than allowed under current statute and regulation.	1.f. *Minimum Rent (HCV)*—The agency may set a minimum rent that is higher than allowed under current statute and regulation.
Statutes and Regulations Waived.	*Minimum Rent (PH)*—Certain provisions of sections 3(a)(1)–(2) and 3(a)(3)(A) of the Act and 24 CFR 5.628 and 5.630.	*Minimum Rent (HCV)*—Certain provisions of sections 3(a)(3)(A) and 8(o)(2)(A)–(C) of the Act and 24 CFR 5.628 and 5.630.
Safe Harbor(s)	1.e. and 1.f. i. Minimum rent must not exceed $130 per month. ii. Agency must exclude elderly and disabled families from rent policy. iii. Agency must conduct an impact analysis.* iv. Agency must implement a hardship policy.*	
1.g., 1.h. Tenant Payment as a Modified Percentage of Income		
Activity	1.g. *Tenant Payment as a Modified Percentage of Income (PH)*—The agency may modify the percentage of income used in the TTP calculation.	1.h. *Tenant Payment as a Modified Percentage of Income (HCV)*—The agency may modify the percentage of income used in the TTP calculation.
Statutes and Regulations Waived.	*Tenant Payment as a Modified Percentage of Income (PH)*—Certain provisions of sections 3(a)(1)–(2) and 3(b)(4)–(5) of the 1937 of the Act and 24 CFR 5.609, 5.611, 960.253 and 960.255.	*Tenant Payment as a Modified Percentage of Income (HCV)*—Certain provisions of sections 3(b)(4)–(5) and 8(o)(2)(A)–(C) of the 1937 Act and 24 CFR 5.609, 5.611, and 982.516.
Safe Harbor(s)	1.g. and 1.h. i. The Tenant Payment in public housing and the Tenant Payment in HCV must not exceed 32% of income for non-elderly/non-disabled families if the agency is utilizing flexibility under activities 1.r., 1.t. and/or 1.v. (for 1.g.) or 1.s., 1.u. and/or 1.w. (for 1.h.). ii. The Tenant Payment in public housing and the Tenant Payment in HCV must not exceed 35% of income for non-elderly/non-disabled families if the agency is not utilizing flexibility under activities 1.r., 1.t. and/or 1.v. (for 1.g.) or 1.s., 1.u. and/or 1.w. (for 1.h.). iii. Agency must exempt elderly and disabled families from rent policy. iv. Agency must conduct an impact analysis.* v. Agency must implement a hardship policy.*	
1i., 1.j. Alternative Utility Allowance		
Activity	1i. *Alternative Utility Allowance (PH)*—The agency may create a utility schedule(s) for all units.	1j. *Alternative Utility Allowance (HCV)*—The agency may create a utility schedule(s) for all HCV units based upon bedroom size, the unit location and/or the types of utilities paid by participant. The agency may establish a site-based utility allowance in PBV.
Statutes and Regulations Waived.	*Alternative Utility Allowance (PH)*—Certain provisions of 24 CFR. 965.503–506.	*Alternative Utility Allowance (HCV)*—Certain provisions of section 8(o)(2)(D)(i) of the 1937 Act and 24 CFR 982.517 and 983.301(f)(2)(ii).
Safe Harbor(s)	1.i. and 1.j. i. The utility schedule must be based upon number of bedrooms, the property location, and/or the types of utilities paid by participant. ii. The agency must review its schedule of utility allowances each year and revise its allowance for a utility category if there has been a change of 10 percent or more of the cost from the prior year. The agency must maintain information supporting its annual review of utility allowances and any revisions made in its utility allowance schedule. iii. The agency must not include items in the utility schedule that are excluded under HUD regulations.*	
1.k., 1.l. Fixed Rents/Subsidies		
Activity	1.k. *Fixed Rents (PH)*—The agency may establish fixed rents based on bedroom size.	1.l. *Fixed Subsidy (HCV)*—The agency may establish a fixed subsidy based on bedroom size. Under this model, the family pays the difference between the gross rent for the unit and the fixed subsidy as the family share/tenant rent.

Statutes and Regulations Waived.	*Fixed Rents (PH)*—Certain provisions of sections 3(a)(1)–(2) and 3(a)(3)(A) of the 1937 Act and 24 CFR 5.628, 5.634(b), and 960.253.	*Fixed Subsidy (HCV)*—Certain provisions of sections 8(o)(2)(A)–(C) and 8(o)(3) of the 1937 Act and 24 CFR 5.628, 5.630, 982.505, 982.508, 983.351(c), 983.353(b)(1), and 983.353(d)(1).
Safe Harbor(s)	1.k. and 1.l. i. Tenant rent under the public housing portion of this activity must not exceed 30% of income under the HUD rent calculation as defined by the 1937 Act. ii. For the HCV portion of this activity, the fixed subsidy must not result in a family paying more than 30% of income under the HUD rent calculation as defined by the 1937 Act.	

1.m., 1.n. Utility Reimbursements

Activity	1.m. *Utility Reimbursements (PH)*—The agency may eliminate utility reimbursement payments in the public housing program when the utility allowance is greater than the total tenant payment.	1.n. *Utility Reimbursements (HCV)*—The agency may eliminate utility reimbursement payments in the HCV program when the utility allowance is greater than the total tenant payment.
Statutes and Regulations Waived.	*Utility Reimbursements (PH)*—Certain provisions of section 3(a)(1) of the 1937 Act and 24 CFR 5.632.	*Utility Reimbursements (HCV)*—Certain provisions of sections 8(o)(2)(A)–(C) of the 1937 Act and 24 CFR 982.514 and 983.353(d).

1.o. Initial Rent Burden (HCV only)

Activity	N/A	1o. *Initial Rent Burden (HCV)*—The agency may waive the maximum family share at initial occupancy of 40% of the family's monthly income.
Statutes and Regulations Waived.	N/A	*Initial Rent Burden (HCV)*—Certain provisions of section 8(o)(3) of the 1937 Act and 24 CFR 982.508.
Safe Harbor(s)	N/A	1.o. i. Agency must implement an impact analysis.* ii. Agency must not allow the family share at initial occupancy to exceed 60% of the family's monthly income.

1.p., 1.q. Imputed Income

Activity	1.p. *Imputed Income (PH)*—Agency may base rent on an assumed number of hours worked per week.	1.q. *Imputed Income (HCV)*—Agency may base TTP on an assumed number of hours worked per week.
Statutes and Regulations Waived.	*Imputed Income (PH)*—Certain provisions of sections 3(a)(1) and 3(b)(4)–(5) of the 1937 Act and 24 CFR 5.609, 5.611, 5.628, 960.255, 960.253, and 960.257.	*Imputed Income (HCV)*—Certain provisions of sections 3(b)(4)–(5) and 8(o)(2)(A)–(C) of the 1937 Act and 24 CFR 5.609, 5.611, 5.628, and 982.516.
Safe Harbor(s)	1.p. and 1.q. i. The rent calculation must be based on no more than 15 hours worked per person, per week at the Federal Minimum Wage. ii. The rent calculation must be based on no more than 30 hours worked per week per household at the Federal Minimum Wage. iii. Agency must conduct an impact analysis.* iv. Agency must exempt elderly and disabled families from rent policy. v. Agency must implement a hardship policy.*	

1.r., 1.s. Elimination of Deduction(s)

Activity	1.r. *Elimination of Deduction(s) (PH)*—The agency may eliminate one, some, or all deductions.	1.s. *Elimination of Deduction(s) (HCV)*—The agency may eliminate one, some, or all deductions.
Statutes and Regulations Waived.	*Elimination of Deduction(s) (PH)*—Certain provisions of sections 3(a)(1), 3(b)(4)–(5) of the 1937 Act and 24 CFR 5.611, 960.253, 960.255, and 960.257.	*Elimination of Deduction(s) (HCV)*—Certain provisions of sections 3(a)(1), 3(b)(4)–(5) and 8(o)(2)(A)–(C) of the 1937 Act and 24 CFR 5.611, and 982.516.
Safe Harbor(s)	1.r. and 1.s. i. Agency must conduct an impact analysis.* ii. Agency must exempt elderly and disabled families from rent policy.* iii. Agency must implement a hardship policy.*	

1.t., 1.u. Standard Deductions

Activity	1.t. *Standard Deductions (PH)*—The agency may replace existing deduction(s) with a single standard deduction(s).	1.u. *Standard Deductions (HCV)*—The agency may replace existing deduction(s) with a single standard deduction(s).
Statutes and Regulations Waived.	*Standard Deductions (PH)*—Certain provisions of sections 3(a)(1) and 3(b)(4)–(5) of the 1937 Act and 24 CFR 5.611, 960.253, 960.255, and 960.257.	*Standard Deductions (HCV)*—Certain provisions of sections 3(a)(1), 3(b)(4)–(5), and 8(o)(2)(A)–(C) of the 1937 Act and 24 CFR 5.611, and 982.516.
Safe Harbor(s)	1.t. and 1.u. i. Agency must conduct an impact analysis.* ii. Agency must implement a hardship policy.*	

1.v., 1.w. Alternative Income Inclusions/Exclusions

Activity	1.v. *Alternative Income Inclusions/Exclusions (PH)*—The agency may establish alternative policies to include or exclude certain forms of participant income during the income review and rent calculation process.	1.w. *Alternative Income Inclusions/Exclusions (HCV)*—The agency may establish alternative policies to include or exclude certain forms of participant income during the income review and rent calculation process.
Statutes and Regulations Waived.	*Alternative Income Inclusions/Exclusions (PH)*—Certain provisions of sections 3(a)(1) and 3(b)(4)–(5) of the 1937 Act and 24 CFR 5.609, 5.611, 960.253, 960.255, and 960.257.	*Alternative Income Inclusions/Exclusions (HCV)*—Certain provisions of sections 3(a)(1), 3(b)(4)–(5), and 8(o)(2)(A)–(C) of the 1937 Act and 24 CFR 5.609, 5.611, and 982.516.
Safe Harbor(s)	1.v. and 1.w.	

	i. Agency must exempt elderly and disabled individuals from this rent determination policy.

2. Payment Standards and Rent Reasonableness

The agency is authorized to adopt and implement any reasonable policy to establish payment standards or rent reasonableness that differ from the currently mandated program requirements in the 1937 Act and its implementing regulations. For voucher activities, the Department has developed a standard rider to the HAP contract that reflects any MTW authorizations that amend the current requirements of the HAP contract.

2.a. Payment Standards—Small Area Fair Market Rents

Activity	2.a. *Payment Standards—Small Area Fair Market Rents (HCV)*—The agency is authorized to adopt and implement any reasonable policy to establish payment standards based upon Small Area Fair Market Rents (SAFMR). In lieu of establishing a unique payment standard for each ZIP code area within its jurisdiction, a PHA may use this flexibility to establish payment standards for ''grouped'' ZIP code areas.
Statutes and Regulations Waived.	*Payment Standards—Small Area Fair Market Rents (HCV)*—Certain provisions of section 8(o)(1)(B) and 8(o)(13)(H) of the 1937 Act and 24 CFR 982.503–505 and 983.301.
Safe Harbor(s)	2.a. i. Payment standard must be between 80% and 150% of the SAFMR. ii. The payment standard in effect for each grouped ZIP code area must be within the basic range of the SAFMR for each ZIP code area in the group.* iii. Agency must implement an impact analysis.* iv. Agency must implement a hardship policy.*

2.b. Payment Standards—Fair Market Rents

Activity	2.b. *Payment Standards – Fair Market Rents (HCV)*—The agency is authorized to adopt and implement any reasonable policy to establish payment standards based upon Fair Market Rents (FMR).
Statutes and Regulations Waived.	*Payment Standards—Fair Market Rents (HCV—Tenant-Based Assistance)*—Certain provisions of section 8(o)(1)(B) and 8(o)(13)(H) of the 1937 Act and 24 CFR 982.503–505 and 983.301.
Safe Harbor(s)	2.b. i. Payment standard must be between 80% and 120% of the FMR. ii. Agency must implement an impact analysis.* iii. Agency must implement a hardship policy.*

2.c. Rent Reasonableness

Activity	2.c. *Rent Reasonableness—Process (HCV)*—The agency is authorized to develop a local process to determine rent reasonableness that differs from the currently mandated program requirements in the 1937 Act and its implementing regulations.
Statutes and Regulations Waived.	*Rent Reasonableness—Process (HCV)*—Certain provisions of section 8(o)(10)(A) of the 1937 Act, 24 CFR 982.507 and 983.303.
Safe Harbor(s)	2.c. i. Through the Administrative Plan, the agency shall make available the method used to determine that rents charged by owners to voucher participants are reasonable when compared to similar unassisted units in the market area.* ii. At the Department's request, the agency must obtain the services of a third-party entity to determine rent reasonableness for PHA-owned units.*

2.d. Rent Reasonableness—Third-Party Requirement

Activity	2.d. *Rent Reasonableness—Third-Party Requirement (HCV)*—The agency is authorized to perform rent reasonable determinations on PBV units that it owns, manages, and/or controls.
Statutes and Regulations Waived.	*Rent Reasonableness—Third-Party Requirement (HCV)*—Certain provisions of 24 CFR 982.352(b) and 983.303.
Safe Harbor(s)	2.d. i. The agency shall establish and make available a quality assurance method to ensure impartiality.* ii. The agency shall make available the method used to determine that rents charged by owners to voucher participants are reasonable when compared to similar unassisted units in the market area.* iii. At the Department's request, the agency must obtain the services of a third-party entity to determine rent reasonableness for PHA-owned units.*

3. Reexaminations

The agency is authorized to implement a reexamination program that differs from the reexamination program currently mandated in the 1937 Act and its implementing regulations. The terms ''low-income families'' and ''very low-income families'' shall continue to be defined by reference to section 3(b)(2) of the 1937 Act. MTW agencies must continue to determine the initial eligibility of the family in accordance with provisions of 24 CFR 5.609.

3.a., 3.b. Alternative Reexamination Schedule for Households

Activity	3.a. *Alternative Reexamination Schedule for Households (PH)*—The agency may establish an alternative reexamination schedule for households.	3.b. *Alternative Reexamination Schedule for Households (HCV)*—The agency may establish an alternative reexamination schedule for households.
Statutes and Regulations Waived.	*Alternative Reexamination Schedule for Households (PH)*—Certain provisions of sections 3(a)(1) and 3(a)(2)(E) of the 1937 Act and 24 CFR 960.257(a)–(b).	*Alternative Reexamination Schedule for Households (HCV)*—Certain provisions of section 8(o)(5) of the 1937 Act and 24 CFR 982.516 (a)(1) and 982.516(c)(2).
Safe Harbor(s)	3.a. and 3.b. i. Reexaminations must occur at least every three years. ii. The agency must allow at least one interim adjustment per year at the request of the household, if the household gross income has decreased 10% or more. iii. Agency must implement an impact analysis.* iv. Agency must include a hardship policy.*	

3.c., 3.d. Self-Certification of Assets

Activity	3.c. *Self-Certification of Assets (PH)*—At reexamination, the agency may allow the self-certification of assets.	3.d. *Self-Certification of Assets (HCV)*—At reexamination, the agency may allow the self-certification of assets.

Statutes and Regulations Waived.	*Self-Certification of Assets (PH)*—Certain provisions of sections 3(a)(1) and 3(a)(2)(E) of the 1937 Act and 24 CFR. 960.259(c)(2).	*Self-Certification of Assets (HCV)*—Certain provisions of section 8(o)(5) of the 1937 Act and 24 CFR. 982.516 (a)(3).
Safe Harbor(s)	3.c. and 3.d. i. At reexamination, the agency may allow the self-certification of assets only up to $50,000.	

4. Landlord Leasing Incentives

The agency is authorized to determine a damage claim and/or vacancy loss policy and payment policy for units that differ from the policy requirements currently mandated in the 1937 Act and its implementing regulations. All policies are subject to state and local laws. The agency may combine activities 4a and 4b into one voucher leasing incentive. For voucher activities related to this waiver, the Department has developed a standard rider to the HAP contract that reflects MTW authorizations that amend the current provisions of the HAP contract.

4.a., 4.b., 4.c. Vacancy Loss, Damage Claims, and Other Landlord Incentives

Activity	4.a. *Vacancy Loss (HCV—Tenant-Based Assistance)*—To incentivize a landlord's continued participation in the HCV program, the agency is authorized to make additional payments to the landlord.
Statutes and Regulations Waived.	*Landlord Voucher Leasing Incentives (HCV—Tenant-Based Assistance)*—Certain provisions of section 8(o)(9) of the 1937 Act, and 24 CFR 982.311 and 982.352(c).
Safe Harbor(s)	4.a. i. Payments made to the landlord must be equal to no more than one month of the contract rent. ii. The payment must be made to the landlord when the next HAP contract is executed between the owner and the PHA.* iii. The agency must update its Administrative Plan to reflect the vacancy loss policy.*
Activity	4.b. *Damage Claims (HCV—Tenant-Based Assistance)*—To incentive a landlord's continued participation in the HCV program, the agency may provide landlords with compensation.
Statutes and Regulations Waived.	*Landlord Voucher Leasing Incentives (HCV—Tenant-Based Assistance)*—Certain provisions of section 8(o)(9) of the 1937 Act, and 24 CFR 982.311 and 982.352(c).
Safe Harbor(s)	4.b. i. If the tenant leaves the unit damaged, the amount of damage claims must not exceed the lesser of the cost of repairs or two months of contract rent. ii. In implementing this activity, the participant's security deposit must first be used to cover damages and the agency may provide up to two months of contract rent minus the security deposit to cover remaining repairs. iii. The payment must be made to a landlord when the next HAP contract is executed between the owner and PHA.* iv. The agency must update its Administrative Plan to reflect the damage claim policy.*
Activity	4.c. *Other Landlord Incentives (HCV—Tenant-Based Assistance)*—In order to incentivize new landlords to join the HCV program, the agency may provide incentive payments. Agencies may target incentive payments to landlords leasing properties in high opportunity neighborhoods or in areas located where vouchers are difficult to use as defined in an agency's Administrative Plan.
Statutes and Regulations Waived.	*Landlord Voucher Leasing Incentives (HCV—Tenant-Based Assistance)*—Certain provisions of section 8(o)(9) of the 1937 Act, and 24 CFR 982.311 and 982.352(c).
Safe Harbor(s)	4.c. i. Payments made to the landlord must be equal to no more than one month of the contract rent. ii. The payment must be made to the landlord when the HAP contract is executed between the owner and the PHA.*

5. Housing Quality Standards (HQS)

Subject to state and local laws, the agency is authorized by the Secretary to develop flexibilities around an HQS inspection's timing and frequency, the independent-entity requirement, and penalties for failing an HQS inspection, as detailed below. Implementation of any of the below discrete HQS activities meets the requirements of the 1996 MTW Statute, which requires housing to meet HQS established or approved by the Secretary.

5.a. Pre-Qualifying Unit Inspections

Activity	5.a. *Pre-Qualifying Unit Inspections (HCV)*—The agency may allow pre-qualifying unit inspections (also known as a pre-inspection).
Statutes and Regulations Waived.	*Pre-Qualifying Unit Inspections (HCV)*—Certain provisions of section 8(o)(8) of 1937 Housing Act and 24 CFR 983.103, 24 CFR 982.405.
Safe Harbor(s)	5.a. i. The pre-inspection must have been conducted within 90 days of the participant occupying the unit. ii. The participant must be able to request an interim inspection.* iii. HQS inspection standards must not be altered as found at 24 CFR 982.401.*

5.b. Reasonable Penalty Payments for Landlords

Activity	5.b. *Reasonable Penalty Payments for Landlords (HCV)*—The agency is authorized to establish a reasonable penalty fee for landlords who failed HQS inspections to encourage positive HQS inspection outcomes and to reduce costs associated with re-inspections. Examples may include a fee imposed at the agency's discretion on a landlord for failed initial, annual, or re-inspections, or for a submission of a Request for Tenancy Approval on a unit that has failed its most recent inspection within a specified timeframe.
Statutes and Regulations Waived.	*Reasonable Penalty Payments for Landlords (HCV)*—Certain provisions of section 8(o)(8) of 1937 Housing Act and 24 CFR 983.101, 24 CFR 983.103, and 24 CFR 982.405.
Safe Harbor(s)	5.b. i. The agency must establish its penalty process in its Administrative Plan.* ii. HQS inspection standards must not be altered as found at 24 CFR 982.401.* iii. All fees collected must be used for eligible MTW activities.*

5.c. Third-Party Requirement

Activity	5.c. *Third-Party Requirement (HCV)*—The agency is authorized to perform HQS inspections on PBV units that it owns, manages, and/or controls.
Statutes and Regulations Waived.	*Third-Party Requirement (HCV)*—Certain provisions of section 8(o)(11) of the 1937 Act, 24 CFR 982.352(b)(iv) and 24 CFR 983.103(f).
Safe Harbor(s)	5.c. i. The agency shall establish and make available a quality assurance method to ensure an objective analysis.* ii. The participant must be able to request an interim inspection.* iii. HQS inspection standards must not be altered as found at 24 CFR 982.401.* iv. At the Department's request, the agency must obtain the services of a third-party entity to determine if PHA-owned units pass HQS.*

5.d. Alternative Inspection Schedule

Activity	5.d. *Alternative Inspection Schedule (HCV)*—The agency is authorized to establish a local inspection schedule for all or a portion of its HCV units.
Statutes and Regulations Waived.	*Alternative Inspection Schedule (HCV)*—Certain provisions of 24 CFR 983.103.
Safe Harbor(s)	5.d. i. Units must be inspected at least once every three years. ii. The participant must be able to request an interim inspection.* iii. HQS inspection standards as found at 24 CFR 982.401 must not be altered.* iv. The Department must be able to conduct or direct the agency to perform an inspection at any time for health and safety, as well as accessibility, purposes.*

6. Short-Term Assistance

The agency may develop and adopt a Short-Term Assistance Program in HCV or PH for specific populations (*i.e.,* hard to house, at-risk, homeless, etc.).[35] The agency will ensure that these programs do not adversely affect participation in, benefits of, or otherwise discriminate against persons on the basis of race, color, national origin, sex, religion, familial status, or disability or other protected bases. The agency's programs shall be operated in a manner that is consistent with the requirements of nondiscrimination and equal opportunity authorities, and will be accessible to persons with disabilities in accordance with the Fair Housing Act, section 504 of the Rehabilitation Act, Titles II and III of the Americans with Disabilities Act, as applicable, and the Architectural Barriers Act. More specifically, under no circumstances will participants of such programs be required to participate in supportive services that are targeted to persons with disabilities in general, or persons with any specific disability. In addition, admission to any of the programs or priority for supportive services developed under this section will not be conditioned on a diagnosis or specific disability of a member of an applicant or participant family. This section is not intended to govern the designation of housing that is subject to section 7 of the 1937 Act. The agency must determine initial eligibility in accordance with 24 CFR 5.609 and must comply with section 3(b)(2) of the Act.

6.a., 6.b. Short-Term Assistance

Activity	6.a. *Short-Term Assistance (PH)*—The agency may create a short-term housing assistance program with supportive services in one or more buildings in its public housing program.	6.b. *Short-Term Assistance (HCV)*—The agency may create a short-term housing assistance program with supportive services in its HCV program.
Statutes and Regulations Waived.	*Short-Term Assistance (PH)*—Certain provisions of sections 6(l)(1) and 6(l)(5) of the 1937 Act and 24 CFR 966.4(a)(2)(i).	*Short-Term Assistance (HCV*)—Certain provisions of sections 8(o)(7)(A)–(C) of the 1937 Act and 24 CFR 982.303, 982.309(a)(1), 983.256(f), and 983.257.
Safe Harbor(s)	6.a. and 6.b. i. The term of assistance must not be shorter than 3 months. ii. The term of assistance must not be longer than 36 months. iii. The short-term housing assistance program must include supportive services in one or more buildings (which may be in collaboration with local community-based organization and government agencies). iv. Subject to availability, successful participants of the short-term housing assistance program must be given the option of transferring into whichever program (section 8 or 9) the short-term housing assistance program falls under. v. Under no circumstances will participants be required to participate in supportive services that are targeted to persons with disabilities in general, or persons with any specific disability.* vi. The agency must not require participation in supportive services as a condition for housing subsidy for elderly and disabled families.* vii. If the agency requires participation in supportive services as a condition for housing subsidy, an impact analysis must be developed and adopted in accordance with MTW guidance prior to the implementation of the activity.* viii. If the agency requires participation in supportive services as a condition for housing subsidy, a hardship policy must be developed and adopted in accordance with MTW guidance prior to the implementation of the activity.* ix. The activity cannot be extended to an entire public housing or HCV program and must only serve specific populations.*	

7. Term-Limited Assistance

The agency is authorized to implement term limits for families residing in public housing or receiving voucher assistance.

7.a., 7.b. Term-Limited Assistance

Activity	7.a. *Term-Limited Assistance (PH)*—The agency may limit the duration for which a family receives housing assistance.	7.b. *Term-Limited Assistance (HCV)*—The agency may limit the duration for which a family receives housing assistance.
Statutes and Regulations Waived.	*Term-Limited Assistance (PH)*—Certain provisions of sections 6(l)(1) and 6(l)(5) of the 1937 Act and 24 CFR and 966.4(a)(2).	*Term-Limited Assistance (HCV)*—Certain provisions of sections 8(o)(7)(A)–(C) of the 1937 Act and 24 CFR 982.303, 982.309(a), 982.552(a), 983.256(f), and 983.257.
Safe Harbor(s)	7.a. and 7.b. i. The term of assistance may not be shorter than 4 years.* ii. Services, or referrals to services, must be provided by the agency or a partner organization to support preparing families for the termination of assistance. iii. Agency must conduct an annual impact analysis.* iv. Agency must exclude elderly and disabled families from term limit.* v. Agency must implement a hardship policy.*	

8. Increase Elderly Age

The agency is authorized to amend the definition of an elderly person to be an individual who is at most 65 years of age. The agency remains subject to HUD's regulations implementing the Age Discrimination Act of 1975 at 24 CFR part 146 in its entirety.

8. Increase Elderly Age

Activity	8. *Increase Elderly Age (PH & HCV)*—The agency may change HUD's definition of an elderly person to be at most 65 years of age.
Statutes and Regulations Waived.	*Increase Elderly Age (PH & HCV)*—Certain provisions of section 3(b)(3)(D) of the 1937 Act to read ''[63, 64, or 65] years of age'' in relevant part, 24 CFR 5.100 to read ''[63, 64, or 65] years of age'' in relevant part of the definition of Elderly Person, and 24 CFR 5.403 to read ''[63, 64, or 65] years of age'' in relevant part of the definition of *Elderly family.*
Safe Harbor(s)	8. i. The definition of an elderly person must not set a threshold (minimum) age above 65 years old.*

	ii. The agency must still exclude persons 62 and older from activities for which the activity description or safe harbor exempts those exempted from the Community Service Requirement under section 12(c)(2)(A), (B), (D) and (E) of the 1937 Act (e.g. work requirements or mandatory FSS).* iii. The agency must conduct an initial activity analysis consistent with 24 CFR part 146 and make the activity analysis available during the applicable public review period prior to the implementation of the MTW activity. The activity analysis must be updated at least annually during implementation of the activity and at the time the activity is closed out.* iv. The agency must retain records available for HUD inspection that cover the waiver, tenant consultation and public comment, results of the activity analysis, and specific policies and procedures to implement the waiver.* v. The implementation of this activity must apply only to new admissions after the effective date of the MTW Supplement in which the activity is authorized.*

9. Project-Based Voucher Program Flexibilities

The agency is authorized to adopt and implement the activities listed below in the project-based voucher program. For voucher activities, the Department has developed a standard rider to the HAP contract that reflects any MTW authorizations that amend the current requirements of the HAP contract.

9.a. Increase PBV Program Cap

Activity	9.a. *Increase PBV Program Cap (HCV)*—The agency may increase the number of authorized units that it project-bases.
Statutes and Regulations Waived.	*Increase PBV Program Cap (HCV)*—Certain provisions of section 8(o)(13)(B) of the 1937 Act and 24 CFR 983.6(a)–(b), as superseded by the Housing Opportunity through Modernization Act of 2016 (HOTMA) Implementation Notices at 82 FR 5458 and 82 FR 32461 (see implementation guidance in Notice PIH 2017–21).
Safe Harbor(s)	9.a. i. The agency must not project-base more than 50% of the lower of either the total authorized units or annual budget authority.

9.b. Increase PBV Project Cap

Activity	9.b. *Increase PBV Project Cap (HCV)*—The agency may raise the PBV cap within a project up to 100%.
Statutes and Regulations Waived.	*Increase PBV Project Cap (HCV)*—Certain provisions of section 8(o)(13)(D) of the 1937 Act and 24 CFR 983.56(a)–(b), as superseded by HOTMA Implementation Notices at 82 FR 5458 and 82 FR 32461 (see implementation guidance in Notice PIH 2017–21).
Safe Harbor(s)	9.b. i. The agency is subject to Notice PIH 2013–27 where applicable, or successor.*

9.c. Elimination of PBV Selection Process for PHA-Owned Projects Without Improvement, Development, or Replacement

Activity	9.c. *Elimination of PBV Selection Process (HCV)*—The agency may eliminate the selection process in the award of PBVs to properties owned by the agency that are not public housing without engaging in an initiative to improve, develop, or replace a public housing property or site
Statutes and/or Regulations Waived.	*Elimination of PBV Selection Process (HCV)*—Certain provisions of 24 CFR. 983.51 as it was superseded by HOTMA Implementation Notices at 82 FR 5458 and 82 FR 32461 (see implementation guidance in Notice PIH 2017–21).
Safe Harbor(s)	9.c. i. A subsidy layering review must be conducted.* ii. The agency must complete site selection requirements.* iii. HQS inspections must be performed by an independent entity according to 24 CFR 983.59(b) or 24 CFR 983.103(f).* iv. The agency is subject to Notice PIH 2013–27 where applicable, or successor.* v. Property must be owned by a single-asset entity of the agency, see Notice PIH 2017–21.*

9.d. Alternative PBV Selection Process

Activity	9.d. *Alternative PBV Selection Process (HCV)*—The agency may establish an alternative competitive process in the award of PBVs that are owned by non-profit, for-profit housing entities, or by the agency that are not public housing.
Statutes and/or Regulations Waived.	*Alternative PBV Selection Process (HCV)*—Certain provisions of 24 CFR 983.51 as superseded by HOTMA Implementation Notices at 82 FR 5458 and 82 FR 32461 (see implementation guidance in Notice PIH 2017–21).
Safe Harbor(s)	9.d. i. If the selected project is PHA-owned, HQS inspections must be performed by an independent entity according to 24 CFR 983.59(b) or 24 CFR 983.103(f).* ii. The agency is subject to Notice PIH 2013–27 where applicable, or successor.*

9.e. Alternative PBV Unit Types (Shared Housing and Manufactured Housing)

Activity	9.e. *Alternative PBV Unit Types (Shared Housing and Manufactured Housing) (HCV)*—The agency may attach and pay PBV assistance for shared housing units and/or manufactured housing.
Statutes and/or Regulations Waived.	*Alternative PBV Unit Types (Shared Housing and Manufactured Housing) (HCV)*—Certain provisions of 24 CFR 983.53(a)(1) as it was superseded by HOTMA Implementation Notices at 82 FR 5458 and 82 FR 32461 (see implementation guidance in Notice PIH 2017–21).
Safe Harbor(s)	9.e. i. PBV units must comply with HQS.* ii. PBV units must comply deconcentration and desegregation requirements under 24 CFR part 903.* iii. A subsidy layering review must be conducted.* iv. Shared housing units may not be owner occupied.*

9.f. Increase PBV HAP Contract Length (HCV)

Activity	9.f. *Increase PBV HAP Contract Length (HCV)*—The agency may increase the term length of a PBV HAP Contract.
Statutes and/or Regulations Waived.	*Increase PBV HAP Contract Length (HCV)*—Certain provisions of section 8(o)(13)(F) of the 1937 Act and 24 CFR 983.205 as it was superseded by HOTMA Implementation Notices at 82 FR 5458 and 82 FR 32461 (see implementation guidance in Notice PIH 2017–21).
Safe Harbor(s)	9.f. i. PBV HAP Contract length must not be shortened. ii. PBV HAP Contract length must not be greater than 50 years, including any extensions. iii. PBV HAP Contract is subject to appropriations and the ending of an agency's MTW authorization.*

9.g. Increase PBV Rent to Owner

Activity	9.g. *Increase Rent to Owner (HCV):* The agency is authorized to develop a local process to determine the initial and re-determined rent to owner.

Statutes and Regulations Waived.	*Increase Rent to Owner (HCV)*—See MTW Waiver #2.a. and 2.b. ''Payment Standards'' and associated activities, statutes and regulations waived, and safe harbors.
Safe Harbor(s)	9.g. i. Any policy must comply with rent reasonableness, unless modified by waiver(s) 2.c. and/or 2.d.*

9.h. Limit Portability for PBV Units

Activity	9.h. *Limit Portability for PBV Units (HCV)*—The agency is authorized to waive the requirement to provide a tenant-based voucher at 12 months when requested by a PBV household.
Statutes and Regulations Waived.	*Limit Portability for PBV Units (HCV)*—Certain provisions of section 8(o)(13)(E) of 1937 Act and 24 CFR 983.261 as it was superseded by HOTMA Implementation Notices at 82 FR 5458 and 82 FR 32461 (see implementation guidance in Notice PIH 2017–21).
Safe Harbor(s)	9.h. i. Portability under this activity must not be restricted for more than 24 months. ii. The agency must have a clear and uniform policy in place to address how move requests are received and how they are approved/denied for PBV households.* iii. Participants must still retain the ability to request a tenant-based voucher for reasonable accommodation according to existing rules.*

10. Family Self-Sufficiency Program With MTW Flexibility

The agency is authorized to operate its Family Self-Sufficiency (FSS) Program, and any successor programs, exempt from certain HUD program requirements. If the agency receives dedicated funding for an FSS coordinator, such funds must be used to employ a self-sufficiency coordinator and in accordance with any requirements of any NOFA under which funds were received. Recruitment, eligibility, and selection policies and procedures must be consistent with the Department's nondiscrimination and equal opportunity requirements. An agency may make its Self-Sufficiency Program participation mandatory for any household member that is non-elderly/non-disabled by waiving the statutory and regulatory definition of FSS family or participating family which is ''a family that resides in public housing or receives assistance under the rental certificate or rental voucher programs, and that elects to participate in the FSS program'' (24 CFR 984.103(b)). To the extent that Family Self-Sufficiency activities include supportive services, such services must be offered to elderly and disabled persons who are participants in the covered program and eligible for such services. Notwithstanding the above, any funds granted pursuant to a competition must be used in accordance with the NOFA.

10.a.–10.e. FSS Program With MTW Flexibility Activities

Activity	10.a. *Waive Operating a Required FSS Program (PH & HCV)*—If the agency is statutorily required to operate an FSS program, the agency is authorized to waive this requirement.
Activity	10.b. *Alternative Structure for Establishing Program Coordinating Committee (PH & HCV)*—The agency is authorized to create an alternative structure for securing local resources to support an MTW Self-Sufficiency Program.
Activity	10.c. *Alternative Family Selection Procedures (PH & HCV)*—The agency is authorized to develop its own recruitment and selection procedures for its MTW FSS Program. Alternatively, the agency may make participation in the MTW FSS Program mandatory for any household member that is non-elderly or non-disabled.
Activity	10.d. *Modify or Eliminate the Contract of Participation (PH & HCV)*—The agency is authorized to modify the terms of or eliminate the FSS Contract of Participation (HUD–52650), in lieu of a local form. The agency may modify the terms of the Contract of Participation to align with adjustments made to its MTW FSS Program using MTW flexibility. Further, the agency may discontinue use of the Contract of Participation and instead employ a locally-developed agreement that codifies the terms of participation.
Activity	10.e. *Policies for Addressing Increases in Family Income (PH & HCV)*—The agency is authorized to set its own policies for addressing increases in family income during participation in the MTW FSS Program. Consistent with the goals and structure of its MTW FSS Program, the agency may set policies for whether income increases are recognized for purposes of increasing rent (consistent with the agency's existing rent policy) or changing the amount of funds moved to escrow/savings through the program.
Statutes and Regulations Waived.	*FSS Program with MTW Flexibility (PH & HCV)*—Certain provisions of sections 23(b)–(d), (f), and (n)(1) of the 1937 Act and 24 CFR 984.105, 984.202(b)–(c), 984.203(a)–(c)(2), 984.303(b)–(d), (f)–(h).
Safe Harbor(s)	10.a.–10.e. i. Agency must review FSS Guidance.* [36] ii. The agency must execute a Contract of Participation, or other locally developed agreement, that is at least five years but not more than ten years, with each participant participating in their FSS program. iii. The agency, if implementing an FSS program, even with MTW modifications, must have an up to date, approved FSS Action Plan in accordance with 24 CFR 984.201 that incorporates all modifications to the FSS program approved under the MTW Contract.* iv. The agency must not require MTW FSS Program participation as a condition for housing subsidy for elderly and disabled families.* v. If the agency requires MTW FSS Program participation as a condition for housing subsidy, an impact analysis must be developed and adopted in accordance with MTW guidance prior to the implementation of the activity.* vi. If the agency requires MTW FSS Program participation as a condition for housing subsidy, a hardship policy must be developed and adopted in accordance with MTW guidance prior to the implementation of the activity.* vii. The agency must not make MTW FSS Program participation mandatory for individuals that do not meet the definition of an eligible family at section 23(n)(3) of the 1937 Act, and those exempted from the Community Service Requirement under section 12(c)(2)(A), (B), (D) and (E) of the 1937 Act.* viii. If an agency terminates the housing subsidy or tenancy of a family for alleged violation of mandatory MTW FSS Program participation, the family will be entitled to a hearing under the agency's Grievance Procedure (24 CFR part 966, subpart B) or the HCV informal hearing process (24 CFR part 982.555).* ix. The agency must not use income increases during participation in the MTW FSS Program to change a family's eligibility status for purposes of participation in the MTW FSS Program or for the receipt public housing or HCV assistance.*

11. MTW Self-Sufficiency Program

The agency is authorized to operate any of its existing self-sufficiency and training programs, and any successor programs, exempt from certain HUD program requirements. The agency will ensure that these programs do not have a disparate impact on protected classes and will be operated in a manner that is consistent with the requirements of nondiscrimination and equal opportunity authorities, including but not limited to section 504 of the Rehabilitation Act. More specifically, under no circumstances will participants of such programs be required to participate in Self-Sufficiency Programs that are targeted to persons with disabilities in general, or persons with any specific disability. In addition, admission to any of the programs or priority for supportive services developed under this section will not be conditioned on a diagnosis or specific disability of a member of an applicant or participant family. This section is not intended to govern the designation of housing that is subject to section 7 of the 1937 Act. The agency must determine initial eligibility in accordance with 24 CFR 5.609 and must comply with section 3(b)(2) of the Act.

11.a.–11.b. MTW Self-Sufficiency Program Activities

Activity	11.a. *Alternative Family Selection Procedures (PH & HCV)*—The agency is authorized to develop its own recruitment and selection procedures for its MTW Self-Sufficiency Program(s). Alternatively, the agency may make participation in the MTW Self-Sufficiency Program mandatory for any household member that is non-elderly or non-disabled. Any supportive services provided in the Program must be offered to elderly and disabled household members that qualify for such services.	
Activity	11.b. *Policies for Addressing Increases in Family Income (PH & HCV)*—The agency is authorized to set its own policies for addressing increases in family income during participation in the MTW Self-Sufficiency Program. Consistent with the goals and structure of its MTW Self-Sufficiency Program, the agency may set policies for whether income increases are recognized for purposes of increasing rent (consistent with the agency's existing rent policy) or changing the amount of funds moved to escrow/savings through the program.	
Statutes and Regulations Waived.	*MTW Self-Sufficiency Program (PH)*—Certain provisions of section 3(a)(1), 6(l)(1), and 6(l)(5) of the 1937 Act 24 CFR 5.609, 5.611, 5.628, 960.255, 960.253, 960.257, and 966.4(a)(2)..	*MTW Self-Sufficiency Program (HCV)*—Certain provisions of sections 8(o)(2)(A)–(C) of the 1937 Act and 24 CFR 5.609, 5.611, 5.628, 982.516, and 982.551.
Safe Harbor(s)	11.a.–11.b. i. The agency must not require MTW Self-Sufficiency Program participation as a condition for housing subsidy for elderly and disabled families.* ii. If the agency requires MTW Self-Sufficiency Program participation as a condition for housing subsidy, an impact analysis must be developed and adopted in accordance with MTW guidance prior to the implementation of the activity.* iii. If the agency requires MTW Self-Sufficiency Program participation as a condition for housing subsidy, a hardship policy must be developed and adopted in accordance with MTW guidance prior to the implementation of the activity.* iv. The agency must not make MTW Self-Sufficiency Program participation mandatory for individuals that do not meet the definition of an eligible family at section 23(n)(3) of the U.S. Housing Act of 1937 (1937 Act) and those exempted from the Community Service Requirement under section 12(c)(2)(A), (B), (D) and (E) of the 1937 Act.* v. If an agency terminates the housing subsidy or tenancy of a family for alleged violation of mandatory MTW Self-Sufficiency Program participation, the family will be entitled to a hearing under the agency's Grievance Procedure (24 CFR part 966, subpart B) or the HCV informal hearing process (24 CFR part 982.555).* vi. The agency must not use income increases during participation in the MTW Self-Sufficiency Program to change a family's eligibility status for purposes of participation in the MTW Self-Sufficiency Program or for the receipt public housing or HCV assistance.	

12. Work Requirement

The agency is authorized to implement a requirement that a specified segment of its PH and/or HCV residents work or engage in an acceptable substitute for work as a condition of tenancy, subject to all applicable fair housing and civil rights requirements and the mandatory admission and prohibition requirements imposed by sections 576–578 of the Quality Housing and Work Responsibility Act of 1998 and Section 428 of Public Law 105–276. Work requirements shall not apply to persons with disabilities or the elderly. However, persons with disabilities or the elderly, and families that include persons with disabilities or the elderly, must have equal access to the full range of program services and other incentives. The agency must update its Administrative Plan and/or Admissions and Continued Occupancy Plan (ACOP) to include a description of the circumstances in which families shall be exempt from the requirement. The Administrative Plan and/or ACOP should include a description of what is considered work as well as acceptable substitutes for work. The PHA Executive Director or Board may suspend the sanctions policy due to negative local economic conditions.

12.a., 12.b. Work Requirement

Activity	12.a. *Work Requirement (PH)*—The agency may implement a work requirement for public housing residents who are at least 18 years old. Additionally, residents must be non-elderly and non-disabled.	12.b. *Work Requirement (HCV)*—The agency may implement a work requirement for HCV residents who are at least 18 years old. Additionally, residents must be non-elderly and non-disabled.
Statutes and Regulations Waived.	*Work Requirement (PH)*—Certain provisions of sections 6(l)(1) and 6(l)(5) of the 1937 Act and 24 CFR. 966.4(a)(2).	*Work Requirement (HCV)*—Certain provisions of 24 CFR982.551.
Safe Harbor	12.a. and 12.b. i. If the work requirement policy applies to all eligible individuals—the maximum requirement would be 15 hours of work per week per individual. ii. If the work requirement policy applies to all eligible households, the maximum requirement would be 30 hours of work per week per household. iii. Prior to implementation, all residents shall be given notice six months in advance of the sanction policy for non-compliance. vi. The work requirement may apply to non-elderly, non-disabled households or non-elderly, non-disabled adult household members.* vii. Those individuals exempt from the Community Service Requirement in accordance with Section 12(c)(2)(A), (B), (D) and (E) of the 1937 Act must be exempt from the agency's work requirement in both the public housing and HCV programs.* viii. Individuals who are the primary caretaker for a child under 6 years of age or who are pregnant must also be exempt from the agency's work requirement. ix. Supportive services shall be provided, either through the agency or a partner organization, to assist families in obtaining employment or an acceptable substitute, as defined by the MTW agency's policy. x. Work requirements shall not be applied to exclude, or have the effect of excluding, the admission into housing or participation in supportive services by persons with disabilities or elderly individuals, or families that include persons with disabilities or elderly individuals.* iv. Agency must conduct an annual impact analysis.* xi. Agency must implement a hardship policy, including a policy to address tenants seeking a determination of disability status.* xii. The hardship policy in the ACOP and/or Administrative Plan must apply to families who are actively trying to comply with the agency's work requirement, but are having difficulties obtaining work or an acceptable substitute.* xiii. The ACOP and/or Administrative Plan must also describe the consequences of failure to comply with the work requirement.*	

13. Public Housing as an Incentive for Economic Progress (PH)

The agency is authorized to extend the period for which a household can be over-income while remaining in public housing, with its subsidy, as an incentive for the economic progress and the eventual self-sufficiency of the household.

13. Public Housing as an Incentive for Economic Progress	
Activity	13. *Public Housing as an Incentive for Economic Progress (PH)*—The agency is authorized to extend the period for which a household can be over-income while remaining in a subsidized public housing unit with their subsidy as an incentive for the economic progress and the eventual self-sufficiency of the household.
Statutes and Regulations Waived.	*Public Housing as an Incentive for Economic Progress (PH)*—Section 16(a)(5) of the 1937 Act and 24 CFR 960.261.
Safe Harbor(s)	13. i. The over-income limit is set at 120% of AMI. ii. The agency must set the grace period for a household to remain in a unit while over-income at no less than 2 and no more than 3 years. iii. The agency must inform of the household of its over-income status no less than one year prior to the end of the grace period.* iv. The agency must terminate the household's tenancy within one year of the end of the grace period or charge the household a monthly rent equal to the greater of: (1) the applicable Fair Market Rent (FMR); or (2) the amount of monthly subsidy for the unit, including amounts from the operating and capital fund, as determined by regulations.*

14. Moving On Policy
Moving On enables individuals and families who are able and want to move on from permanent supportive housing (PSH) by providing mainstream housing options (i.e., PH, HCV, LNT) and resources necessary to maintain housing stability.

Moving On Activities	
Activity	14.a. *Waive Initial HQS Inspection Requirement (HCV)*—For participants who will continue leasing the same unit, the agency is authorized to accept the most recent HQS inspection from the partner agency in place of an initial HQS inspection.
Activity	14.b. *Allow Income Calculations from Partner Agencies (PH & HCV)*—The agency is authorized to accept income calculations from the partner agencies. The agency is still required to complete all required fields in Form HUD–50058 MTW Expansion, or successor form.
Activity	14.c. *Aligning Tenant Rents and Utility Payments between Partner Agencies (PH & HCV)* The agency is authorized to set tenant rents and/or make adjustments to the total tenant payment to ensure that clients referred from the partner agency are not subject to an increase in rental payments or increase in utility payments due to transferring from a permanent supportive housing program to a public housing or HCV program.
Statutes and Regulations Waived.	*Moving On Activities (PH & HCV)*—Certain provisions of sections 3(a)(1)–(3), 8(o)(2)(A), 8(o)(8)(A) of the Act, the definition of ''responsible entity'' in 24 CFR 5.100, 24 CFR 5.603, 24 CFR 5.628, 24 CFR 5.630, 24 CFR 5.634, 24 CFR 960.253, 24 CFR 982.405(a).
Safe Harbor(s)	14.a.–14.c. i. Initial income eligibility must be determined in accordance with 24 CFR 5.609 of the 1937 Act.* ii. Agencies must continue to allow participants to request an interim HQS inspection. iii. Any income calculations that are accepted from partner agencies must have been calculated within the past year. iv. Screenings for lifetime sex offender status and convictions of drug-related criminal activity for manufacture or production of methamphetamine on the premises of federally assisted housing must continue and are not waivable.*

15. Acquisition Without Prior HUD Approval (PH)
The agency is authorized to acquire public housing sites without prior HUD approval.

15. Acquisition Without Prior HUD Approval	
Activity	15. *Acquisition without Prior HUD Approval (PH)*—The agency is authorized to acquire public housing sites without prior HUD approval. This activity allows MTW agencies flexibility around the timing of HUD's approval, but not the content of the approval. When acquiring the sites, the agency must have all submission materials in place as if HUD were approving the acquisition proposal prior to acquisition. The agency must provide the materials to the Field Office for approval within 30 days of acquisition. If the Department is unable to approve the acquisition based on the materials submitted, then the agency must repay the cost of acquisition with non-federal funds.
Statutes and Regulations Waived.	*Acquisition without Prior HUD Approval (PH)*—Certain provisions of 24 CFR 905.608(a).
Safe Harbor(s)	15. i. The agency must comply with and have documentation that the project is in compliance with local zoning as described in 24 CFR 905.608(e).* ii. The agency must commission an independent appraisal of the site as described in 24 CFR 905.608(f).* iii. Prior to acquisition, the agency must conduct an environmental assessment as described in 24 CFR 905.608(h).* iv. The agency must provide all required documents to HUD within 30 days of the acquisition.*

16. Deconcentration of Poverty in Public Housing Policy (PH)
The agency is authorized to create an alternative policy in how it addresses deconcentration of poverty.

16. Deconcentration of Poverty in Public Housing Policy (PH)	
Activity	16. *Deconcentration of Poverty in Public Housing Policy (PH)*—The agency is authorized to create an alternative policy in how it addresses deconcentration of poverty.
Statutes and Regulations Waived.	*Deconcentration of Poverty in Public Housing Policy (PH)*—Certain provisions of 24 CFR 903.2.
Safe Harbor(s)	16. i. All Fair Housing requirements continue to apply.* ii. The agency must provide all justifications as to the local Deconcentration of Poverty in Public Housing Policy to HUD upon request.*

17. Local, Non-Traditional Activities	
MTW Funding can be utilized per statute and regulation on the eligible activities listed at sections 9(d)(1), 9(e)(1), and 8(o) of the 1937 Act. Any authorized use of these funds outside of the allowable uses listed in the 1937 Act constitutes a local, non-traditional activity. The agency is authorized to implement the local, non-traditional activities listed below to provide a rental subsidy to a third-party entity to provide housing and supportive services to eligible low-income participants, and to contribute MTW Funding to the development of affordable housing. Families served through the activities described below must be at or below 80% of Area Median Income. Implemented activities must meet one of the three MTW statutory objectives of increasing the efficiency of federal expenditures, incentivizing self-sufficiency of participating families, and increasing housing choice for low-income families. The use of MTW Funding must be consistent with the requirements of 2 CFR 200 and other basic requirements for the use of federal assistance. The agency must determine the eligibility of families in accordance with 24 CFR 5.609 and with section 3(b)(2) of the Act. Local, non-traditional activities must fall within one of the three categories below and comply with PIH Notice 2011–45 or any successor notice/and or guidance.	
17.a. Rental Subsidy Programs	
Activity	17.a. *Rental Subsidy Programs*—Programs that use MTW Funding to provide a rental subsidy to a third-party entity (other than a landlord or tenant) who manages intake and administration of the subsidy program to implement activities, which may include: Supportive housing programs and services to help homeless individuals and families reach independence; supportive living; shallow subsidies; homeless/transitional housing programs; or programs that address special needs populations.
Statutes and Regulations Waived.	*Local, Non-Traditional Activities*—MTW Funding can be utilized per statute and regulation on the eligible activities listed at sections 9(d)(1), 9(e)(1), and 8(o) of the 1937 Act. Any authorized use of these funds outside of the allowable uses listed in the 1937 Act constitutes a local, non-traditional activity.
Safe Harbor(s)	17.a. i. The agency must not spend more than 10% of its HAP budget on local, non-traditional activities. ii. Families receiving housing or services through local, non-traditional activities must meet the HUD definition of low-income.* iii. The agency is subject to Notice PIH 2011–45 or any successor notice and/or guidance.* iv. Any MTW Funding awarded to a third-party provider must be competitively bid.*
17.b. Service Provision	
Activity	17.b. *Service Provision*—The provision of HUD-approved self-sufficiency or supportive services using MTW Funding that are not otherwise permitted under the public housing and HCV programs, or that are provided to eligible low-income individuals who do not receive either public housing or HCV assistance from the PHA. Eligible activities may include: services for participants of other PHA-owned or managed affordable housing that is not public housing or HCV assistance; services for low-income non-participants; services and/or incentives to attract applicants to developments, or portions thereof, which can be difficult to market; or supportive services.
Statutes and Regulations Waived.	*Local, Non-Traditional Activities*—MTW Funding can be utilized per statute and regulation on the eligible activities listed at sections 9(d)(1), 9(e)(1), and 8(o) of the 1937 Act. Any authorized use of these funds outside of the allowable uses listed in the 1937 Act constitutes a local, non-traditional activity.
Safe Harbor(s)	*17.b.* i. The incentive must not be in the form of a deduction to the household's rent contribution.* ii. The amount of the incentive must not equal more than one month of the applicable unit's rent.* iii. The agency must not spend more than 10% of its HAP budget on local, non-traditional activities. iv. Families receiving housing or services through local, non-traditional activities must meet the HUD definition of low-income.* v. The agency is subject to Notice PIH 2011–45 or any successor notice and/or guidance.* vi. Any MTW Funding awarded to a third-party provider must be competitively bid.*
17.c. Housing Development Programs	
Activity	17.c. *Housing Development Programs*—Programs that use MTW Funding to acquire, renovate and/or build affordable units for low-income families that are not public housing units. Eligible activities may include: Gap financing for non-PHA development of affordable housing, development of project-based voucher units or tax credit partnerships.
Statutes and Regulations Waived.	*Local, Non-Traditional Activities*—MTW Funding can be utilized per statute and regulation for the eligible activities listed at sections 8(o), 9(d)(1), and 9(e)(1) of the 1937 Act. Any authorized use of these funds outside of the allowable uses listed in the 1937 Act constitutes a local, non-traditional activity.
Safe Harbor(s)	17.c. i. The agency must not spend more than 10% of its HAP budget on local, non-traditional activities. ii. Families receiving housing or services through local, non-traditional activities must meet the HUD definition of low-income.* iii. The agency is subject to Notice PIH 2011–45 or any successor notice and/or guidance.* iv. Agency must comply with section 30 of the 1937 Housing Act.* v. Any MTW Funding awarded to a third-party provider must be competitively bid.*

[1] In the HCV tenant-based program, the housing assistance payment (HAP) is the lower of: (1) The payment standard minus the family's TTP, or (2) the gross rent minus the TTP. The TTP is the minimum amount the family will pay das the family share. If the gross rent exceeds the payment standard, the family will pay TTP and the difference between the gross rent and the payment standard as the family share. In the HCV project-based program, the family always pays TTP minus any utility allowance (UA) as the tenant rent.

Appendix II

Specific requirements on safe harbors related to impact analyses and hardship policies are provided in this Appendix.

Impact Analysis

The MTW agency must complete a written analysis of the various impacts of the MTW activity. The MTW agency must prepare this analysis: (1) Prior to implementation of the MTW activity, if required as a safe harbor; (2) for certain activities (Work Requirements, Term-Limited Assistance, and Stepped Rent) on an annual basis during the implementation of the MTW activity; (3) prior to any Safe Harbor Waiver or Agency-Specific Waiver requests; and (4) at the time the MTW activity is closed out, if an impact analysis was previously required.

This analysis must consider the following factors, as applicable:

1. Impact on the agency's finances (*e.g.,* how much will the activity cost, any change in the agency's per family contribution);

2. Impact on affordability of housing costs for affected families (*e.g.,* any change in how much affected families will pay towards their housing costs);

3. Impact on the agency's waitlist(s) (*e.g.,* any change in the amount of time families are on the waitlist);

4. Impact on the agency's termination rate of families (*e.g.,* any change in the rate at which families non-voluntarily lose assistance from the agency);

5. Impact on the agency's current occupancy level in public housing and utilization rate in the HCV program;

6. Impact on meeting the MTW statutory goals of cost effectiveness, self-sufficiency, and/or housing choice;

7. Impact on the agency's ability to meet the MTW statutory requirements;

8. Impact on the rate of hardship requests and the number granted and denied as a result of this activity; and

9. Across the other factors above, the impact on protected classes (and any associated disparate impact).

The MTW agency must have the initial impact analysis, which analyzes potential impacts of the MTW activity, attached to the MTW Supplement during the applicable public review period prior to implementation of the MTW activity. For certain activities (Work Requirements, Term-Limited Assistance, and Stepped Rent), an updated impact analysis must be provided in each subsequent year. While MTW activities are listed by waiver and specific activity name in Appendix I, MTW agencies may combine activities together at the PHA level in order to create more comprehensive initiatives. For such comprehensive initiatives an MTW agency may submit a single impact analysis. Should a larger initiative undergo a substantial change, such as adding an activity, the MTW agency must reevaluate its impact with a new impact analysis. This information must be retained by the agency for the duration of the agency's participation in the MTW demonstration program and available for public review and inspection at the agency's principal office during normal business hours.

Hardship Policy

The MTW agency must adopt a written policy for determining when a requirement or provision of an MTW activity constitutes a financial or other hardship for the family. The agency must include this policy as an attachment to its MTW Supplement to the Annual PHA Plan. The agency may use a single hardship policy, as applicable, for multiple MTW waivers or develop different hardship policies for different MTW waivers as it finds appropriate. The agency must review its hardship policy(s) with residents during its intake and recertification processes. The agency must consider if a resident qualifies for a hardship exemption at the time of a potential termination of assistance that is due to an MTW activity.

When a resident requests a hardship exemption from a required MTW activity, the agency must suspend the activity for the household, beginning the next month after the request, until the MTW agency has determined if the request is warranted. The agency shall make the determination of whether a financial or other hardship exists within a reasonable time after the family's request. If the agency determines that a financial or other hardship exists, the MTW agency must continue to provide an exemption from the MTW activity at a reasonable level and duration, according to the agency's written policy. If an agency determines that the request did not meet its hardship standards, they must resume the MTW activity and collect any retroactive rent, if applicable, through a reasonable repayment agreement.

The agency's written policy(s) for determining what constitutes financial hardship must include the following situations:

- The family has experienced a decrease in income because of changed circumstances, including loss or reduction of employment, death in the family, or reduction in or loss of earnings or other assistance;
- The family has experienced an increase in expenses, because of changed circumstances, for medical costs, childcare, transportation, education, or similar items; and
- Such other situations and factors determined by the agency to be appropriate.

The agency's written policies shall include a grievance procedure that a family may request for second level review of denied hardship requests.

The agency shall keep records of all hardship requests received and the results of these requests and supply them at HUD's request. This information must be retained by the agency for the duration of the agency's participation in the MTW demonstration program and available for public review and inspection at the agency's principal office during normal business hours.

Appendix III

The statutory requirement that MTW agencies continue to ''serve substantially the same number of families'' throughout participation in the MTW demonstration program (STS Requirement) will be monitored for MTW agencies in the MTW Expansion through the following methodology, which adheres to the main themes and principles described in the MTW Operations Notice. Since the funding calculation for public housing (including Operating and Capital Funds) is significantly different than the funding calculation in the Housing Choice Voucher (HCV) program, the methodology for calculating the STS Requirement for the public housing and HCV programs will differ.

Public Housing

As described in Section 7.c.i of the MTW Operations Notice, HUD will monitor public housing occupancy rates for MTW agencies. The public housing occupancy rate will be determined by dividing the total number of ''occupied'' units by the total number of ''standing'' units:

TOTAL OCCUPIED UNITS ÷ TOTAL STANDING = MTW AGENCY OCCUPANCY RATE

The table below shows what public housing unit categories [37] are currently included in the numerator and what public housing unit categories are currently included in the denominator: [38]

Public housing unit category/sub-category	Total occupied units (numerator)	Total standing units (denominator)
Occupied—Assisted Tenant	X	X
Occupied—Employee	X	X
Occupied—Non-Assisted Tenant Over Income	X	X
Occupied—Police Officer	X	X
Occupied—Unauthorized		X
Vacant—Undergoing Modernization		X
Vacant—Court Litigation		X
Vacant—Natural Disaster		X
Vacant—Casualty Loss		X
Vacant—Market Conditions		X
Non-Dwelling—Anti-Drug Crime	X	X
Non-Dwelling—Self-Sufficiency Activities	X	X
Non-Dwelling—Other Resident Activities	X	X
Non-Dwelling—Moving to Work	X	X
Non-Dwelling—Administrative		X
Non-Dwelling—Resident Amenities		X
Non-Dwelling—Authorized		X
Demo-Dispo (Approved and Vacant)		

[37] Public housing unit categories and unit reporting in IMS/PIC is provided in PIH Notice 2011–07, or successor notice.

[38] Current monitoring of public housing occupancy rates for all agencies is conducted according to the current HUD Agency Priority Goal (APG) reporting categories. Should this change, MTW agencies would be subject to the same monitoring of public housing occupancy rates as all non-MTW agencies.

Public housing unit category/sub-category	Total occupied units (numerator)	Total standing units (denominator)
Vacant—Vacant	.....	X

Annual Public Housing STS Compliance

To be compliant with the public housing portion of the STS Requirement, the MTW agency's public housing occupancy rate must be at or above 96%, unless otherwise approved by HUD. HUD may consider the MTW agency's efforts to reposition its public housing as an allowable reason to temporarily dip below 96% occupancy. Any allowable dips must be time-limited and described in the MTW Supplement to the Public Housing Agency (PHA) Plan.

Each year, HUD will advise the MTW agency of its compliance under the STS Requirement in the public housing program for the prior calendar year. This information will also be made available on HUD's website. In instances where the MTW agency's public housing occupancy rate falls below 96%, HUD may require, at its discretion, that the MTW agency enter into an Occupancy Action Plan to address the occupancy issues. The Occupancy Action Plan will include at a minimum: The cause of the occupancy issue, the intended solution, and reasonable timeframes to address the cause of the occupancy issue.

The exception to the above is for MTW agencies that are below 96% public housing occupancy when they receive MTW designation. MTW agencies that are below 96% occupied when they are designated have two years, or more as determined by HUD, to come into compliance before they are required to enter into and adhere to an Occupancy Action Plan as described above.

Failure to adhere to the Occupancy Action Plan may result in enforcement processes detailed in the MTW amendment to the MTW agency's Annual Contributions Contract (ACC Amendment).

Housing Choice Voucher Program

To be compliant with the STS Requirement in the HCV program, the MTW agency will be required to house at least 90% of the families it would be able to house based on the HCV Housing Assistance Payment (HAP) dollars it receives each year.

Establishing the Annual HCV STS Target

In the first full calendar year that the agency is an MTW agency, the Annual HCV Capacity of the MTW agency will be calculated based on the total Budget Authority of HCV HAP funds (including Special Purpose Vouchers) in that year and the per unit cost (PUC) from the calendar year prior to the agency's entry into the MTW Demonstration Program, adjusted for inflation.

First Full Calendar Year in MTW—Step 1

HCV PUC FROM CALENDAR YEAR PRIOR TO MTW × ANNUAL INFLATION FACTOR(S) = ''ADJUSTED BASELINE YEAR PUC''

First Full Calendar Year in MTW—Step 2

TOTAL BUDGET AUTHORITY OF HCV HAP FUNDS ÷ ADJUSTED BASELINE YEAR PUC = ''ANNUAL HCV CAPACITY''

For all subsequent MTW years, the PUC established from the calendar year prior to MTW designation will continue to be inflated annually to determine each MTW year's Annual Adjusted PUC. The Annual HCV Capacity of the MTW agency will be calculated based on the total Budget Authority of HCV HAP funds in that year and the Annual Adjusted PUC from the prior calendar year, adjusted for inflation.

Subsequent Calendar Year in MTW—Step 1

''ADJUSTED BASELINE YEAR PUC'' (from prior year) × ANNUAL INFLATION FACTOR = ''ANNUAL ADJUSTED BASELINE YEAR PUC'' (new for current year)

Subsequent Calendar Year in MTW—Step 2

TOTAL BUDGET AUTHORITY OF HCV HAP FUNDS IN CALENDAR YEAR ÷ ANNUAL ADJUSTED BASELINE YEAR PUC'' (new for current year) = ''ANNUAL HCV CAPACITY'' (new for current year)

Because MTW agencies must serve at least 90% of the current year Annual HCV Capacity to be compliant with the HCV portion of the STS Requirement, the Annual HCV STS Target will then be established.

''ANNUAL HCV CAPACITY'' × 90% = ''ANNUAL HCV STS TARGET''

Establishing the Number of Families Housed in the HCV Program

To determine the number of families that count towards the STS Requirement in the HCV program each year, HUD will consider families housed through both the HCV program and any local, non-traditional program.

The calculation for determining total families housed in the HCV program is the total unit months leased divided by twelve.

The calculation for determining total families housed in the local, non-traditional housing program includes two types of housing as provided in the waivers appendix of the MTW Operations Notice. These are also discussed in detail in PIH Notice 2011–45 (or its successor) titled ''Parameters for Local, Non-Traditional Activities under the Moving to Work Demonstration Program.''

- The first type of housing is a local, non-traditional rental subsidy program. Here, the total unit months of housing provided over the calendar year will be utilized and divided by twelve. Families that receive services only will not be included.
- The second type of housing is a local, non-traditional housing development program. Here, HUD will first take the total investment of MTW funds in developing these types of units. This total dollar amount will be divided by the applicable HUD-published Total Development Cost (TDC). The resulting number of units will then count as families housed each year from when a certificate of occupancy is issued through the term of the affordability restrictions. Families that receive services only will not be included.

Annual HCV STS Compliance

Consistent with the statutory language of serving ''substantially'' the same number of families, the MTW agency will be considered compliant with the STS Requirement in the HCV program if it houses families through the HCV and local, non-traditional program at or above the Annual HCV STS Target. Again, the Annual HCV STS Target is 90% of the Annual HCV Capacity.

The MTW agency may dip below the Annual HCV STS Target for certain circumstances, as approved by HUD. Any allowable dips must be time-limited and described in the MTW Supplement to the PHA Plan.

Each year, HUD will advise the MTW agency of its compliance under the STS Requirement in the HCV program for the prior calendar year. This information will also be made available on HUD's website.

In the event an MTW agency does not meet the Annual HCV STS Target, the MTW agency will have two years from the date it is notified to come into compliance. If, two years after notification of the deficiency the MTW agency still does not meet the Annual HCV STS Target, then the MTW agency will be required to expend all HAP dollars only on HAP. Once the MTW agency achieves 93% expenditures of Budget Authority on HAP, the MTW agency will be able to again use its HCV HAP funds flexibly. Failure to adhere to this may result in enforcement processes detailed in the MTW amendment to the MTW agency's Annual Contributions Contract (ACC Amendment).

Adjustments to the HCV Annual Capacity

If the MTW agency believes that its Annual Adjusted Baseline Year PUC is no longer accurate, it may request an adjustment to this figure. Such a request may not be made more than once every three calendar years. The MTW agency must submit such a request to HUD along with a justification for the adjustment (for example, rising costs, special market conditions, public housing repositioning). HUD will then review the request and either approve or deny it. If approved, HUD will change the PUC appropriate to the circumstances of the MTW agency (as determined by HUD). This new PUC will then be adjusted by the inflation factor every year and used to determine compliance with the HCV portion of the STS Requirement going forward.

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Part III

Department of Homeland Security

Federal Emergency Management Agency

44 CFR Parts 77, 78, 79, et al.

FEMA's Hazard Mitigation Assistance and Planning Regulations; Proposed Rule

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Parts 77, 78, 79, 80, 201, and 206

[Docket ID: FEMA–2019–0011]

RIN 1660–AA96

FEMA's Hazard Mitigation Assistance and Planning Regulations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Emergency Management Agency (FEMA) proposes to amend its Hazard Mitigation Assistance (HMA) program regulations to reflect current statutory authority and agency practice. FEMA's HMA program regulations consist of the Flood Mitigation Assistance (FMA) grant program, the Hazard Mitigation Grant Program (HMGP), financial assistance for property acquisition and relocation of open space, and mitigation planning program regulations. FEMA proposes to revise the FMA grant program regulations to incorporate changes made by amendments to the National Flood Insurance Act of 1968 (NFIA). Finally, FEMA proposes to update terms and definitions throughout the HMA and Mitigation Planning program regulations to better align with uniform administrative requirements that apply to all Federal assistance.

DATES: Comments are due on or before October 27, 2020.

ADDRESSES: You may submit comments, identified by Docket ID: FEMA–2019–0011, by one of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail/Hand Delivery/Courier: Regulatory Affairs Division, Office of Chief Counsel, Federal Emergency Management Agency, Room 8NE, 500 C Street, SW, Washington, DC 20472–3100.

To avoid duplication, please use only one of these methods. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. For instructions on submitting comments, see the Public Participation portion of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Katherine Fox, Assistant Administrator for Mitigation, Federal Emergency Management Agency, 202–646–1046, *Katherine.Fox5@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Public Participation

We encourage you to participate in this rulemaking by submitting comments and related materials. We will consider all comments and material received during the comment period.

If you submit a comment, identify the agency name and the docket ID for this rulemaking, indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by electronic means, mail, or delivery to the address under the **ADDRESSES** section. Please submit your comments and material by only one means.

Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal e-Rulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy and Security Notice that is available via a link on the homepage of *http://www.regulations.gov.*

Viewing comments and documents: For access to the docket to read background documents or comments received, go to the Federal e-Rulemaking Portal at *http://www.regulations.gov.* Background documents and submitted comments may also be inspected at FEMA, Office of Chief Counsel, Room 8NE, 500 C Street SW, Washington, DC 20472–3100.

Public Meeting: We do not plan to hold a public meeting, but you may submit a request for one at the address under the **ADDRESSES** section explaining why one would be beneficial. If FEMA determines that a public meeting would aid this rulemaking, it will hold one at a time and place announced by a notice in the **Federal Register**.

II. Background

A. Overview of Hazard Mitigation Assistance Programs

FEMA's Hazard Mitigation Assistance (HMA) grant programs provide funding for eligible mitigation activities that reduce disaster losses and protect life and property from future disaster damages. FEMA currently administers three hazard mitigation assistance programs under the HMA umbrella: (1) The Flood Mitigation Assistance (FMA) program (a grant program, described in 44 CFR parts 78 and 79); (2) the Hazard Mitigation Grant Program (HMGP) (44 CFR part 206, subpart N); and (3) the Pre-Disaster Mitigation (PDM) program (implemented via guidance and the annual grants process without corresponding regulations). Mitigation planning requirements (44 CFR part 201) and requirements for property acquisition and relocation for open space (44 CFR part 80) apply to all three HMA programs. The *Hazard Mitigation Assistance Guidance* (hereinafter ''HMA Guidance'') provides comprehensive guidance for all three HMA programs and supplements the FMA program and HMGP program regulations.[1]

The majority of the revisions FEMA proposes in this rulemaking apply to the FMA regulations. FEMA proposes a few changes to the HMGP regulations as well. Below, FEMA provides a general description of the FMA and HMGP programs, and then a more detailed discussion of how FEMA administers the FMA program.

1. Flood Mitigation Assistance Program (FMA)

Section 1366 of the National Flood Insurance Act of 1968 (NFIA), 42 U.S.C. 4104c, as amended, authorized the FMA program to reduce or eliminate claims under the National Flood Insurance Program (NFIP). The FMA program provides funds on an annual basis for projects to reduce or eliminate risk of flood damage to buildings, manufactured homes, and other structures insured under the NFIP. *See* 42 U.S.C. 4104c(a); 44 CFR 79.1(c). Currently, 44 CFR parts 78 and 79 prescribe actions, procedures, and requirements for the administration of the FMA program. The requirements in part 78 applied only to those FMA grants for which the application period opened prior to December 3, 2007. *See* 44 CFR 78.1(a). The requirements in part 79 apply to all FMA funds awarded on or after December 3, 2007. *See* 44 CFR 79.1(a).

In accordance with 44 CFR part 201, ''Mitigation Planning,'' all State and Tribal applicants must have a FEMA-approved State or Tribal mitigation plan as a condition of receiving any FEMA mitigation grant, including FMA grants. *See* 44 CFR 201.4(a), 201.7(a)(1). Subapplicants consisting of local governments and Tribal governments

[1] Federal Emergency Management Agency, *Hazard Mitigation Assistance Guidance* (hereinafter ''HMA Guidance''), Feb. 27, 2015, available at *https://www.fema.gov/media-library-data/1424983165449-38f5dfc69c0bd4ea8a161e8bb7b79553/HMA_Guidance_022715_508.pdf* (last accessed Feb. 13, 2020). As noted in this preamble, the PDM program does not have implementing regulations, but rather is implemented through the annual grants process, including the Notice of Funding Opportunity, and other policy and guidance statements, including the HMA Guidance.

must have a FEMA-approved mitigation plan in order apply for and receive mitigation project grants under FMA and PDM. *See* 44 CFR 201.6(a), 201.7(a)(3).

2. Hazard Mitigation Grant Program (HMGP)

Section 404 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. 5170c, authorized HMGP. Implementing regulations for HMGP are found at 44 CFR part 206, subpart N. The key purpose of HMGP is to substantially reduce the risk of future damage, hardship, loss, or suffering in any area affected by a major disaster. *See* 42 U.S.C. 5170c(a). HMGP funding is available, when authorized under a Presidential major disaster declaration,[2] in the areas requested by the Governor or chief executive of the Tribe. *See id.; HMA Guidance Part 1.B(1), p. 4.* State agencies, local governments, private nonprofit organizations, and Indian Tribal governments are eligible to apply for HMGP assistance.[3] The level of HMGP funding available for a given disaster is based on a percentage of the estimated total Federal assistance available under the Stafford Act, excluding administrative costs, for each Presidential major disaster declaration. *See* 44 CFR 206.432(b). States and Indian Tribal governments applying for HMGP funding must have a FEMA-approved State or Tribal mitigation plan at the time of the Presidential major disaster declaration and at the time FEMA obligates HMGP funding. *See* 42 U.S.C. 5165; 44 CFR 201.4. Subapplicants, including local governments and Indian Tribal governments, must have a FEMA-approved mitigation plan in order to receive HMGP subawards. *See* 42 U.S.C. 5165(a), (b); 44 CFR 201.6(a), 201.7(a), 206.434(b).

3. Property Acquisition and Relocation for Open Space

Part 80 provides guidance on the administration of FEMA mitigation assistance for projects to acquire property for open space purposes under all FEMA HMA programs. *See* 44 CFR 80.1.

B. FMA Program Administration

FMA is a non-disaster program allowing communities to complete mitigation activities so that structures insured under the NFIP are protected from future damages and the need for future insurance claims is lessened. FMA grants are subject to availability of annual Federal appropriations, as well as to any program-specific directive or restrictions with respect to such funds.

The FMA is a competitive grant program, meaning FEMA reviews the applications submitted and selects the most qualified for an award. Each year, FEMA publishes a Notice of Funding Opportunity (NOFO) announcing the availability of funding and program requirements.[4] In addition, projects must meet the minimum eligibility criteria identified in 44 CFR 79.6. The criteria ensure that FEMA selects cost-effective and beneficial mitigation projects for FMA funding.

Applicants for the FMA program can be States and/or Indian Tribal governments.[5] *See* 44 CFR 79.2(b). Subapplicants can be a State agency, community,[6] or Indian Tribal government.[7] *See* 44 CFR 79.2(i). Subapplicants must participate in the NFIP. *See* 44 CFR 79.6(a)(1). Subapplicants that have withdrawn from the NFIP, or those that FEMA has suspended for failure to comply with floodplain management requirements, are not eligible. *See* 44 CFR 79.6(a)(3).

Subapplicants submit their applications to the applicant during the open application cycle as noted in the NOFO. Applicants then select, prioritize, and forward subapplications to FEMA by the deadline established in the NOFO. FEMA awards FMA funds to the applicant, who becomes the recipient. The recipient then disburses funding for the approved subawards to the subapplicants, who become subrecipients. Recipients and subrecipients must comply with all program requirements and other applicable Federal, State, territorial, and Tribal laws and regulations. *See* 44 CFR 79.3(b)(6) and (d)(4).

A grant recipient/subrecipient must use FMA funds for mitigation planning and mitigation projects that will reduce or eliminate the risk of flood damages to properties insured under the NFIP. *See* 44 CFR 79.6(c). An example of a hazard mitigation project is the elevation of a home to reduce risk of flood damage. Eligible mitigation projects must be cost-effective or able to eliminate future payments from the National Flood Insurance Fund (NFIF) for severe repetitive loss structures through an acquisition or relocation activity. *See* 42 U.S.C. 4104c(c)(2)(A). To demonstrate cost-effectiveness, a project's anticipated benefits must be equal to or more than the cost of implementing the project, which is demonstrated through a benefit-cost analysis that compares the cost of the project to the benefits anticipated to occur over the lifetime of the project.[8]

FMA applicants must have a FEMA-approved State or Tribal mitigation plan as a condition of receiving an FMA award. *See* 44 CFR 79.6(b)(1), 201.4(a), 201.7(a)(1). FMA subapplicants must have a FEMA-approved mitigation plan in order to apply for and receive mitigation project grants. *See* 44 CFR 79.6(b)(2), 201.6(a), 201.7(a)(3). Applicants/subapplicants must propose projects for FMA grants that are consistent with the goals and objectives of the State or Tribal Mitigation Plan, and, for subawards, the Local or Tribal Mitigation Plan.[9]

C. Statutory Changes to FMA

The Biggert-Waters Flood Insurance Reform Act of 2012 (BW–12), Public Law112–141, 126 Stat. 916, reformed and streamlined the NFIA's hazard mitigation grant programs. Before BW–12, the NFIA authorized three distinct grant programs: (1) The FMA program (44 CFR part 79); (2) the Repetitive Flood Claims (RFC) program (implemented through guidance); and (3) the Severe Repetitive Loss (SRL) program (44 CFR part 79). BW–12 eliminated the RFC and SRL programs and consolidated aspects of those

[2] Note that there is an exception to the requirement that there be a Presidential major disaster declaration to receive HMGP funding. This exception is HMGP Post Fire, which provides mitigation assistance under HMGP generally for wildfire. It is triggered not by a Presidential major disaster declaration, but by a Fire Management Assistance Grant declaration under section 420 of the Stafford Act. See 42 U.S.C. 5170c(a).

[3] 44 CFR 206.434(a). Eligible subapplicants apply to the recipient (also known as the ''grantee'') for HMGP subawards. The recipient may be the State for which the major disaster is declared, or an Indian Tribal government choosing to act as a recipient instead of a subrecipient. *See* 44 CFR 206.431, definition of ''grantee.''

[4] The most recent NOFO was posted on *www.grants.gov* and can be viewed at this link: *https://www.grants.gov/web/grants/search-grants.html.*

[5] An Indian Tribal government is any Federally recognized governing body of an Indian or Alaska Native Tribe, band, nation, pueblo, village, or community that the Secretary of Interior acknowledges to exist as an Indian Tribe under the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a. This does not include Alaska Native corporations, the ownership of which is vested in private individuals. 44 CFR 79.2(e).

[6] Community means a political subdivision, including any Indian Tribe, authorized Tribal organization, Alaska Native village or authorized native organization, that has zoning and building code jurisdiction over a particular area having special flood hazards, and is participating in the NFIP, or a political subdivision of a State, or other authority that is designated by a political subdivision to develop and administer a mitigation plan. 44 CFR 79.2(c).

[7] *See supra* note 5.

[8] *See* HMA Guidance, Part III.E.3, Cost-Effectiveness, p. 44.

[9] 42 U.S.C. 4104c(c)(1); *see* HMA Guidance, Part III.E.5, Hazard Mitigation Plan Requirement, p. 44.

programs into a reformed FMA program.[10]

1. Changes to Method of Program Funding

Before BW–12, FEMA allocated FMA program funding to States each fiscal year based upon the number of NFIP policies within the State, the number of repetitive loss structures within the State, and other criteria the Administrator determined to be in the best interests of the NFIF.[11] FEMA allocated funding under the SRL program to States each fiscal year based upon the percentage of the total number of severe repetitive loss properties located within that State.[12] Funds allocated to States that chose not to participate in either the FMA or SRL program in any given year were reallocated to participating States and Indian Tribal applicants.[13] BW–12 replaced this process with a fully competitive program under which, as described above, FEMA selects subapplications against agency priorities identified in annual appropriations and the NOFO. In addition to involving a simpler formula that is easier to implement, this allows FEMA to better prioritize funding awards to the most at-risk (*i.e.,* severe repetitive loss) properties.

2. Changes to Cost Share

Before BW–12, FEMA generally contributed up to 75 percent of the eligible activity costs for mitigation projects under the FMA and SRL programs.[14] However, FEMA made available an increased Federal cost share of up to 90 percent for the mitigation of severe repetitive loss properties if the applicant had a repetitive loss strategy in its approved State or Tribal mitigation plan.[15] If neither the applicant nor the subapplicant could meet the FMA non-Federal share requirement, FEMA made available up to 100 percent of the project cost under the RFC program.[16]

Under the FMA program, as amended by BW–12, FEMA may contribute up to 90 percent of the eligible costs of projects that mitigate repetitive loss structures, and up to 100 percent of the eligible costs of projects that mitigate severe repetitive loss structures.[17] For all other mitigation activities, including activities to properties that are NFIP-insured but do not meet the repetitive loss or severe repetitive loss definitions, FEMA may contribute up to 75 percent of the eligible costs.[18] These changes to the FMA program resulted in increased funding to the most vulnerable properties (severe-repetitive loss properties) and decreased funding to less vulnerable (repetitive loss) properties.

3. Other Changes

BW–12 made a number of other changes to the FMA program, including eliminating the cap on FMA funding for States and communities (but not changing the overall amount of grant funding available); eliminating the limit on in-kind contributions for the non-Federal cost share; limiting funds for the development or update of mitigation plans to $50,000 Federal share to any applicant or $25,000 Federal share to any subapplicant; and removing the restriction on awarding State or community planning grants more than once every 5 years.

III. Proposed Rule and Section-by-Section Analysis

FEMA implemented the provisions of BW–12 that affected the HMA grant programs through the HMA Guidance.[19] FEMA now proposes to update the FMA program regulations (44 CFR parts 78 and 79) to reflect the revisions made by BW–12. This rule proposes to remove part 78 in its entirety, redesignate part 79 as part 77, and revise the FMA regulations which would be located in the new part 77.

FEMA proposes to make the following revisions pursuant to BW–12:

- Remove regulations pertaining to the SRL program;
- revise the cost share provisions to reflect the matching requirements established by BW–12;
- eliminate the cap on FMA funding for States and communities;
- eliminate the limit on in-kind contributions for the non-Federal cost share;
- specify that elevation, relocation or floodproofing of utilities are eligible activities;
- clarify that the required flood mitigation plan may be part of a community's multi-hazard mitigation plan;
- limit funds for the development or update of mitigation plans to $50,000 Federal share to any applicant or $25,000 Federal share to any subapplicant; and
- remove the restriction on awarding State or community planning grants only once every 5 years.

FEMA also proposes revisions to streamline the FMA regulations and clarify current practice. FEMA describes these revisions in detail in this section. FEMA proposes to update terms and references throughout the various HMA-related regulations, including the hazard mitigation assistance and planning regulations in 44 CFR parts 80 (Property Acquisition and Relocation for Open Space), 201 (Mitigation Planning), and 206 subpart N (HMGP).

On December 26, 2013, the Office of Management and Budget (OMB) finalized government-wide guidance entitled Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.[20] These standard requirements for Federal awards are codified at 2 CFR part 200. The regulations at 2 CFR part 200 apply to FEMA awards made on or after December 26, 2014, and to awards made under major disaster declarations on or after that date.[21] In this proposed

[10] The RFC and SRL programs were authorized by the Bunning-Bereuter-Blumenauer Flood Insurance Reform Act of 2004, Public Law 108–264, 118 Stat. 712. The RFC program was designed to reduce the long-term risk of flood damage to structures insured under the NFIP that have had one or more claim payments for flood damage. RFC funds were used to mitigate structures located within a State or community that were not eligible to receive funding under the FMA program at the time. Under the RFC program, funds could only be awarded if the State and community could not meet the FMA's cost share requirement, or if the State or community lacked the capacity to manage the activity under the FMA program. The SRL program was a voluntary pilot program designed to reduce or eliminate the long-term risk of flood damage to severe repetitive loss residential structures insured under the NFIP. Under the SRL program, an SRL property was defined as a residential property that is covered under an NFIP flood insurance policy and: (a) That has at least four NFIP claim payments (including building and contents) over $5,000 each, and the cumulative amount of such claims payments exceeds $20,000; or (b) For which at least two separate claims payments (building payments only) have been made with the cumulative amount of the building portion of such claims exceeding the market value of the building. At least two of the referenced claims must have occurred within any 10-year period, and must be greater than 10 days apart.

[11] Public Law 108–264, 118 Stat. 721; 44 CFR 79.4(a)(2).

[12] Public Law 108–264, 118 Stat. 716; 44 CFR 79.4(a)(1).

[13] 44 CFR 79.4(b).

[14] 44 CFR 79.4(c)(1).

[15] 44 CFR 79.4(c)(2).

[16] Public Law 108–264, 118 Stat. 722.

[17] 42 U.S.C. 4104c(d). The term ''repetitive loss structure'' is defined at 42 U.S.C. 4104c(h)(2) (cross-reference to 42 U.S.C. 4121(a)(7)). The term ''severe repetitive loss structure'' is defined at 42 U.S.C. 4104c(h)(2)(3).

[18] 42 U.S.C. 4104c(d).

[19] While the current HMA Guidance, *supra* note 1, reflects the changes required by BW–12, these changes were first implemented in the Fiscal Year 2013 version of the HMA Guidance. *See* Fiscal Year 2013 Hazard Mitigation Assistance Unified Guidance, July 12, 2013, Part I.B.1, Programmatic Changes, pp. 4–5, available at *https://www.fema.gov/media-library-data/15463cb34a2267a900bde4774c3f42e4/FINAL_Guidance_081213_508.pdf* (last accessed Jan 8, 2020).

[20] 78 FR 78589.

[21] As part of a joint interim final rule effective December 26, 2014, the Department of Homeland

rule, FEMA proposes to replace outdated terms and definitions with substantively similar terms and definitions that align with 2 CFR part 200 and the HMA Guidance. These are nonsubstantive revisions intended to simplify definitions and improve consistency among FEMA's HMA programs.

A. 44 CFR Part 78, Flood Mitigation Assistance

Part 78 applies to the administration of funds under the FMA program for which the application period opened on or before December 3, 2007. Because all funds appropriated for FMA before December 3, 2007, have been expended, it is unnecessary to retain part 78 and therefore, FEMA proposes to remove part 78 in its entirety.

B. 44 CFR Part 79, Flood Mitigation Grants

The regulations governing the current FMA program are at 44 CFR part 79. FEMA proposes to redesignate part 79 as part 77, which is currently reserved, to establish the revised FMA program regulations. FEMA proposes to reserve part 79. Following is a detailed discussion of the proposed revisions to part 79 (proposed to be redesignated as part 77).

1. Part 79 (Proposed Part 77) Authority

FEMA proposes to revise the authority citation for part 79 (proposed part 77) to remove historical authorities relating to FEMA's organization. FEMA proposes to remove the references to the Reorganization Plan No. 3 of 1978, Executive Order 12127, Executive Order 12148, and Executive Order 13286. The Reorganization Plan and Executive Orders 12127 and 12148 established FEMA as an agency in 1979 and established its functions. Executive Order 13286 revised Executive Order 12148 and transferred some of FEMA's authorities to the Department of Homeland Security (DHS). FEMA proposes to remove these cites but retain the citation to the Homeland Security Act of 2002, 6 U.S.C. 101 *et seq.,* which provided organic authority for FEMA and made it a component agency of DHS. FEMA proposes to retain the citations to the NFIA (42 U.S.C. 4001 *et seq.;* 42 U.S.C. 4104c, 4104d) as they are the main authorities for this part.

2. Section 79.1 (Proposed § 77.1) Purpose

FEMA proposes to change the title from ''Purpose'' to ''Purpose and applicability'' to reflect the content of the section. FEMA proposes to revise paragraph (a), addressing the purpose of the part, to incorporate language from current paragraph (c) addressing the purpose of the FMA program. Paragraph (c) states that the FMA program is to provide financial assistance to ''State and local governments'' to reduce the risk of flood damage to NFIP-insured structures. FEMA proposes to replace ''local governments'' with ''communities'' because the term ''community'' is more inclusive of the entities eligible for assistance.[22] FEMA's definition of ''community'' at 44 CFR 79.2(c) includes Tribes as well as local governments. In addition to States and communities, FEMA proposes to also include Indian Tribal governments in revised paragraph (a). Indian Tribal governments have a unique and direct relationship with the Federal Government and are recognized as distinct sovereign entities.[23] While Indian Tribal governments can assume the responsibilities of the community (as subapplicant or subrecipient, when applying through the State), they can also be direct recipients of FMA funding. *See* 44 CFR 79.2(c), 79.2(d), 79.3(c)(2), and 79.3(c)(3). That an Indian Tribal government is eligible to apply directly to FEMA for FMA funding is already established in the current program regulations in part 79. *See* 44 CFR 79.2(d) and 79.3(c)(2). Including Indian Tribal governments in the purpose statement is consistent with the rest of the substantive FMA program regulations in part 79 and gives Indian Tribal governments the level of recognition commensurate with States. FEMA also proposes to remove references to the SRL program in paragraph (a), because BW–12 eliminated the SRL program. FEMA stopped issuing SRL grants in Fiscal Year 2013. FEMA also proposes to remove current paragraph (b), which describes the purpose of the SRL program.

FEMA proposes to add a new paragraph (b) to address the applicability of the part to the administration of funds under the FMA program for which the application period opens on or after the effective date of the rule.

Finally, FEMA proposes to remove paragraph (c), as FEMA has incorporated the language describing the purpose of the FMA program into revised paragraph (a).

3. Section 79.2 (Proposed § 77.2) Definitions

FEMA proposes to revise the definitions section to reflect changes required by BW–12. FEMA proposes to revise the definition of ''community'' to reflect the definition provided in BW–12.[24] This change is intended to mirror the statutory definition and is not a substantive change to the current definition at 44 CFR 79.2(c).

FEMA proposes to replace the definition of ''severe repetitive loss properties'' with the definition of ''severe repetitive loss structure'' from BW–12. The definition of ''severe repetitive loss properties'' at current 44 CFR 79.2(h) reflects the pre-BW–12 definition that was included in the statutory section authorizing the SRL pilot program.[25] BW–12 removed the statutory section for the SRL pilot program, including the definition of ''severe repetitive loss property,'' and established a definition for ''severe repetitive loss structure'' that is applicable to the FMA program.[26] The BW–12 definition states that a severe repetitive loss structure is one for which four or more separate claims payments have been made with the amount of each claim exceeding $5,000, and with the cumulative amount of such claims payments exceeding $20,000. FEMA proposes to retain the provision providing that the amount of each claim includes building and contents payments. This is consistent with FEMA's prior interpretation of the definition of ''severe repetitive loss property'' as well as the HMA Guidance.[27] The BW–12 definition also states that in the alternative, a severe repetitive loss structure is one for which at least two separate flood insurance claims payments have been made, with the cumulative amount of such claims exceeding the value of the insured structure. FEMA proposes to retain the statement that that the claims payments include building payments only because weighing the value of the insured

Security (of which FEMA is a component) adopted the requirements of 2 CFR part 200 at 2 CFR part 3002. 79 FR 75871 (Dec. 19, 2014).

[22] *See* 42 U.S.C. 4104c(a) ''The Administrator shall carry out a program to provide financial assistance to States and communities.'' FEMA defines ''community'' in the current regulations at 44 CFR 79.2(c); the definition includes local governments and Tribes.

[23] *See* FEMA Tribal Policy, FEMA Policy #305–111–1, Dec. 27, 2016, available at *https://www.fema.gov/media-library-data/1483536222523-e549608aa77ec6cb623fae5d5de82930/FEMA_Tribal_Policy.pdf* (last accessed Feb. 13, 2020).

[24] *See* 42 U.S.C. 4104c(h)(1).

[25] *See* Public Law 108–264, 118 Stat. 714.

[26] 42 U.S.C. 4104c(h)(3).

[27] *See* 44 CFR 79.2(h)(1); HMA Guidance, Part VIII.C.1, Eligible Properties, p. 116.

structure against the amount of building payments is a more direct comparison than weighing the value of the insured structure against the amount of both building *and* contents payments. This is consistent with FEMA's prior interpretation of the definition of ''severe repetitive loss property'' as well as the HMA Guidance.[28]

FEMA proposes to add a definition for ''repetitive loss structure'' to reflect the definition provided in BW–12. BW–12 established a distinction between repetitive loss structures and severe repetitive loss structures for purposes of the FMA program (which allows FEMA to better target funding based on a property's risk of damage). BW–12 defined the term ''repetitive loss structure'' to mean ''a structure covered by a contract for flood insurance that—(A) has incurred flood-related damage on 2 occasions, in which the cost of repair, on the average, equaled or exceeded 25 percent of the value of the structure at the time of each such flood event; and (B) at the time of the second incidence of flood-related damage, the contract for flood insurance contains increased cost of compliance coverage.'' FEMA's proposed definition of ''repetitive loss structure'' parrots the statutory definition. *See* 42 U.S.C. 4121(a)(7) (cross referenced in 42 U.S.C. 4104c(h)(2)).

FEMA proposes to remove the definitions of ''market value'' and ''multifamily property,'' currently found at 44 CFR 79.2(f) and (g), respectively, because the statutory definitions of ''severe repetitive loss structure'' and ''repetitive loss structure'' no longer include these terms and it is therefore not necessary to use or define these terms in the regulations.

In addition to the revisions to the definitions made pursuant to BW–12, FEMA proposes to add terms and to replace outdated terms and definitions with substantively similar terms and definitions that better align with 2 CFR part 200 and the HMA Guidance. These are nonsubstantive revisions intended to simplify definitions and improve consistency among FEMA's HMA programs. FEMA proposes to add definitions for ''closeout,'' ''Federal award,'' ''management costs,'' ''pass-through Entity,'' and ''State.''

FEMA proposes to add a definition for ''closeout'' which is nearly identical to the definition in 2 CFR 200.16. FEMA proposes to add this definition for ease of the reader because the term is used in proposed part 77, and also to establish that it has the same meaning as in the grants management regulations at 2 CFR part 200. This is a nonsubstantive change that reflects current practice.

FEMA proposes to add a definition for ''Federal award'' to reflect the definition in 2 CFR 200.38(a)(1),[29] with two exceptions. First, FEMA proposes to use the terms ''recipient'' and ''subrecipient'' instead of the term ''non-Federal entity.'' The term ''non-Federal entity,'' as defined at 2 CFR 200.69, includes entities that are not eligible recipients or subrecipients under the FMA program. While FMA recipients and subrecipients are ''non-Federal entities'' under 2 CFR part 200, FEMA proposes to tailor the definitions in the FMA regulations so that they are program-specific. Second, FEMA proposes to clarify that the terms ''award'' and ''grant'' may also be used to describe a ''Federal award'' under the FMA program regulations. This is a nonsubstantive change to clarify that the terms used throughout proposed part 77 are interchangeable.

FEMA proposes to add a definition for ''management costs.'' ''Management costs'' are referenced throughout the FMA program regulations, but this term is not currently defined in part 79. FEMA proposes to define ''management costs'' consistent with existing FEMA regulations [30] and the HMA Guidance.[31]

FEMA proposes to add a definition for ''pass-through entity'' which is substantively the same as the definition in 2 CFR 200.74, with one exception. FEMA proposes to use the terms ''recipient'' and ''subrecipient'' instead of the term ''non-Federal entity.'' The term ''non-Federal entity,'' as defined at 2 CFR 200.69, includes entities that are not eligible recipients or subrecipients under the FMA program. While FMA recipients and subrecipients are ''non-Federal entities'' under 2 CFR part 200, FEMA proposes to tailor the definitions in the FMA regulations so that they are program-specific. The addition of this definition is for ease of the reader since the term is used in other definitions in proposed part 77.

FEMA proposes to add a definition for ''State,'' which is consistent with 2 CFR 200.90 as well as FEMA's regulations for mitigation planning and HMGP.[32] Although not defined in the authorizing statute for the HMA programs, for purposes of these programs, and consistent with 2 CFR 200.90, FEMA considers a State to be any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

FEMA proposes to replace the definitions ''grantee,'' ''subgrant,'' and ''subgrantee,'' with definitions for ''recipient,'' ''subaward,'' and ''subrecipient,'' respectively, to better align with the terms and definitions used in 2 CFR part 200 and the HMA Guidance. The proposed definition of ''recipient'' is similar to the definition at 2 CFR 200.86; however, FEMA proposes to use the terms ''State or Indian Tribal government'' instead of the term ''non-Federal entity'' to reflect the terms and definitions in this proposed rule, which are tailored to the FMA program. FEMA also proposes to add that the recipient may be a pass-through entity to clarify the relationship between the terms ''recipient'' and ''pass-through entity.''

The proposed definition of ''subaward'' is the same as the definition at 2 CFR 200.92.

The proposed definition of ''subrecipient'' is similar to the definition at 2 CFR 200.93; however, FEMA proposes to use the terms ''State agency, community, or Indian Tribal government'' instead of the term ''non-Federal entity'' to reflect the terms and definitions in this proposed rule, which are tailored to the FMA program.

FEMA proposes to revise the definitions of ''applicant'' and ''subapplicant.'' In the definition of ''applicant,'' FEMA proposes to replace the term ''grant'' with the term ''Federal award,'' which FEMA proposes to define in proposed § 77.2(e). This is a nonsubstantive change to use the newly defined term ''Federal award'' throughout the definitions. FEMA proposes to remove the provision stating that the applicant will be accountable for the use of the funds because it only serves as a vague reference to other applicable substantive requirements and is not necessary to include in the definition of ''applicant.'' [33] FEMA also proposes to add that once funds have been awarded, the applicant becomes the recipient and may also be a pass-through entity. This is a nonsubstantive addition to clarify the relationship

[28] *See* 44 CFR 79.2(h)(2); HMA Guidance, Part VIII.C.1, Eligible Properties, p. 116.

[29] In 2 CFR 200.38(a)(1), ''Federal award'' means the Federal financial assistance that a non-Federal entity receives directly from a Federal awarding agency or indirectly from a pass-through entity.

[30] *See* 44 CFR 207.2.

[31] *See* HMA Guidance, Part III, E.1.5, Management Costs, p. 41.

[32] *See* the definition for ''State'' in the mitigation planning regulations at 44 CFR 201.2 and the definitions section of part 206 (§ 206.2(a)(22)) which applies to the HMGP program regulations at part 206 subpart N. *See also,* HMA Guidance, Part III.A, Eligible Applicants, p. 25.

[33] *See, e.g.,* 44 CFR 79.9, Grant administration, and 2 CFR 200.300–200.309, Standards for Financial and Program Management.

between the terms ''applicant,'' ''recipient,'' and ''pass-through entity'' for the ease of the reader. FEMA proposes to revise the definition of ''subapplicant'' by removing the reference to the SRL program which is no longer authorized pursuant to BW–12. FEMA proposes to clarify that applications submitted by subapplicants are *sub*applications. These are nonsubstantive revisions intended to reflect FEMA's current use of these terms.

Finally, FEMA makes no changes to the definitions of ''Indian Tribal government,'' ''Administrator,'' and ''Regional Administrator.''

4. Section 79.3 (Proposed § 77.3) Responsibilities

In proposed § 77.3, which covers responsibilities of FEMA, the recipient, and subrecipients, FEMA proposes to remove references to the SRL program, to replace terms to conform to the revised definitions in proposed § 77.2, to remove the paragraphs addressing Indian Tribal government responsibilities (as they are covered under the recipient responsibilities), and to add monitoring and closeout provisions.

Paragraph (a) addresses FEMA's responsibilities under the FMA program. FEMA proposes to remove (a)(2), (a)(7), and (a)(8), which pertain to the former SRL program and are no longer necessary. FEMA proposes to add two paragraphs, (a)(6) and (7), regarding monitoring and closeout requirements. Consistent with 2 CFR 200.328 and 200.343, and the HMA Guidance,[34] FEMA proposes to add the following FEMA responsibilities: (1) Monitoring implementation of awards through quarterly reports; and (2) reviewing all closeout documentation for compliance and sending the recipient a request for additional supporting documentation, if needed.[35] These are nonsubstantive revisions intended to reflect and clarify existing requirements; they are already a part of the current grants process.

Paragraph (b) addresses the responsibilities of the State. However, the paragraph actually addresses the responsibilities of all recipients, including territories and Indian Tribal governments.[36] Therefore, FEMA proposes to replace ''State'' with ''recipient'' in the heading and introductory paragraph of (b). As proposed in this rulemaking, the term ''State'' includes territories (see proposed § 77.2(l)), and the term ''recipient'' includes States and Indian Tribal governments (see proposed § 77.2(i)). This change is clarifying and is not substantive.

The introductory paragraph of (b) states that the State will serve as the applicant and grantee through a single point of contact for the FMA and SRL programs. FEMA proposes to remove this sentence because it relates to the former FMA program and the eliminated SRL program, and it is no longer necessary to have a single point of contact as there are no longer two programs being addressed in this part.

Paragraph (b)(2) states the recipient has responsibility to review and submit local mitigation plans to the FEMA Regional Administrator for final review and approval. FEMA proposes to remove this paragraph in its entirety. The requirement to submit plans for review and approval is now located in 44 CFR part 201 (local mitigation plans are specifically covered in § 201.6). FEMA prefers to refer to part 201 to avoid confusion. Repeating the same requirement in part 79 (proposed part 77) is duplicative, can cause confusion as it might appear to be a separate requirement, and is administratively burdensome if FEMA needs to make any changes, as it would have to change them in two different places in the regulations. Finally, submitting plans for review and approval is not an FMA grant requirement; the FMA requirement is to have an approved plan, which is already captured in current § 79.3(b)(1) (proposed § 77.3(b)(1)).

FEMA proposes to replace the term ''subgrant(s)'' with ''subaward(s)'' in paragraphs (b)(3) (proposed (b)(2)), (b)(4) (proposed (b)(3)), and (b)(5) (proposed (b)(4)), to reflect the terminology used in 2 CFR part 200. This is a nonsubstantive change and is already used in the HMA Guidance.

FEMA proposes to add two new paragraphs, (b)(5) and (6), regarding monitoring and closeout requirements. Consistent with 2 CFR 200.328 and 200.343, and the HMA Guidance,[37] FEMA proposes to add the following recipient responsibilities: (1) Monitor and evaluate the progress of the mitigation activity in accordance with the approved original scope of work and budget through quarterly reports; and (2) closeout the subaward in accordance with 2 CFR 200.343 and 200.344, and applicable FEMA guidance. These are nonsubstantive revisions intended to reflect and clarify existing requirements; they are already a part of the current grants process.[38]

Paragraph (c) addresses the responsibilities of Indian Tribal governments acting as recipients. As these responsibilities would now be covered under paragraph (b), FEMA proposes to remove paragraph (c). Current paragraph (c)(1) states that an Indian Tribal government must have a FEMA approved Tribal mitigation plan in accordance with § 201.7. Proposed paragraph (b)(1) states this requirement generally, to cover both States and Indian Tribal governments, as proposed paragraph (b) would now cover all recipients (States or Indian Tribal governments) instead of just States. Current paragraph (c)(2) states that a federally-recognized Indian Tribal government as defined by the Federally Recognized Indian Tribe List Act of 1994, applying directly to FEMA for mitigation grant funding will assume the responsibilities of the State as the term is used in part 79, as applicant or grantee, described in current paragraphs (b)(3) through (b)(6) (*i.e.,* the responsibilities of the State). This provision is now captured in proposed paragraph (b), which applies to all recipients, including Indian Tribal governments, since Indian Tribal governments are included in the definition of ''recipient'' in proposed § 77.2(i). Current paragraph (c)(3) states that a federally-recognized Indian Tribal government as defined by the Federally Recognized Indian Tribe list Act of 1994, applying through the State, will assume the responsibilities of the community (as the subapplicant or subgrantee) described in current paragraphs (d)(2) through (4). This provision would be captured in proposed paragraph (c), addressing the responsibilities of subrecipients (which can include Indian Tribal governments), as described below.

Current paragraph (d) addresses the responsibilities of the community. FEMA proposes to redesignate paragraph (d) as paragraph (c) and to change the paragraph heading from ''Community'' to ''Subrecipient.'' The responsibilities in this paragraph apply not just to communities, but to any entity that qualifies as a subrecipient, *i.e.,* a State agency, community, or Indian Tribal government (see proposed definition of ''subrecipient'' in

[34] *See* HMA Guidance, Part II.M, Project Monitoring, and Part II.N, Closeout, pp. 23–24.

[35] These requirements are covered by OMB Information Collection 1660–0072, ''Mitigation Grant Programs/e-grants''. This collection is approved by OMB until October 31, 2021.

[36] *See* HMA Guidance, Part I.C, Roles and Responsibilities, p. 5.

[37] *See* HMA Guidance, Part II.M, Project Monitoring, and Part II.N, Closeout, pp. 23–24.

[38] These requirements are covered by OMB Information Collection 1660–0072, ''Mitigation Grant Programs/e-grants''. This collection is approved by OMB until October 31, 2021.

§ 77.2(o)). This is a nonsubstantive change for clarification purposes only.

FEMA proposes to replace ''community'' with ''subrecipient'' in the introductory sentence as well, and to add that this can mean subapplicant because some of these responsibilities occur before the award. This is also a nonsubstantive change for clarification purposes only.

FEMA proposes to remove paragraph (d)(1), stating that the community must prepare and submit a FEMA approved local mitigation plan, consistent with 44 CFR part 201. The requirement to prepare and submit plans for review and approval is now located in 44 CFR part 201 (local mitigation plans are specifically covered in § 201.6). FEMA prefers to refer to part 201 to avoid confusion. Repeating the same requirement in part 79 (proposed part 77) is duplicative, can cause confusion as it might appear to be a separate requirement, and is administratively burdensome if FEMA needs to make any changes, as it would have to change them in two different places in the regulations. Finally, submitting plans for review and approval is not an FMA grant requirement; the requirement is to have an approved plan in order to be eligible for FMA project grants, which is already captured in current § 79.6(b)(2) (proposed § 77.6(b)(2)).

Current paragraph (d)(2) states that the community (proposed: subrecipient) must complete and submit subgrant applications to the State POC for FMA planning, project and management cost subgrants, and for SRL project and management costs subgrants. FEMA proposes to replace ''subgrant'' with ''subaward,'' consistent with the terminology in 2 CFR part 200. FEMA proposes to replace ''State POC'' with ''recipient'' as ''recipient'' captures the universe of entities to which a subrecipient would submit an application (*i.e.,* in addition to a State, the recipient can be a territory or Indian Tribal government). FEMA proposes to replace the phrase ''FMA planning, project and management cost subgrants'' with ''FMA planning and project subawards'' because FEMA proposes to replace the term ''subgrant'' with the term ''subaward,'' and because ''management costs'' are not a separate type of grant. Rather, ''management costs'' are defined under proposed § 77.2(g) and eligible as described under proposed § 77.7(a)(1). FEMA proposes to remove the clause pertaining to SRL subgrants, as the SRL program is no longer authorized under the NFIA. FEMA proposes to redesignate current paragraph (d)(2) as paragraph (c)(1). The proposed changes to paragraph (d)(2) are nonsubstantive to clarify and conform the regulations with the changed definitions described above.

Current paragraph (d)(3) states that the community (proposed: subrecipient) must implement all approved subgrants; notifying each holder of a record interest in severe repetitive loss properties when an offer of mitigation assistance has been made under the SRL program, and when such offer has been refused. FEMA proposes to revise this provision to simply state that the subrecipient must ''implement all approved subawards.'' As the SRL program is no longer authorized under the NFIA, the clause pertaining to SRL assistance is not necessary. However, it is a current responsibility of all subrecipients to implement any approved subawards, so FEMA proposes to retain this portion of current paragraph (d)(3). FEMA proposes to redesignate current paragraph (d)(3) as paragraph (c)(2). These are nonsubstantive clarifying revisions.

FEMA proposes to add two paragraphs to address the monitoring and closeout requirements that are currently part of the grants process. Consistent with 2 CFR part 200 and the HMA Guidance, FEMA proposes to add paragraph (c)(3), stating that the subrecipient must monitor and evaluate the progress of the mitigation activity in accordance with the approved original scope of work and budget through quarterly reports, and paragraph (c)(5), stating that the subrecipient must closeout the subaward in accordance with 2 CFR 200.343 and 200.344, and the HMA Guidance.[39] These are nonsubstantive revisions reflecting existing requirements.[40]

Current paragraph (d)(4) states that the community must comply with program requirements under this part, grant management requirements under 2 CFR parts 200 and 3002, the grant agreement articles, and other applicable Federal, State, Tribal and local laws and regulations. FEMA proposes to retain this language and redesignate current paragraph (d)(4) as paragraph (c)(4).

5. Section 79.4 (Proposed § 77.4) Availability of Funding

Section 79.4 addresses the method of funding under the SRL and FMA programs prior to BW–12. As explained in the Background section of this preamble, prior to BW–12, FMA program funding was allocated to States each fiscal year based upon the number of NFIP policies within the State, the number of repetitive loss structures within the State, and other criteria the Administrator determined to be in the best interests of the NFIF.

Paragraph (a) addresses automatic allocations. FEMA proposes to remove paragraph (a)(1), which addresses the SRL program, as that program is no longer authorized under the NFIA. Paragraph (a)(2) describes how the automatic allocation process worked for the FMA program prior to BW–12. Pursuant to the introductory language of current paragraph (a)(2), for the amount made available for the FMA program, the Administrator allocates the available funds each fiscal year. Funds are distributed based upon the number of NFIP policies, repetitive loss structures, and any other such criteria the Administrator determines are in the best interest of the NFIF. FEMA proposes to revise the introductory language of current paragraph (a)(2) to state that the Administrator will allocate funds based upon criteria established for each application period rather than ''each fiscal year,'' because this is more accurate. Although each application period is usually tied to the specific fiscal year, referring to ''each application period'' would allow flexibility in the event that a particular application period did not line up exactly with a particular fiscal year (for example, if the appropriations process delayed the announcement of an application period beyond the normal schedule). FEMA also proposes to add ''severe repetitive loss structures'' to the list of criteria because under the NFIA, as amended by BW–12, these structures are defined separately and subject to different cost share provisions.[41] FEMA proposes to renumber revised paragraph (a)(2) as § 77.4(a)(1).

Current paragraph (a)(2)(i) states that a maximum of 7.5 percent of the amount made available in any fiscal year may be allocated for FMA planning grants nationally, that a planning grant will not be awarded to a State or community more than once every 5 years, and an individual planning grant will not exceed $150,000 to any State agency applicant, or $50,000 to any community subapplicant. It states that the total planning grant made in any fiscal year to any State, including all communities located in the State, will not exceed $300,000. FEMA proposes to redesignate this paragraph as paragraph (a)(2). FEMA also proposes to revise this paragraph because BW–12 revised the

[39] *See* 2 CFR 200.328, 200.343; HMA Guidance, Part II. M, Project Monitoring, and Part II.N, Closeout, pp. 23–24.

[40] These requirements are covered by OMB Information Collection 1660–0072, ''Mitigation Grant Programs/e-grants.'' This collection is approved by OMB until October 31, 2021.

[41] *See* 42 U.S.C. 4104c(d)(1) and (h)(3).

$150,000 and $50,000 caps, and explicitly removed the 7.5 percent cap, the 5-year limit, and the $300,000 total cap. Under the current statutory authority, the amount of an individual planning grant under the FMA program shall not exceed $50,000 for any mitigation plan of a State (or, a ''recipient'' as defined in this proposed rule) or $25,000 for any mitigation plan of a community (or, a ''subrecipient'' as defined in this proposed rule).[42] FEMA proposes to reflect these revised caps in proposed § 77.4(a)(2). This removal is a nonsubstantive change to the FMA program as FEMA has already implemented this provision of BW–12.[43]

Current paragraph (a)(2)(ii) states that the total amount of FMA project grant funds provided during any 5-year period will not exceed $10,000,000 to any State agency(s) or $3,300,000 to any community. It states that the total amount of project grant funds provided to any State, including all communities located in the State will not exceed $20,000,000 during any 5-year period. The Administrator may waive the limits of this paragraph for any 5-year period when a major disaster or emergency is declared pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act for flood conditions. FEMA proposes to remove this paragraph because BW–12 removed these caps and time period restrictions. Under the current statutory authority, FMA project grants must meet the eligibility requirements in 42 U.S.C. 4104c(c), are subject to the availability of funds, and may be subject to additional restrictions as Congress may establish in the annual appropriation for the FMA program. This removal is a nonsubstantive change to the FMA program as FEMA has already implemented this provision of BW–12.[44]

Paragraph (b) addresses redistribution. It states that funds allocated to States that choose not to participate in either the FMA or SRL program in any given year will be reallocated to participating States and Indian Tribal applicants. It states that any funds allocated to a State, and the communities within the State, which have not been obligated within the timeframes established by the Administrator shall be redistributed by the Administrator to other States and communities to carry out eligible activities in accordance with this part. FEMA proposes to remove this paragraph because BW–12 eliminated automatic allocations. As there are no automatic allocations, there is no need for a provision regarding re-allocations. Under the current program post-BW–12, FEMA considers all eligible subapplications and selects subapplications against agency priorities identified in annual appropriations and the NOFO.[45]

Current paragraph (c) addresses the cost share provisions that were applicable prior to BW–12. Under current paragraph (c)(1), FEMA may provide up to 75 percent of the eligible cost of activities for grants approved for funding. Under current paragraph (c)(2), FEMA may contribute up to 90 percent of the cost of the eligible activities for severe repetitive loss properties if the applicant has an approved mitigation plan meeting the repetitive loss requirements identified in § 201.4 or § 201.7.

FEMA proposes to redesignate current paragraph (c) as paragraph (b) and to replace current paragraphs (c)(1) and (2) with proposed paragraphs (b)(1) through (3) to reflect the new cost share structure under BW–12. FEMA proposes to add a new paragraph (b)(1) to state that for each severe repetitive loss structure, FEMA may contribute up to 100 percent of all eligible costs if the activities are technically feasible and cost-effective, or, up to the amount of the expected savings to the NFIP for acquisition or relocation activities.[46] FEMA is not retaining the requirement that severe repetitive loss properties have an approved mitigation plan meeting the repetitive loss requirements identified in part 201 because BW–12 removed this requirement.[47] Note that all applicants must still have a FEMA-approved mitigation plan that addresses flood losses to structures covered by the NFIP, but the mitigation planning requirements are no longer tied to specific cost shares.[48] FEMA proposes to clarify the mitigation planning requirements in proposed § 77.6(b), discussed elsewhere in this preamble.

FEMA proposes to add a new paragraph (b)(2) to state that for repetitive loss structures, FEMA may contribute up to 90 percent of eligible costs.[49] Prior to BW–12, repetitive loss structures received a 75 percent cost share.

FEMA proposes to add a new paragraph (b)(3) to state that for all other mitigation activities, FEMA may contribute up to 75 percent of all eligible costs.[50] FEMA has implemented this new cost structure in the HMA Guidance.[51]

Some projects include different types of structures. FEMA proposes to add a new paragraph (b)(4) stating that for projects that contain a combination of severe repetitive loss, repetitive loss, and/or insured structures, FEMA will calculate the cost share as appropriate for each type of structure submitted in the project subapplication, meaning that FEMA will determine the cost share based on the type of structure, even if the structure is combined with other types in the same project. FEMA is adding this provision to make clear that a structure is not eligible to receive an increased Federal cost share just because it is included in the same project as structures that are eligible to receive an increased Federal cost share. For example, the cost of mitigating a repetitive loss structure is still subject to the 90 percent Federal/10 percent non-Federal cost share requirement, even if it is included in a project that also mitigates severe repetitive loss structures. This is not a substantive change and reflects FEMA's current practice. FEMA proposes to add this provision to ensure that potential subrecipients do not mistakenly expect to receive increased cost shares for which they are ineligible.

Current paragraph (c)(3) states that for the FMA program only, of the non-Federal contribution, not more than one half can be provided from in-kind contributions. FEMA proposes to remove this paragraph because BW–12 eliminated the limit on the amount of in-kind contributions that may make up the non-Federal portion of an FMA award.[52]

BW–12 includes a provision stating that for any application for a grant for which FEMA fails to make a grant award within 5 years of the date of application, the grant application is considered to be denied and any funding amounts allocated for such grant application will remain available

[42] 42 U.S.C. 4104c(c)(3)(F).

[43] *See* HMA Guidance, Part IV.E.3, FMA Funding Restrictions, p. 54.

[44] *See* HMA Guidance, Part VIII.C, Additional Program Guidance: Flood Mitigation Assistance Program, pp. 116–18.

[45] *See* HMA Guidance, Part IV.H.1, Required Components, p. 59.

[46] 42 U.S.C. 4104c(c)(2) and (d)(1); implemented via HMA Guidance at section VIII.C.3, Cost Sharing, p. 117.

[47] *See* Public Law 112–141, section 100225(a)(1), (9); 42 U.S.C. 4104c(d).

[48] *See* 42 U.S.C. 4104c(b).

[49] 42 U.S.C. 4104c(d)(2); implemented via HMA Guidance at section VIII.C.3, Cost Sharing, p. 118.

[50] 42 U.S.C. 4104c(d)(3); implemented via HMA Guidance at section VIII.C.3, Cost Sharing, p. 118.

[51] *See* HMA Guidance, Part VIII. C.3, Cost Sharing, pp. 117–18.

[52] *See* Public Law 112–141, section 100225(a); 42 U.S.C. 4104c(d).

for other FMA grants.[53] FEMA proposes to add a new paragraph (c) to implement this provision. FEMA notes that while the statute uses the term ''application,'' FEMA is interpreting this to mean subapplications as well. While FEMA makes awards to the applicant, it is the applicant who awards funds to the subapplicant. Therefore FEMA is applying the 5-year requirement to applicants to ensure they in turn are timely in making the subawards to their subapplicants. Otherwise, the intent of the statute would not be fully realized if FEMA makes the award within 5 years, but the applicant does not in turn make a timely award to the subapplicant. FEMA interprets ''date of application'' to mean date of submission, meaning the date the applicant/subapplicant submits the application to FEMA. This is to avoid any potential confusion about the date that marks the beginning of the 5-year period. FEMA has implemented this provision in the HMA Guidance.[54]

6. Section 79.5 (Proposed § 77.5) Application Process

Current § 79.5 addresses the application process. Paragraph (a) is entitled ''Applicant or grantee.'' FEMA proposes to remove the reference to grantee so that the title of paragraph (a) would just be ''Applicant.'' While 2 CFR part 200 uses recipient rather than grantee, this section addresses the point in the grants process where money has not yet been awarded, so the appropriate term for this paragraph is applicant rather than recipient. Current paragraph (a)(1) states that States will be notified of the amount allocated to them for the SRL and FMA programs each fiscal year, along with the application timeframes. As discussed above, automatic allocations are no longer used under the FMA program, and the SRL program is no longer authorized. Further, FEMA prefers to use ''applicant'' rather than State, as applicant captures the full universe of entities who may be an applicant (*i.e.,* States (including territories) and Indian Tribal governments).[55] Therefore FEMA proposes to revise paragraph (a)(1) to state that applicants will be notified of the availability of funding for the FMA program pursuant to 2 CFR 200.202 and 200.203. Section 200.202 requires agencies to provide public notice of grant fund availability, and § 200.203 lists the requirements surrounding these notices (including the information they must contain). As discussed above, FEMA publishes a NOFO when funds become available. The NOFO includes the application timeframes, and therefore FEMA did not retain in paragraph (a)(1) the specific requirement to provide application timeframes.

Paragraph (a)(2) states that the State is responsible for soliciting applications from eligible communities, or subapplicants, and for reviewing and prioritizing applications prior to forwarding them to FEMA for review and award. FEMA proposes to replace ''State'' with ''applicant'' to cover the entire universe of potential applicants (States (including territories) and Indian Tribal governments).[56]

Paragraph (a)(3) states that participation in these flood mitigation grant programs is voluntary, and States may elect not to participate in either the SRL or FMA program in any fiscal year without compromising their eligibility in future years. FEMA proposes to remove this paragraph because it was relevant pre-BW–12 when the programs were allocation based and each eligible State received an annual allocation. While the current FMA program is voluntary, this is not necessary to repeat in the regulations relating to the application process because the voluntary nature of the program is established in the statute and made clear in § 79.6 (proposed § 77.6), each annual NOFO, and the HMA Guidance.[57]

Paragraph (a)(4) states that Indian Tribal governments interested in applying directly to FEMA for either the FMA or SRL program grants should contact the appropriate FEMA Regional Administrator for application information. FEMA proposes to remove this paragraph because proposed paragraphs (a)(1) and (2) would apply to Indian Tribal government applicants and eliminate the need to address these applicants in a separate paragraph.

Paragraph (b) is entitled ''Subapplicant or subgrantee.'' FEMA proposes to remove the term ''subgrantee'' because the paragraph applies to subapplicants before they become subgrantees (proposed ''subrecipients''), and thus it is only necessary to include ''subapplicant'' in the paragraph title. No substantive change is intended. The first sentence states that participation in the SRL and the FMA program is voluntary, and communities may elect not to apply. FEMA proposes to remove this sentence because it was relevant pre-BW–12 when the programs were allocation based and each eligible State received an annual allocation. While the current FMA program is voluntary, this is not necessary to repeat in the regulations relating to the application process because the voluntary nature of the program is established in the statute and made clear in § 79.6 (proposed § 77.6), each annual NOFO, and the HMA Guidance.[58]

The second sentence states that communities or other subapplicants who choose to apply must develop applications within the timeframes and requirements established by FEMA and must submit applications to the State. FEMA proposes to replace ''State'' with ''applicant'' for reasons discussed above, and proposes to replace ''applications'' with ''subapplications,'' which is the proper terminology. Subapplicants submit subapplications, while applicants submit applications. This is not a substantive change.

7. Section 79.6 (Proposed § 77.6) Eligibility

i. Paragraph (a) Eligible Applicants and Subapplicants

FEMA proposes to change the heading of paragraph (a) from ''Eligible applicants and subapplicants'' to ''NFIP requirements'' to better reflect the provisions of this paragraph.

Paragraph (a)(1) states that States, Indian Tribal governments, and communities participating in the NFIP may apply for planning and project grants and associated management costs. FEMA proposes to revise this paragraph to say that States, Indian Tribal governments, and communities must be participating in the NFIP and may not be suspended or withdrawn under the program. FEMA proposes to omit ''planning and project grants and associated management costs'' from this paragraph because eligible activities are covered in paragraph (c) and need not be listed here as well. FEMA also proposes to incorporate into paragraph (a)(1) the eligibility restriction for communities that are suspended or withdrawn under the NFIP. This requirement is currently listed in paragraph (a)(3), which FEMA proposes to remove. This is a nonsubstantive revision intended to incorporate the relevant NFIP participation requirements into a simplified paragraph (a)(1).

Paragraph (2) states that States, Indian Tribal governments, and communities

[53] *See* 42 U.S.C. 4104c(g).

[54] *See* HMA Guidance, Part VIII.C.6, Failure to Make Federal Award within 5 Years, p. 118.

[55] *See* proposed § 77.2(b).

[56] *Id.*

[57] *See* 42 U.S.C. 4104c(a); 44 CFR 79.6; HMA Guidance, Part II, Frontloading HMA Program Eligibility Requirements, p. 13.

[58] *Id.*

participating in the NFIP may apply for SRL project grants and associated management costs. FEMA proposes to remove this paragraph because the SRL program is no longer authorized under the NFIA.

Paragraph (3) states that communities withdrawn, suspended, or not participating under part 60 (Criteria for Land Management and Use) of the NFIP are not eligible for either the FMA or SRL programs. FEMA proposes to remove this paragraph because the SRL program was eliminated by BW–12, and the NFIP participation requirement for the FMA program is already covered under proposed § 77.6(a)(1). While paragraph (3) specifically references part 60, FEMA proposes to omit the reference to part 60 in proposed paragraph (a)(1) because it is unnecessary. The reference to part 60 effectively means communities that are participating in the NFIP and who are not suspended or withdrawn *under the program.* FEMA intends proposed paragraph (a)(1) to have the same meaning, but proposes to reference the NFIP generally so that the meaning remains clear even if the regulations at part 60 are revised or renumbered.

While current part 79 addresses NFIP requirements in terms of applicant and subapplicant eligibility, it does not address NFIP requirements specific to property eligibility. FEMA proposes to add a new paragraph (a)(2) to clarify that, for projects that impact individual structures, an NFIP policy for the structure must be in effect prior to the opening of the application period and be maintained for the life of the structure. This is consistent with the HMA Guidance, which explains that properties must be NFIP-insured at the time of the application submittal and prior to the period of availability or application start date and be maintained for the life of the structure.[59] In the absence of such a requirement, a property owner could obtain an NFIP policy immediately before receiving an FMA award and drop the policy after taking advantage of NFIF funds. The establishment of a clear and measurable eligibility requirement will help ensure that FMA funding is awarded to policy holders who consistently maintain coverage for eligible structures. This requirement is consistent with the NFIA's statutory mandate to use funds for activities designed to reduce the risk of flood damage to structures covered under contracts for flood insurance,[60] and is intended to support good stewardship of NFIF funds.

ii. Paragraph (b) Plan Requirement

FEMA proposes to revise paragraph (b), *Plan requirement,* to remove the reference to the SRL program and to clarify current mitigation planning requirements consistent with BW–12. To be eligible for FMA awards, applicants and subapplicants must have a FEMA-approved mitigation plan that describes the mitigation activities to be carried out with FMA awards and provides for the reduction of flood losses to structures covered under the NFIP.[61]

Paragraph (1) states that States must have an approved mitigation plan meeting the requirements of 44 CFR 201.4 or 201.5 in order to apply for grants through the FMA or SRL programs. FEMA proposes to remove the reference to 201.5 as this section addresses enhanced State mitigation plans which are not necessary for eligibility. FEMA also proposes to revise this sentence to clarify that the plan must be approved by FEMA. While it is implied in part 201 that the plan must be approved by FEMA, it is not explicit, so FEMA proposes to add this clarification to avoid any potential confusion. This is not a substantive change and is intended only to improve clarity and consistency with part 201.[62] FEMA also proposes to add language specifying that the FEMA-approved mitigation plan ''provides for reduction of flood losses to structures for which NFIP coverage is available'' to make the language more consistent with the current statutory requirement at 42 U.S.C. 4104c(b). FEMA proposes to remove the language ''in order to apply for grants through the FMA or SRL programs,'' first because the SRL is no longer authorized, and second, even though FMA is still an authorized program, it is not necessary because the regulation already makes it clear that a plan is required.

The second sentence of paragraph (1) states that Indian Tribal governments must have an approved plan meeting the requirements of 44 CFR 201.7 at the time of application. As with States, FEMA proposes to revise this provision to clarify that the plan must be approved by FEMA. While it is implied in part 201 that the plan must be approved by FEMA, it is not explicit, so FEMA proposes to add this clarification to avoid any potential confusion. FEMA proposes to add ''mitigation'' before ''plan'' for the sake of clarity. As with State mitigation plans, FEMA proposes to add language specifying that the FEMA-approved mitigation plan ''provides for reduction of flood losses to structures for which NFIP coverage is available'' to make the language more consistent with the current statutory requirement at 42 U.S.C. 4104c(b). Finally, FEMA proposes to remove the language ''at the time of application'' and address this requirement in a separate sentence as described below.

Applicants must have a FEMA-approved mitigation plan at the time of application and award. This comports with the NFIA, which requires applicants to have a FEMA-approved mitigation plan as a condition of eligibility for FMA awards.[63] Currently, the regulation is silent as to this requirement for States. For Indian Tribal governments, the current regulation states only ''at the time of application.'' FEMA proposes to add a sentence stating that both States and Indian Tribal governments must have a FEMA-approved mitigation plan at the time of application and award. This is a nonsubstantive change intended for clarification purposes only.[64]

Paragraph (2) states that in order to be eligible for FMA and SRL grants, subapplicants must have an approved mitigation plan at the time of application in accordance with 44 CFR part 201 that at a minimum addresses flood hazards. As with applicants, FEMA proposes to revise this provision to clarify that the plan must be approved by FEMA. While it is implied in part 201 that the plan must be approved by FEMA, it is not explicit, so FEMA proposes to add this clarification to avoid any potential confusion. Also as with applicants, FEMA proposes to add that the plan must provide for reduction of flood losses to structures for which NFIP coverage is available. FEMA proposes to remove the language ''at a minimum, addresses flood hazards'' and replace it with the language ''provides for reduction of flood losses to structures for which NFIP coverage is available'' to make the language more consistent with the current statutory requirement at 42 U.S.C. 4104c(b).

FEMA proposes to add a sentence stating that the FEMA-approved mitigation plan is required at the time of application and award for reasons described above.[65]

[59] *See* HMA Guidance, Part VIII.C.1, Eligible Properties, p. 116.

[60] *See* 42 U.S.C. 4104c(a).

[61] *See* 42 U.S.C. 4104c(b).

[62] *See* 44 CFR 201.3(b).

[63] *See* 42 U.S.C. 4104c(b).

[64] *See* HMA Guidance, Part III.E.5.1, Applicant Mitigation Plan Requirement, p. 45.

[65] *See* HMA Guidance, Part III.E.5.2, Subapplicant Mitigation Plan Requirement, p. 45.

Finally, FEMA proposes to add paragraph headings to aid the reader. It proposes to add the header ''applicants'' for paragraph (b)(1), and the header ''subapplicants'' for paragraph (b)(2) to make the paragraph structure easier to follow.

iii. Paragraph (c) Eligible Activities

FEMA proposes to revise paragraph (c), *Eligible activities,* to reflect the changes from BW–12.

Paragraph (1) addresses planning and states that FMA planning grants are limited to those activities necessary to develop or update the flood portion of any mitigation plan. FEMA proposes to remove this sentence because the NFIA, as amended by BW–12, explicitly provides that a mitigation plan that provides for the reduction of flood losses to structures for which NFIP coverage is available *may be included in a multi-hazard mitigation plan.*[66] FEMA proposes to remove the ''flood portion'' language because there may be multi-hazard mitigation plans that meet the statutory requirements but that do not distinguish and address all flood-related provisions in a separate ''flood portion'' of the plan. FEMA proposes to say, instead, that the plans must provide for reduction of flood losses to structures for which NFIP coverage is available. This change is intended to reflect the statutory language at 42 U.S.C. 4104c(b).

FEMA proposes to also remove the following sentence, which states that planning grants are not eligible for funding under the SRL program; as the SRL program is no longer authorized, this provision is no longer necessary.

Paragraph (c)(2) addresses projects. The first sentence of the introductory text states that projects funded under the SRL program are limited to those activities that specifically reduce or eliminate flood damages to severe repetitive loss properties. FEMA proposes to remove this sentence and make necessary grammatical adjustments to this paragraph because the SRL program is no longer authorized.

In paragraph (c)(2)(v), FEMA proposes to remove language that limits the eligibility of demolition and rebuilding of properties to the SRL program. The demolition and rebuilding of properties to at least base flood levels or higher, if required by FEMA or by State or local ordinance, has been an eligible activity under the FMA program since before BW–12's passage. FEMA implemented this provision in the HMA Guidance.[67]

Paragraph (c)(2)(vi) lists as an eligible project ''minor physical localized flood reduction measures'' that lessen the frequency or severity of flooding and decrease predicted flood damages. FEMA proposes to replace ''minor physical localized flood reduction measures'' with ''localized flood risk reduction projects.'' The following sentence states that ''major flood control projects'' such as dikes, levees, floodwalls, seawalls, groins, jetties, dams and large-scale waterway channelization projects are not eligible. FEMA proposes to replace ''major flood control projects'' with ''non-localized flood risk reduction projects.'' Major flood control projects are known as ''non-localized flood risk reduction projects'' for purposes of FMA. FEMA proposes to replace major flood control projects with non-localized flood risk reduction projects so that these projects are known by one common name. These changes are intended to ensure consistency between program implementation, guidance, and regulation, and do not impose new requirements. The terms ''localized flood risk reduction projects'' and ''non-localized flood risk reduction projects'' are used throughout the HMA Guidance.[68]

BW–12 added elevation, relocation, and floodproofing of utilities as eligible activities.[69] FEMA proposes to add these activities to a new paragraph (c)(2)(vii). These activities were implemented in the HMA Guidance.[70]

BW–12 provides that eligible activities may include mitigation activities that are described in the mitigation plan of a State or community but not specified by statute or regulation.[71] FEMA proposes to implement this provision in a new paragraph (c)(2)(viii) for mitigation activities described in a State, Tribal, or local mitigation plan that are not listed in paragraphs (c)(2)(i) through (vii). This flexibility is important because it allows FEMA to consider innovative or novel projects that are consistent with the goals of the FMA program but are not specifically identified in statute or regulation. This is a nonsubstantive change; FEMA has already implemented this provision in the HMA Guidance.[72]

BW–12 provides that if a State applied for and was awarded at least $1,000,000 in FMA grants in the prior fiscal year, FEMA may provide funding for technical assistance to communities not to exceed $50,000 per State in any fiscal year to identify eligible activities, to develop grant applications, and to implement FMA grants.[73] FEMA proposes to add new paragraph (c)(3) to implement this provision. The new paragraph would state that if a recipient applied for and was awarded at least $1 million in the prior fiscal year, that recipient may be eligible to receive a technical assistance grant for up to $50,000. FEMA has already implemented this provision in the HMA Guidance.[74] The HMA Guidance lists potential eligible activities under this grant, such as promoting FMA to communities, visiting sites with communities/applicants, developing and reviewing project applications and mitigation plans, participating in planning meetings, providing planning workshops and materials, performing benefit cost analyses and providing grants management workshops and materials, funding (in part) salaries and expenses of staff working to develop, review, monitor, and close FMA grants.[75]

iv. Paragraph (d) Minimum Project Criteria

Paragraph (d) addresses minimum project criteria which lists specific criteria FMA grant projects must meet in addition to being an eligible project type as described in paragraph (c). Paragraph (d)(1) states that projects must be in conformance with mitigation plans approved under 44 CFR part 201 for the State and community where the project is located. FEMA proposes to revise this provision for the sake of clarity, to state that projects must be in conformance with ''State, Tribal, and/or local'' mitigation plans approved under part 201 for the ''jurisdiction'' where the project is located.

Paragraph (d)(2) states that projects must be in conformance with part 9 of this chapter, Floodplain Management and Protection of Wetlands, § 60.3 of this subchapter, Flood plain management criteria for floodprone areas, and other applicable Federal, State, Tribal, and local laws and regulations. FEMA proposes to revise

[66] 42 U.S.C. 4104c(b).

[67] *See* HMA Guidance Addendum, Feb. 27, 2015, Part D, Mitigation Reconstruction Projects, p. 59, available at *https://www.fema.gov/media-library-data/1424983165449-38f5dfc69c0bd4ea8a161e8bb7b79553/HMA_Addendum_022715_508.pdf* (last accessed Feb. 13, 2020).

[68] *See, e.g.,* HMA Guidance, Part III.E.1.1, Mitigation Projects, p. 36.

[69] *See* 42 U.S.C. 4104c(c)(3)(D), Public Law112–141, section 100225(a)(5)(D).

[70] HMA Guidance, Part III.E.1.1, Mitigation Projects, pp. 34 –35.

[71] *See* 42 U.S.C. 4104c(c)(3)(I).

[72] HMA Guidance, Part III.E.1.1, Mitigation Projects, p. 38.

[73] *See* 42 U.S.C. 4104c(c)(3)(J).

[74] HMA Guidance, Part III.E.1.4, Technical Assistance, pp. 40–41.

[75] *Id.*

this provision to state that the project must be in conformance with applicable environmental and historic preservation laws, regulations, and agency policy, including parts 9 and 60 of this chapter, and other applicable Federal, State, Tribal, and local laws and regulations. FEMA proposes to remove the reference to § 60.3 and replace it with a more general reference to part 60, which captures additional requirements that fall under current paragraph (d)(2). FEMA also proposes to emphasize that projects must be in conformance ''with applicable environmental and historic preservation laws, regulations, and agency policy,'' which includes FEMA regulations at parts 9 and 60. Applicable environmental and historic preservation requirements also include the requirements in DHS Directive and Instruction 023–01, ''Implementation of the National Environmental Policy Act,'' and FEMA Directive and Instruction 108–1, ''Environmental Planning and Historic Preservation Responsibilities and Program Requirements.'' [76] This is a nonsubstantive change intended to capture all applicable legal requirements and to highlight applicable environmental and historic preservation requirements, which are particularly relevant to the implementation of mitigation grants.[77]

Paragraph (d)(3) states that mitigation grant projects must ''be technically feasible.'' Under the NFIA, as amended by BW–12, mitigation projects must be ''technically feasible and cost-effective'' or ''eliminate future payments from the [NFIF] for severe repetitive loss structures through an acquisition or relocation activity.'' [78] FEMA proposes to add to paragraph (d)(3) ''and cost-effective; or, eliminate future payments from the NFIF for severe repetitive loss structures through an acquisition or relocation activity.'' FEMA proposes this revision to capture all of the statutory requirements in 42 U.S.C. 4104c(c)(2)(A) in the same regulatory provision. This is not a substantive change; FEMA had already implemented this provision prior to BW–12.[79]

Paragraph (d)(5) states that the project must be cost effective and reduce the risk of future flood damage. FEMA proposes to remove this paragraph because cost-effectiveness is addressed in the proposed revisions to paragraph (d)(3). Proposed paragraph (d)(3) does not include the language ''reduce the risk for future flood damage'' because FEMA is proposing language that mirrors the statutory provision at 42 U.S.C. 4104c(c)(2)(A)(ii), as explained above.

Finally, FEMA proposes to replace ''subgrantee'' with ''subrecipient'' in current paragraph (d)(6) to reflect the terminology in 2 CFR part 200, and to redesignate current paragraph (d)(6) as paragraph (d)(5), and current paragraph (d)(7) as paragraph (d)(6).

8. Section 79.7 Offers and Appeals Under the SRL Program

Section 79.7 deals solely with the SRL program, which is no longer authorized under the NFIA. Accordingly, FEMA proposes to remove this section in its entirety.

9. Section 79.8 (Proposed § 77.8) Allowable Costs

This section addresses allowable costs under the FMA program. Paragraph (a)'s introductory text states that general policies for allowable costs are addressed in 2 CFR 200.101, 200.102, 200.400–200.475. FEMA proposes to revise this provision to clarify that the allowable costs are ''for implementing awards and subawards.'' This is a nonsubstantive change.

Paragraph (a)(1) is entitled ''Eligible management costs.'' Paragraph (a)(1)(i) is entitled ''grantee.'' FEMA proposes to replace ''grantee'' with ''recipient'' to reflect the updated terminology in 2 CFR part 200. The first sentence of paragraph (a)(1)(i) states that States are eligible to receive management costs consisting of a maximum of 10 percent of the planning and project activities awarded to the State, each fiscal year under FMA and SRL, respectively. FEMA proposes to replace ''State(s)'' with ''recipient(s)'' to reflect the terminology in 2 CFR part 200 and to capture all possible applicants (States (including territories) and Indian Tribal governments).[80] FEMA proposes to remove the reference to the SRL program, which is no longer authorized under the NFIA. The last sentence states that an Indian Tribal government applying directly to FEMA is eligible for management costs consisting of a maximum of 10 percent of grants awarded for planning and project activities under the SRL and FMA programs respectively. FEMA proposes to remove this sentence as it would no longer be necessary under the proposed revisions to this paragraph, which replaces ''States'' with ''recipients.'' The term ''recipients'' includes Indian Tribal governments.

FEMA proposes to replace the header of paragraph (a)(1)(ii), ''subgrantee,'' with ''subrecipient'' to reflect the terminology in 2 CFR part 200. FEMA proposes to replace the term ''State'' with ''recipient'' to capture the full universe of entities to which a subapplicant may apply (States (including territories) and Indian Tribal governments).

Paragraph (a)(2) is entitled ''Indirect Costs.'' FEMA proposes to remove the reference to the SRL program, as the program is no longer authorized under the NFIA. FEMA proposes to replace ''grantee'' with ''recipient'' and ''subgrantee'' with ''subrecipient'' to reflect the terminology in 2 CFR part 200.

Paragraph (b) is entitled ''Pre-award costs.'' The first sentence states that FEMA may fund eligible pre-award planning or project costs at its discretion and as funds are available. FEMA proposes to revise this sentence to state that FEMA may fund eligible pre-award costs related to developing the application or subapplication at its discretion and as funds are available. FEMA interprets ''pre-award planning or project costs'' to mean pre-award costs related to developing an application or subapplication. This revision is intended to clarify the regulatory language, consistent with FEMA's interpretation established in the HMA Guidance, and is not a substantive change.[81] FEMA proposes to replace ''grantees'' with ''recipients'' and ''subgrantees'' with ''subrecipients'' to reflect the terminology in 2 CFR part 200. Finally, FEMA proposes to make nonsubstantive grammatical changes to reflect that this section applies just to FMA grants, and proposes to replace the phrase ''incurred prior to grant award'' with ''incurred prior to award'' as the word ''grant'' is not necessary.

Paragraph (c) is entitled ''Duplication of Benefits.'' FEMA proposes to replace ''grantee'' with ''recipient'' and ''subgrant award'' with ''subaward'' to reflect the terminology in 2 CFR part 200.

10. Section 79.9 (Proposed § 77.9) Grant Administration

Paragraph (a) states that the grantee must follow FEMA grant requirements, including submission of performance and financial status reports, and shall follow adequate competitive procurement procedures, and that grantees are responsible for ensuring

[76] *See* 81 FR 56514 and 81 FR 56682.

[77] *See* HMA Guidance, Part III.E.6, Environmental Planning and Historic Preservation Requirements, pp. 47–48.

[78] 42 U.S.C. 4104c(c)(2)(A).

[79] HMA Guidance, Part III.E.3, Cost Effectiveness, and Part III.E.4, Feasibility and Effectiveness, p.44.

[80] *See* proposed 77.2(i).

[81] *See* HMA Guidance, Part IV.F.2, Pre-award costs, p. 55.

that all subgrantees are aware of and follow the requirements of 2 CFR parts 200 and 3002. Finally, it states that the grantee must follow FEMA grant requirements, including submission of performance and financial status reports. FEMA proposes to revise this paragraph for a more streamlined approach and to eliminate some of the repetition in the current paragraph. Accordingly, FEMA proposes to revise paragraph (a) to state that recipients must comply with the requirements of 2 CFR parts 200 and 3002, and FEMA award requirements, including submission of performance and financial status reports, and that recipients must also ensure that subrecipients are aware of and comply with 2 CFR parts 200 and 3002. Finally, FEMA proposes to add a header to paragraph (a), entitled ''General,'' to distinguish it from the other paragraphs and for the ease of the reader. These are nonsubstantive changes.

FEMA proposes to add a header to paragraph (b), ''Cost overruns,'' for the ease of the reader. In paragraph (b)'s introductory text, FEMA proposes to replace ''State POC'' with ''recipient'' to capture the universe of all possible recipients (States (including territories) and Indian Tribal governments). FEMA proposes to redesignate the introductory text of paragraph (b) as paragraph (b)(1), and to redesignate paragraph (b)(1) as (b)(1)(i), and paragraph (b)(2) as (b)(1)(ii). Current paragraph (b)(2) (proposed paragraph (b)(1)(ii)), which lists one of the requirements for reimbursement of an overrun, states that the amended grant award must meet the cost share requirements identified in this section. FEMA proposes to revise this to state that the amended grant award must meet the eligibility requirements, including cost share requirements, identified in this section. FEMA proposes this change to capture all eligibility requirements, including but not limited to cost share requirements. This is a nonsubstantive change, because all FMA eligibility requirements apply to amended grant awards, and is consistent with the HMA Guidance.[82]

Paragraph (b)(3) limits cost overrun reimbursements so that the total amount obligated to the State does not exceed the maximum funding amounts set in § 79.4(a)(2). FEMA proposes to remove this provision because BW–12 eliminated automatic allocations under the FMA program and the NFIA no longer establishes maximum funding amounts for project awards.[83]

Current paragraph (c) addresses the ability of grantees to use cost underruns to offset overruns in other awards. FEMA proposes to redesignate paragraph (c) as paragraph (b)(2), since it more appropriately belongs in the paragraph on cost overruns rather than as a stand-alone paragraph. The first sentence of current paragraph (c) (proposed paragraph (b)(2)) states that grantees may use cost underruns from ongoing subawards to offset overruns incurred by another subgrant(s) awarded under the same grant. FEMA proposes to replace ''grantees'' with ''recipients'' and ''subgrants'' with ''subawards'' to reflect the terminology in 2 CFR part 200, and to replace the final word of the sentence (''grant'') with ''award.'' These are nonsubstantive changes. The second sentence of current paragraph (c) (proposed paragraph (b)(2)) states that all costs for which funding is requested must have been included in the original application's cost estimate. FEMA proposes to replace ''application'' with ''subapplication'' because the need for an overrun is at the subaward level. This is a nonsubstantive change for clarification purposes—the program currently applies this to the subapplication amount for a specific project, not the application amount which encompasses all projects under the recipient's award. FEMA proposes to add that in cases where an underrun is not available to cover an overrun, the Administrator may, with justification from the recipient or subrecipient, use other available FMA funds to cover the cost overrun. FEMA implements this practice pursuant to 42 U.S.C. 4104c(c)(1), which requires FEMA to provide FMA assistance to the extent amounts are available in the NFIF pursuant to appropriation Acts, subject only to the absence of approvable mitigation plans. This practice is consistent with the HMA Guidance which provides that ''[t]he pass-through entity may request additional Federal funds for identified overruns, which FEMA may approve if program funds are available.'' [84] This flexibility allows FEMA and recipients to address unanticipated needs.

Current paragraph (d) addresses the requirement that the request for an overrun be in writing to the FEMA Regional Administrator. FEMA proposes to redesignate this paragraph as paragraph (b)(3), as it appropriately belongs in the paragraph that addresses overruns rather than as a stand-alone paragraph. FEMA proposes to replace ''grant'' with ''award'' for the sake of clarity, and to replace ''State POC'' with ''recipient'' to capture the universe of potential recipients (States (including territories) and Indian Tribal governments). FEMA proposes to replace ''shall'' with ''must'' and ''will'' pursuant to the Office of the Federal Register's Principles of Clear Writing.[85]

Current paragraph (e) addresses the circumstances under which FEMA recaptures funds. FEMA proposes to redesignate this paragraph as paragraph (c) and to add a paragraph heading ''Recapture'' for the ease of the reader. FEMA proposes to replace ''these programs'' with ''this part'' for the sake of clarity.

FEMA proposes to add a new paragraph (d) to address remedies for noncompliance, consistent with 2 CFR part 200. FEMA proposes to add that FEMA may terminate an award or take other remedies for noncompliance in accordance with 2 CFR 200.338 through 200.342.

Finally, FEMA proposes to add a new paragraph (e) to address the reconsideration process under the FMA program. FEMA proposes to state that it will reconsider determinations of noncompliance, additional award conditions, or its decision to terminate a Federal award. Requests for reconsideration must be made in writing within 60 calendar days after receipt of a notice of the action, and in accordance with submission procedures set out in guidance. FEMA will notify the requester of the disposition of the request for reconsideration. If the decision is to grant the request for reconsideration, FEMA will take appropriate implementing action. FEMA proposes to add these provisions to reflect the existing opportunity to request reconsideration [86] and the procedures for when a recipient/subrecipient challenges a remedy for noncompliance, as required by 2 CFR 200.341.[87] FEMA believes that a 60 calendar day deadline for submitting requests for reconsideration is appropriate and consistent with the

[82] *See* HMA Guidance, Part IV.D.3.3, Cost overruns and Underruns, p. 85.

[83] *See* discussion *supra* regarding the proposed revisions to § 79.4 (proposed § 77.4).

[84] *See* HMA Guidance, Part VI.D.3.3, Cost overruns and Underruns, p. 85.

[85] *https://www.archives.gov/federal-register/write/legal-docs/clear-writing.html.*

[86] *See* HMA Guidance, Part V.B.3, Reconsideration Process, p. 77.

[87] *See* 2 CFR 200.341, *Opportunities to object, hearings and appeals,* providing that ''[U]pon taking any remedy for non-compliance, the Federal awarding agency must provide the non-Federal entity an opportunity to object and provide information and documentation challenging the suspension or termination action, in accordance with written processes and procedures published by the Federal awarding agency.''

amount of time provided to submit appeals or requests for reconsideration in other FEMA programs.[88] This is a nonsubstantive change that codifies current practice.

C. 44 CFR part 80, Property Acquisition and Relocation for Open Space

Throughout part 80,[89] FEMA proposes to replace outdated terms and definitions with substantively similar terms and definitions that better align with 2 CFR part 200 and the HMA Guidance. These are nonsubstantive revisions intended to simplify definitions and improve consistency among FEMA's HMA programs. FEMA also proposes to replace the word ''shall'' with the word ''will'' or ''must,'' as appropriate, and to remove references to the SRL program.

1. Part 80 Authority

FEMA proposes to revise the authority citation for part 80 to remove historical authorities relating to FEMA's organization. FEMA proposes to remove the references to the Reorganization Plan No. 3 of 1978, Executive Order 12127, Executive Order 12148, and Executive Order 13286. The Reorganization Plan and Executive Orders 12127 and 12148 established FEMA as an agency in 1979 and established its functions. Executive Order 13286 revised Executive Order 12148 and transferred some of FEMA's authorities to DHS. The Homeland Security Act of 2002, 6 U.S.C. 101 *et seq.,* superseded previous organizational authorities and provided organic authority for FEMA as a component agency of DHS. FEMA proposes to remove the superseded authorities and retain the citation to the Homeland Security Act of 2002.

2. Section 80.3 Definitions

FEMA proposes nonsubstantive revisions to simplify definitions and improve consistency among FEMA's HMA programs. FEMA proposes to simplify the definition of ''market value'' to provide clearer meaning and reflect the definition found in widely recognized resources.[90]

FEMA proposes to add a definition for ''Federal award'' to reflect the definition in 2 CFR part 200. FEMA's proposed definition is similar to the definition in 2 CFR 200.38(a)(1),[91] with two exceptions. First, FEMA's proposed definition uses the terms ''recipients'' and ''subrecipients'' instead of the term ''non-Federal entities.'' The term ''non-Federal entity,'' as defined at 2 CFR 200.69, includes entities that are not eligible recipients or subrecipients under all of FEMA's HMA programs. While all HMA recipients and subrecipients are ''non-Federal entities'' under 2 CFR part 200, FEMA proposes to tailor the definitions in part 80 so that they are program-specific and work when read in conjunction with the regulations for the FMA Program and HMGP. Second, FEMA proposes to add a sentence to the definition to clarify that the terms ''award'' and ''grant'' may also be used to describe a ''Federal award.'' This is a nonsubstantive change to make it clear that the terms are interchangeable.

FEMA proposes to add a definition for ''pass-through entity'' to reflect the definition in 2 CFR part 200. FEMA's proposed definition of ''pass-through entity'' is substantively the same as the definition in 2 CFR 200.74, with one exception. FEMA's proposed definition uses the terms ''recipients'' and ''subrecipients'' instead of the term ''non-Federal entities.'' The term ''non-Federal entity,'' as defined at 2 CFR 200.69, includes entities that are not eligible recipients or subrecipients under all of FEMA's HMA programs. While all HMA recipients and subrecipients are ''non-Federal entities'' under 2 CFR part 200, FEMA proposes to tailor the definitions in part 80 so that they are program-specific and work when read in conjunction with the regulations for the FMA Program and HMGP.

FEMA proposes to replace the definitions ''grantee,'' ''subgrant,'' and ''subgrantee,'' with definitions for ''recipient,'' ''subaward,'' and ''subrecipient,'' respectively, to better align with the terms and definitions used in 2 CFR part 200 and the HMA Guidance. The proposed definition of ''recipient'' is similar to the definition at 2 CFR 200.86; however, FEMA proposes to use the terms ''State or Indian Tribal government'' instead of the term ''non-Federal entity'' to reflect the terms and definitions in this proposed rule, which are tailored to part 80 and reflect which entities are eligible recipients for purposes of part 80. The proposed definition of ''subaward'' is similar to the definition at 2 CFR 200.92; however, FEMA proposes to use the terms ''recipient'' and ''subrecipient'' instead of the term ''non-Federal entity'' to reflect the terms and definitions in this proposed rule, which are tailored to part 80. The proposed definition of ''subrecipient'' is similar to the definition at 2 CFR 200.93; however, FEMA proposes to use the terms ''State agency, community, or Indian Tribal government'' instead of the term ''non-Federal entity'' to reflect which entities are eligible subrecipients for purposes of part 80.

Finally, FEMA proposes to revise the definitions of ''applicant'' and ''subapplicant.'' FEMA proposes to replace the term ''grant'' in the current definition of ''applicant'' with the term ''Federal award.'' This is a nonsubstantive change to use the newly defined term ''Federal award'' (proposed § 80.3(c)) throughout the definitions. FEMA also proposes to add that once funds have been awarded, the applicant becomes the recipient and may also be a pass-through entity. This is a nonsubstantive addition to clarify the relationship between the terms ''applicant,'' ''recipient,'' and ''pass-through entity'' for the ease of the reader. FEMA proposes to revise the definition of ''subapplicant'' to replace ''grantee'' with ''recipient'' and ''subgrantee'' with ''subrecipient'' to reflect the terms and definitions in this proposed rule, which are tailored to part 80. FEMA proposes to make conforming amendments to these terms throughout part 80.

3. Section 80.13 Application Information

In paragraph (a)(3), FEMA proposes to replace ''FEMA's Office of General Counsel'' with ''FEMA's Office of Chief Counsel.'' This is a nonsubstantive change intended to reflect FEMA's current organizational structure (FEMA's Office of General Counsel became the Office of Chief Counsel when FEMA became a component of DHS).

4. Section 80.19 Land Use and Oversight

In addition to replacing outdated terms with substantively similar terms that better align with 2 CFR part 200 and the HMA Guidance (*i.e.,* replacing ''grantee'' with ''recipient,'' etc.), FEMA proposes in paragraph (e) to move the sentence in (e)(1)(i) to paragraph (e)(1), and redesignate paragraphs (e)(1)(ii), and (e)(1)(ii)(A) through (C) as (e)(2), and (e)(2)(i) through (iii), respectively. This nonsubstantive redesignation is intended to conform this section to the

[88] *See, e.g.,* 44 CFR 206.101(m), 206.115(a), 206.171(f)(5), 206.204(e)(2), 206.206(c), and 206.366(d)(4).

[89] See, *e.g.,* §§ 80.5 (Roles and responsibilities), 80.9 (Eligible and ineligible costs), 80.11 (Project eligibility), 80.13 (Application information), 80.17 (Project implementation), 80.19 (Land use and oversight), and 80.21 (Closeout requirements).

[90] *See, e.g,* The Law Dictionary, Black's Law Dictionary Free Online Legal Dictionary, 2nd ed.; West's Encyclopedia of American Law, 2nd ed.

[91] 2 CFR 200.38(a)(1) (the Federal financial assistance that a non-Federal entity receives directly from a Federal awarding agency or indirectly from a pass-through entity).

regulatory drafting principle of proper subordination (*e.g.,* it is improper to have an (e)(1) where there is not an (e)(2)).

5. Section 80.21 Closeout Requirements

In paragraph (d), FEMA proposes to replace the word ''property'' with the word ''structure'' to conform to the definition of ''repetitive loss structure'' provided in BW–12 and proposed § 77.2, discussed above.

D. 44 CFR Part 201, Mitigation Planning

FEMA proposes to replace outdated terms and definitions throughout part 201 with substantively similar terms and definitions that better align with 2 CFR part 200 and the HMA and Mitigation Planning programs guidance documents. These are nonsubstantive revisions intended to simplify definitions and improve consistency among FEMA's HMA and Mitigation Planning programs. FEMA also proposes to replace the word ''shall'' with the word ''will'' or ''must,'' as appropriate.

1. Part 201 Authority

FEMA proposes to revise the authority citation for part 201 to remove historical authorities relating to FEMA's organization. FEMA proposes to remove the references to the Reorganization Plan No. 3 of 1978, Executive Order 12127, Executive Order 12148, and Executive Order 13286. The Reorganization Plan and Executive Orders 12127 and 12148 established FEMA as an agency in 1979 and established its functions. Executive Order 13286 revised Executive Order 12148 and transferred some of FEMA's authorities to DHS. The Homeland Security Act of 2002, 6 U.S.C. 101 *et seq.,* superseded previous organizational authorities and provided organic authority for FEMA as a component agency of DHS. FEMA proposes to remove the superseded authorities and retain the citation to the Homeland Security Act of 2002.

2. Section 201.1 Purpose

FEMA proposes to replace the word ''polices'' with ''policies'' in paragraph 201.1(a) as the word ''polices'' is a typographical error.

3. Section 201.2 Definitions

FEMA proposes to revise the definition of ''severe repetitive loss'' properties and to add a new definition for ''repetitive loss structure'' to reflect the definitions provided in BW–12 and proposed in this rulemaking.[92] FEMA proposes to remove the definitions of the ''repetitive flood claims'' and ''severe repetitive loss'' programs as BW–12 eliminated the RFC and SRL programs.

FEMA proposes to add definitions for the terms ''applicant'' and ''subapplicant'' to reflect the terms and definitions in proposed § 77.2. FEMA also proposes to add new definitions for ''Federal award'' and ''pass-through Entity'' to reflect the definitions in 2 CFR part 200. FEMA's proposed definition of ''Federal award'' is similar to the definition in 2 CFR 200.38(a)(1),[93] with two exceptions. First, FEMA's proposed definition uses the terms ''recipients'' and ''subrecipients'' instead of the term ''non-Federal entities.'' The term ''non-Federal entity,'' as defined at 2 CFR 200.69, includes entities that are not eligible recipients or subrecipients under FEMA's HMA programs. While FMA recipients and subrecipients are ''non-Federal entities'' under 2 CFR part 200, FEMA proposes to tailor the definitions so that they work in conjunction with the regulations for the FMA program and HMGP. Second, FEMA proposes to add a sentence to the definition to clarify that the terms ''award'' and ''grant'' may also be used to describe a ''Federal award'' under the FMA program regulations. This is a nonsubstantive change to make it clear that the terms are interchangeable. FEMA proposes to add a definition for ''pass-through entity'' to reflect the definition in 2 CFR part 200. FEMA's proposed definition of ''pass-through entity'' is substantively the same as the definition in 2 CFR 200.74, with one exception. FEMA's proposed definition uses the terms ''recipients'' and ''subrecipients'' instead of the term ''non-Federal entities.'' The term ''non-Federal entity,'' as defined at 2 CFR 200.69, includes entities that are not eligible recipients or subrecipients under FEMA's HMA programs. While all HMA recipients and subrecipients are ''non-Federal entities'' under 2 CFR part 200, FEMA proposes to tailor the definitions so that they work in conjunction with regulations for the FMA program and HMGP.

FEMA proposes to replace the definitions of ''grantee'' and ''subgrantee'' with definitions for ''recipient'' and ''subrecipient,'' respectively, to better align with the terms and definitions used in 2 CFR part 200 and the HMA Guidance. The proposed definition of ''recipient'' is similar to the definition at 2 CFR 200.86; however, FEMA proposes to use the terms ''State or Indian Tribal government'' instead of the term ''non-Federal entity'' to reflect the terms and definitions in this proposed rule, which are tailored to part 201 and reflect which entities are eligible recipients for purposes of part 201. The proposed definition of ''subrecipient'' is similar to the definition at 2 CFR 200.93; however, FEMA proposes to specify which entities are eligible subrecipients for purposes of part 201. Depending on the program, subrecipients of hazard mitigation assistance subawards can be a State agency, local government, private nonprofit organization, or Indian Tribal government. Subrecipients of FMA subawards can be a State agency, community, or Indian Tribal government, as described in 44 CFR part 77. Finally, FEMA proposes to add a definition of ''subaward'' similar to the definition at 2 CFR 200.92; however, FEMA proposes to use the terms ''recipient'' and ''subrecipient'' instead of the term ''non-Federal entity'' to reflect the terms and definitions tailored to part 201 in this proposed rule.

4. Section 201.3 Responsibilities

FEMA proposes to revise paragraph (c)(1) to reflect the elimination of the SRL program and to conform to the mitigation planning requirements proposed in this rulemaking. *See* proposed 44 CFR 77.6. The last sentence of paragraph (c)(1) would be removed and replaced with a sentence describing the mitigation plan requirement in proposed § 77.6(b). *See* proposed 44 CFR 201.3(c)(1). FEMA proposes similar revisions to paragraph (e)(1). The last two sentences of paragraph (e)(1) would be removed and replaced with a sentence describing the mitigation plan requirement in proposed § 77.6(b). *See* proposed 44 CFR 201.3(e)(1).

5. Section 201.4 Standard State Mitigation Plans

FEMA proposes to revise paragraph (c)(3)(v) to reflect the elimination of the SRL program and to conform to the mitigation planning requirements proposed in this rulemaking. *See* proposed 44 CFR 77.6. The current language would be removed and replaced with a sentence describing the mitigation plan requirement found in proposed § 77.6(b). *See* proposed 44 CFR 201.4(c)(3)(v). In paragraph (c)(4)(iii), FEMA proposes to replace the word ''properties'' with the word ''structures'' to reflect the definition of ''repetitive loss structure'' used in BW–12 and proposed § 77.2.

[92] 42 U.S.C. 4104c(h), 4121(a)(7); proposed 44 CFR 77.2.

[93] 2 CFR 200.38(a)(1) (the Federal financial assistance that a non-Federal entity receives directly from a Federal awarding agency or indirectly from a pass-through entity).

6. Section 201.6 Local Mitigation Plans

In § 201.6(a)(1), FEMA proposes to remove the reference to the RFC program, which was eliminated by BW–12.

7. Section 201.7 Tribal Mitigation Plans

FEMA proposes to revise § 201.7 to reflect the elimination of the SRL and RFC programs and to conform to the mitigation planning requirements proposed in this rulemaking. *See* proposed 44 CFR 77.6. FEMA proposes to remove paragraph (a)(2) to reflect the elimination of the SRL program and to remove the reference to the RFC program in paragraph (a)(3). FEMA proposes to redesignate current paragraphs (a)(3) and (4) as (a)(2) and (3), respectively. The language in current paragraph (c)(3)(vi) would be removed and replaced with a sentence describing the mitigation plan requirement in proposed § 77.6(b). *See* proposed 44 CFR 201.7(c)(3)(vi).

E. 44 CFR part 206 Subpart N, Hazard Mitigation Grant Program

Throughout part 206,[94] FEMA proposes to replace outdated terms and definitions with substantively similar terms and definitions that better align with 2 CFR part 200 and the HMA guidance. These are nonsubstantive revisions intended to simplify definitions and improve consistency among FEMA's HMA programs. FEMA also proposes to replace the word ''shall'' with the word ''will'' or ''must,'' as appropriate.

1. Section 206.431 Definitions

FEMA proposes to add a definition for ''pass-through entity'' to reflect the definition in 2 CFR part 200. FEMA's proposed definition of ''pass-through entity'' is substantively the same as the definition in 2 CFR 200.74, with one exception. FEMA's proposed definition uses the terms ''recipients'' and ''subrecipients'' instead of the term ''non-Federal entities.'' The term ''non-Federal entity,'' as defined at 2 CFR 200.69, includes entities that are not eligible recipients or subrecipients under HMGP. While all HMGP recipients and subrecipients are ''non-Federal entities'' under 2 CFR part 200, FEMA proposes to tailor the definitions in part 206 subpart N so that they are program-specific and work when read in conjunction with the HMA-related regulations in parts 79 (proposed part 77), 80, and 201.

FEMA proposes to replace the definitions ''grantee,'' ''subgrant,'' and ''subgrantee,'' with definitions for ''recipient,'' ''subaward,'' and ''subrecipient,'' respectively, to better align with the terms and definitions used in 2 CFR part 200 and the HMA Guidance. The proposed definition of ''recipient'' is similar to the definition at 2 CFR 200.86; however, FEMA proposes to use the terms ''State or Indian Tribal government'' instead of the term ''non-Federal entity'' to reflect the terms and definitions in this proposed rule, which are tailored to reflect which entities are eligible recipients of HMGP. The proposed definition of ''subaward'' is similar to the definition at 2 CFR 200.92; however, FEMA proposes to use the terms ''recipient'' and ''subrecipient'' instead of the term ''non-Federal entity'' to reflect the terms and definitions in this proposed rule, which are tailored to the HMGP regulations. The proposed definition of ''subrecipient'' is similar to the definition at 2 CFR 200.93; however, instead of the term ''non-Federal entity,'' FEMA proposes to keep the language explaining which entities are eligible subrecipients of HMGP. FEMA proposes to make conforming amendments to these terms throughout part 206 subpart N.

FEMA also proposes to revise the definitions of ''applicant'' and ''Indian Tribal government'' and add a definition for ''subapplicant.'' Section 206.431 currently defines ''applicant'' as a State agency, local government, Indian Tribal government, or eligible private nonprofit organization, submitting an application to the grantee for assistance under the HMGP. FEMA proposes to clarify that an ''applicant'' is the non-Federal entity consisting of a State or Indian Tribal government, applying to FEMA for a Federal award under HMGP, and that upon award, the applicant becomes the recipient and may also be a pass-through entity. FEMA proposes this revision because the current definition mistakenly includes local governments and private nonprofit organizations (they are subapplicants, not applicants) and applicants do not submit an application to a recipient, but rather to FEMA. FEMA proposes to add a sentence to the end of the current definition of ''Indian Tribal government'' to clarify that Indian Tribal governments have the option to apply as an applicant or subapplicant. Lastly, FEMA's proposed definition for ''subapplicant'' would clarify that it means the State agency, local government, eligible private nonprofit organization, or Indian Tribal government submitting a subapplication to the applicant for financial assistance under HMGP, and that upon award, the subapplicant becomes the subrecipient. FEMA proposes adding this definition to more clearly distinguish the entities which may be subapplicants from those which may be applicants.

2. Section 206.432 Federal Grant Assistance

FEMA proposes to revise 206.432(b), *Amounts of Assistance,* to remove the references to specific sections of the Stafford Act. Pursuant to 42 U.S.C. 5170c(a), the total contributions for HMGP in each disaster should be based upon the estimated aggregate amount of grants to be made under the Stafford Act for the major disaster. Although 42 U.S.C. 5170c originally specified that the total should be based on the estimated aggregate amount of grants to be made under *Section 406* of the Act,[95] Congress later amended this provision to remove the specific section reference.[96] FEMA included specific section references when it promulgated the HMGP regulations in 1990 to reflect the level of specificity in the statute at that time.[97] FEMA subsequently revised 206.432(b) to include additional sections of the Stafford Act under which major disaster assistance is made.[98] However, this approach requires FEMA to update 206.432(b) whenever statutory amendments change the section numbers or authorize assistance under new sections of the Act.[99] FEMA now proposes to remove specific section references from 206.432(b) so that the regulation mirrors the statutory provision and captures all of the sections under which grants are made with respect to a major disaster. This change would improve consistency with the statute and eliminate the need to continuously update a list of Stafford Act sections.

FEMA also proposes to remove the second sentence of paragraph (c), which provides the cost share under HMGP for major disasters declared before June 10, 1993. As this date has long since passed, it is no longer necessary to include in the HMGP regulations.

3. Section 206.434 Eligibility

Paragraph (a), *Applicants,* currently describes the entities which are eligible

[94] *See, e.g.,* §§ 206.433 (State responsibilities), 206.435 (Project identification and selection criteria), 206.436 (Application procedures), 206.437 (State Administrative Plan), 206.438 (Project management), 206.439 (Allowable costs), and 206.440 (Appeals).

[95] Public Law 100–707, 102 Stat. 4698 (Nov. 23, 1988).

[96] Public Law 103–181, 107 Stat. 2054 (Dec. 3, 1993).

[97] *See* 55 FR 35537 (Aug. 30, 1990).

[98] *See* 59 FR 24356 (May 11, 1994).

[99] *See, e.g.,* 67 FR 8853 (Feb. 26, 2002); 72 FR 61750 (Oct. 31, 2007); 74 FR 47482 (Sep. 16, 2009).

to apply for the Hazard Mitigation Grant Program, listing States and local governments, private nonprofit organizations owning or operating a private nonprofit facility, and Indian Tribes. FEMA proposes to remove the word ''Applicants'' from the first sentence, clarify in subparagraph (a)(1) that applicants include States and Indian Tribal governments, and revise subparagraph (a)(2) to clarify that State agencies and local governments, eligible private nonprofit organizations, and Indian Tribal governments may be subapplicants. FEMA proposes to remove the language at subparagraph (a)(3) (Indian Tribes or authorized Tribal organizations and Alaska Native villages or organizations, but not Alaska native corporations with ownership vested in private individuals) because this language refers to non-federally recognized Tribes, which are included under local governments. 42 U.S.C. 5122(8)(B). FEMA proposes this revision to more clearly distinguish the entities which may be applicants from those which may be subapplicants.

In paragraph (e), *Property acquisitions and relocation requirements,* FEMA proposes to retain the first sentence and remove the rest of the paragraph. FEMA proposes to remove this language because it addresses requirements for major disasters declared before December 3, 2007. For all major disasters declared on or after December 3, 2007, the property acquisitions and relocation requirements are found in part 80.

IV. Regulatory Analysis

A. Executive Order 12866, as Amended, Regulatory Planning and Review; Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs

Executive Orders 12866 (''Regulatory Planning and Review'') and 13563 (''Improving Regulation and Regulatory Review'') 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 (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. Executive Order 13771 (''Reducing Regulation and Controlling Regulatory Costs'') directs agencies to reduce regulation and control regulatory costs and provides that ''for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process.''

The Office of Management and Budget (OMB) has not designated this rule a significant regulatory action under section 3(f) of Executive Order 12866. Accordingly, OMB has not reviewed it. This rule is exempt from the requirements of Executive Order 13771 because it is non-significant under Executive Order 12866. See OMB's Memorandum ''Guidance Implementing Executive Order 13771, Titled 'Reducing Regulation and Controlling Regulatory Costs' '' (April 5, 2017).

Need for Regulation

The Biggert-Waters Flood Insurance Reform Act of 2012 (BW–12), Pub. L.112–141, 126 Stat. 916, amended the National Flood Insurance Act of 1968 (NFIA) to require changes to FEMA's hazard mitigation assistance (HMA) programs. FEMA implemented most of these changes through the *Hazard Mitigation Assistance Guidance* in 2013.[100] FEMA now proposes to update its hazard mitigation assistance regulations to reflect these changes.

Following guidance in OMB Circular A–4, FEMA assessed the impacts of this rule against a no-action baseline as well as a pre-statutory baseline. The no-action baseline is an assessment against what the world would be like if the proposed rule is not adopted. The pre-statutory baseline is an assessment against what the world would be like if the relevant statute(s) had not been adopted and, in this case, already been implemented through guidance.

Under a no-action baseline, this rule would result in cost savings to FEMA, and familiarization costs to HMA recipients. Under a pre-statutory baseline, this rule results in distributional impacts and qualitative benefits, but no marginal costs. The annual distributional impact of this rule is estimated at $4.16 million in increased transfers from FEMA to HMA recipients.

FEMA addressed the substantive changes in this analysis and presented how they affect costs, benefits, and transfers. The remaining changes are nonsubstantive, meaning they are technical and include definitional updates and other changes that modernize and standardize regulations, reduce redundancy, or increase readability. The nonsubstantive changes do not have an economic impact. FEMA included a detailed marginal analysis table that summarizes the changes in this proposed rule and the related impacts in the public docket for this rulemaking available on *www.regulations.gov* under Docket ID FEMA–2019–0011.

Affected Population

The proposed rule would affect all recipients of FEMA's Flood Mitigation Assistance (FMA) grants. Recipients include 56 State and territorial governments and 573 Indian Tribal governments.[101] Local governments and governmental organizations such as flood districts and sewer districts are considered subrecipients and must apply through a State or Indian Tribal government. For simplicity, FEMA refers to the affected population as ''recipients'' throughout the analysis, except in cases where there are different requirements for recipients or subrecipients.

Baselines

BW–12 made substantial changes to FEMA's HMA programs. FEMA implemented most of these changes via the HMA Guidance in 2013. FEMA now proposes to codify those changes in this rule. Following guidance in OMB Circular A–4, FEMA assessed the impacts of this rule against a pre-statutory baseline covering 2006–2012 (pre-BW–12) and a no-action baseline covering 2013–2017 [102] (post-BW–12).

The pre-statutory baseline shows the effects of the proposed rule compared to the current regulations (*i.e.,* as if FEMA had not already implemented the changes through the HMA Guidance). The no-action baseline shows the effects of the proposed rule compared to current FEMA practice (*i.e.,* compared to the HMA Guidance, which reflects FEMA's current practice, but not the current regulations).

Under the pre-statutory baseline, the proposed rule has distributional impacts and qualitative benefits. The distributional impacts would affect recipients of Repetitive Loss (RL) grants and Severe Repetitive Loss (SRL) grants that were combined into the FMA program pursuant to BW–12. Under BW–12, RL and SRL properties received increased assistance, while standard mitigation properties received decreased assistance. Under the no-action baseline, the only impacts are

[100] FEMA, Hazard Mitigation Assistance Guidance, July 12, 2013, available at *https://www.fema.gov/media-library/assets/documents/33634* (last accessed Jan 8, 2020).

[101] Indian Entities Recognized by, and Eligible to Receive Services from the United States Bureau of Indian Affairs, 84 FR 1200, (Feb 1, 2019).

[102] 2017 is the last year complete data is available.

implementation costs and Federal cost savings. Table 1 shows the impacts of this proposed rule under the pre-statutory and no-action baselines.

TABLE 1—ANNUAL EFFECTS OF PROPOSED RULE UNDER PRE-STATUTORY AND NO-ACTION BASELINES

[2018$]

Baseline	Costs	Benefits	Transfers
Pre-Statutory	$610 (year 1 only)	Qualitative	$28.4 million from FEMA to grant recipients.
No-Action	610 (year 1 only)	$85,463	None.

Effects

The primary effects of BW–12 that would be codified by this proposed rule resulted from changes in the Federal cost shares. A cost share is the portion of the costs of a Federally assisted project or program borne by the Federal Government. FEMA pays a portion of the cost of a project, or the Federal cost share, and the recipient pays the remaining share.

FMA Grant Cost Sharing Changes. The current regulations still reflect the pre-BW–12 cost share provisions of the RL and SRL grant programs. BW–12 modified these two programs and FEMA implemented the modifications in the 2013 HMA Guidance. The newly expanded FMA program now serves the recipients of these grant programs.

BW–12 increased the RL Federal cost share from 75 percent to between 75 and 90 percent, and increased the SRL Federal cost share from between 90 and 100 percent to 100 percent. Table 2 shows the cost shares by type of grant.

TABLE 2—COST SHARE BY TYPE OF GRANT

Baseline	RL		SRL	
	FEMA cost share (%)	Recipient cost share (%)	FEMA cost share (%)	Recipient cost share (%)
Pre-Statutory (2006–2012) Pre-BW–12	75	25	90 to 100	10 to 0
No-Action (2013–2017) Post-BW–12	75–90	10–25	100	0

Lowering the Cap and Removing the Frequency Restriction. Prior to BW–12, FMA funds for the development or update of the flood portion of community multi-hazard mitigation plans were capped at $150,000 in Federal funding for States and $50,000 for communities, with a total cap of $300,000 in Federal funding for applications statewide. FEMA could not award State or community planning grants more than once every 5 years.

BW–12 limited FMA grant funds to develop or update the flood portion of community multi-hazard mitigation plans to a $50,000 Federal share to any recipient or a $25,000 Federal share to any subrecipient. BW–12 also removed the restriction on awarding State or community planning grants more than once every 5 years. FEMA discusses the impacts of these changes in the costs section.

Shifting from State Allocations to Competition. Prior to BW–12, FEMA annually allocated FMA program funding to recipients based on the number of insured properties and RL properties present within the recipient's jurisdiction. Recipients that did not meet the minimum threshold to receive a target allocation had to apply against funds that were set aside for this purpose. BW–12 replaced this process with a fully competitive program that selects subapplications against agency priorities identified annually. This change allows FEMA to identify and mitigate properties with the highest risk from flooding, thereby providing the greatest savings to the NFIP.

Costs

Costs for this proposed rule would result from implementation of the rule, rather than the 2013 HMA Guidance. FEMA estimated these costs against the no-action baseline since these are directly attributable to updating the text of the regulation, and not program changes that FEMA already implemented.

Familiarization Costs. FEMA estimated familiarization costs for States, but not for local emergency management divisions or jurisdictions. FEMA assumed States regularly update their emergency response networks and notify local emergency management divisions on any changes. FEMA believes that States would continue to disseminate the new information through each State's established process. FEMA assumed that each State grant recipient would have two personnel that would need to familiarize themselves and understand the proposed rule by reading the existing and new regulations to understand the changes. FEMA expects each person to spend one hour to become familiar with the changes. FEMA assumes that the rule is likely to be reviewed by each State's Emergency Management Director and one administrative support personnel. FEMA assumes that BLS occupations Emergency Management Director (SOC: 11–9160, mean hourly wage $39.70) [103] and First-Line Supervisor of Office and Administrative Support Workers (SOC: 43–1010, mean hourly wage $28.53) [104] are most representative of these roles in a State. Using the 1.46 multiplier,[105] the fully loaded wage rates are $57.96 and $41.65 respectively. The estimated total cost of recipients making themselves

[103] May 2018 National Occupational Employment and Wage Rates, National File (xls), First-Line Supervisors of Office & Admin Support Workers (OCC Code: 43–1010, Average, Column Title: H_Mean). Accessed and downloaded June 4, 2019. *https://www.bls.gov/oes/tables.htm.*

[104] May 2018 National Occupational Employment and Wage Rates, National File (xls), Emergency Management Directors (OCC Code: 11–9160, Average, Column Title: H_Mean). Accessed and downloaded June 4, 2019. *https://www.bls.gov/oes/tables.htm.*

[105] December 2018 Bureau of Labor Statistics, Employer Costs for Employee Compensation, Table 1. Employer costs per hour worked for employee compensation and costs as a percent of total compensation: Civilian workers, by major occupational and industry group, page 4. Accessed and downloaded June 4, 2019. *https://www.bls.gov/news.release/archives/ecec_03192019.pdf.*

familiar with the proposed rule is $4,582 in year 1 ($742 per year annualized at 7 percent over 10 years, and $635 at 3 percent). ((56 recipients × 1 hour × $57.96 wage) + (56 recipients × 1 hour × $41.65 wage) = $5,578.16).

Summary of Costs. FEMA estimated the proposed rule would have familiarization costs of $5,578 in the first year of implementation. FEMA assumed that all staff and resources would come from existing sources and thus represent an opportunity cost.

Benefits

This proposed rule would be beneficial to both FEMA and Hazard Mitigation Grant recipients. While the benefits are not quantifiable, FEMA believes that changes implemented by BW–12 allow it to target the most vulnerable properties, and streamline the mitigation grant process. Under the no-action baseline, most changes in this proposed rule would be technical and include definitional updates and other changes made to harmonize FEMA regulations with current FEMA practices and HMA guidance, modernize and standardize the regulations, reduce redundancy, or increase readability. These changes would be largely nonsubstantive and not have an economic impact.

Cost Savings. Under a no-action baseline, FEMA estimated costs savings of $85,463 that would result from removing the definition of ''market value'' at 44 CFR 79.2(f). Currently, the regulation requires FEMA to use the market value of a structure when making grant determinations. Removal of this requirement would allow FEMA to consider the value of the structure listed on the flood insurance policy when considering a grant request related to a vulnerable structure, rather than the ''market value.'' This would result in a reduction in the time it takes FEMA personnel to review a grant application. Using ''market value'' required additional research and appraisals, whereas the flood insurance property value is readily available to FEMA personnel. FEMA estimated this change would reduce the personnel time it takes to review a grant application by an estimated 2 hours per review for a total of $85,463 annually.

FEMA based its estimates on the estimated annual average number of FMA grant applications that required a market value review between 2013 and 2017 and the wage rates of the personnel reviewing the grants. The annual average number of grant requests was 512. Table 3 shows the annual number of grant requests for vulnerable properties that required a market value review between 2013 and 2017.

TABLE 3—ANNUAL GRANT REQUESTS REQUIRING MARKET VALUE REVIEW

Year	FMA program
2013	602
2014	438
2015	508
2016	592
2017	418
Total	2,558
Annual average	512

Reviews of the grant applications can vary widely from simple—all documentation accompanies the request and requires very little follow-up—to complex. For this analysis, FEMA chose to capture the variability in the grant application reviews by using a weighted average of the hours it takes to complete the reviews. FEMA estimated that 25 percent of the reviews are simple; these reviews take 8 hours each on average to complete. Reviews of applications that are average in their complexity comprise 50 percent of the reviews and are assumed to take 12 hours each. Twenty-five percent of the reviews are complex and take 16 hours on average to complete.[106] Taking a weighted average of the times listed and using the distribution of 25 percent simple/50 percent average/25 percent complex, FEMA estimated that grant application reviews take 12 hours on average to complete. ([(0.25 × 8) + (0.50 × 12) + (0.25 × 16)] = 12 hours).

Program Specialists (GS 13, step 5) and contracted Civil Engineers conduct the reviews, the Program Specialists conduct 75 percent of reviews and the Civil Engineers conduct the remaining 25 percent. The fully-loaded average hourly wage for GS 13, step 5 at the FEMA regional locations is $89.35 [107] and $65.79 [108] is the fully-loaded hourly wage rate for Civil Engineers. Using the 12-hour average estimate for reviewing the grant application, FEMA estimates that each year it spends $512,778 on average to review FMA grant applications. ([(512 grant reviews × 12 hours per review × $89.35 hourly wage for Program Specialist × 0.75) + ([(512 grant reviews × 12 hours per review × $65.79 hourly wage for Civil Engineer × 0.25)] ÷ (0.75 + 0.25) = $512,778.20).

FEMA estimated that removing the definition of ''market value'' would reduce its administrative burden by 2 hours per review. This results in each review taking 10 hours instead of 12, on average. Using the same calculation as above and 10 hours instead of 12 hours per review, FEMA's average amount spent each year on reviewing FMA grant applications would be $427,315 and would result in an estimated annual cost savings of $85,463. ($512,778 − $427,315 = $85,463).

Clarification of Mitigation Grant Terms and Conditions. The current HMA grant program regulations contain inconsistencies or vague language that may cause confusion. Specifically, FEMA would add definitions for ''Federal award'' and ''pass-through entity;'' and replace definitions of ''grantee,'' ''subgrant,'' and ''subgrantee'' with ''recipient,'' ''subaward,'' and ''subrecipient,'' respectively. These changes would make the HMA regulations consistent with FEMA's other regulations.

Revising, Adding, or Removing Definitions. FEMA proposes to revise existing definitions for clarification purposes, to add several definitions to conform with BW–12 and current agency practice, and to delete others that are obsolete. FEMA believes the changes are clear and more consistent with definitions used in 2 CFR part 200 and the HMA Guidance.[109]

Shifting from Standard Mitigations to RL and SRL Structures. One of the main focuses of this proposed rulemaking is on mitigation grants made to properties in the NFIP that have been repeatedly subject to costly loss claims. FEMA provides a range of available mitigation options including the FMA program to address vulnerable RL and SRL structures. Once a structure is mitigated through one of the programs, it could be

[106] FEMA personnel who review the FMA grant requests provided the information on the average time to review and the discussion of complexity.

[107] Based on the OPM General Schedule of Pay, January 2018, the average base wage of GS 13, step 5 in each of the FEMA regional office locations is $61.20 (Boston, MA; NY, NY; Philadelphia, PA; Atlanta, GA; Chicago, IL; Denton, TX; KC, MO; Denver, CO; Oakland, CA; and Bothell, WA), which is multiplied by a 1.46 benefits multiplier (December 2018, BLS Employer Costs for Employee Compensation) to get a fully loaded wage rate of $89.35/hour. Access and downloaded July 5, 2019. *https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2018/salhrl.pdf.*

[108] Based on Bureau of Labor Statistics May 2018 National Employment and Wage Rate, National File (xls), a Civil Engineer, SOC 17–2050, has a base wage of $45.06, which is multiplied by a benefits multiplier of 1.46 (December 2018, BLS Employer Costs for Employee Compensation) to get a fully loaded wage rate of $65.79/hour. Accessed and downloaded July 5, 2019. *https://www.bls.gov/oes/tables.htm.*

[109] Hazard Mitigation Assistance Guidance (HMA Guidance), Feb. 27, 2015, available at *https://www.fema.gov/media-library-data/1424983165449-38f5dfc69c0bd4ea8a161e8bb7b79553/HMA_Guidance_022715_508.pdf* (last accessed Feb. 13, 2020).

protected from flooding, and can be removed from the repetitive flood loss list of un-mitigated properties insured by the NFIP. This reduces the flood vulnerability to RL and SRL structures, preventing further losses to the policyholders, as well as to FEMA. This benefit applies to the pre-statutory baseline, but not the no-action baseline because recipients and FEMA both realized this benefit beginning in 2013 when FEMA implemented it through the HMA Guidance.

Shifting from State Allocations to Competition. Before BW–12, FMA program funding was based on an allocation methodology that required an analysis of the number of insured properties and RL properties present within a jurisdiction and each State was allocated a share of the overall available funding. BW–12 changed this process to a fully-competitive program that allows FEMA to select subapplications according to FEMA priorities no matter the location.

This change lifted the constraints that were formerly in place against multiple eligible subrecipients in the same jurisdiction with vulnerable properties, allowing a more adequate coverage area within and across States and contributing to the increase in the size and volume of RL and SRL properties covered by each grant. FEMA is able to identify and mitigate properties with the highest risk from flooding and provide the greatest savings to the NFIP. This benefit applies to the pre-statutory baseline, but not the no-action baseline because recipients and FEMA both realized this benefit beginning in 2013 when FEMA implemented it through the HMA Guidance.

Eliminating the Limit on In-Kind Contributions. Eliminating the limit on in-kind contributions for a recipient's cost share modifies the nature, or make-up, of the recipient's contribution but does not change the overall dollar amount required for the recipient's contribution. FEMA believes this is advantageous because recipients and subrecipients are able to leverage their own optimal mix of in-kind and cash to meet their portion of the cost-share. There is no change to transfers between FEMA and grantees because the cost share does not change; however, the make-up of the recipient's portion changes.

Summary of Benefits. Under a no-action baseline FEMA believes this rule would promote a better understanding of the FMA program by updating the regulations that govern the HMA programs to conform with adjustments made by BW–12 and current agency practice. These changes would clarify existing requirements and help facilitate the flood portion of the Hazard Mitigation Grant Program processes.

FEMA estimated annual cost savings of $85,463 per year. Removing the definition of ''market value'' would lead to cost savings to FEMA. Removing this definition would reduce the time it takes to conduct an initial grant application review by 2 hours.

Under a pre-statutory (pre-BW–12) baseline, FEMA believes there are considerable benefits associated with the shift to entirely competitive awards for the grants instead of the previous State-specific allocations, as well as the more flexible in-kind match option. The shift to more vulnerable RL and SRL properties by modifying the cost shares and giving priority to applications with the most vulnerable properties are expected to reduce the frequency of loss claims and promote community resiliency through mitigation. There are also qualitative benefits due to the elimination of the cap on FMA funding for States and communities and the opening of the program to a fully competitive award system. These changes enhance FEMA's ability to administer the FMA program in a more streamlined and cost effective manner. Removing State allocations of grant resources and accepting in-kind State contributions further streamline the program. Collectively, these benefits justify the proposed rule and update FEMA's regulations to reflect current statutory authority.

Transfers

Federal Cost Shares. The adjustments in cost shares made by BW–12 result in distributional impacts, with certain grant programs receiving relative increases and decreases in grant funds. To analyze the impact of changes to the cost shares, FEMA summarized available mitigation project data for standard, RL, and SRL grants.[110]

Between 2006 and 2012 (pre-BW–12), FEMA provided a total of 390 grants to 244 recipients for 1,014 properties. The value of those grants was $287,140,206 with FEMA paying $202,072,763 and recipients paying $85,067,443. Table 4 shows the distribution of these grants by category.

TABLE 4—PRE-BW–12 MITIGATION PROJECTS AND ASSOCIATED VALUE BY GRANT CATEGORY

[2018$]

Year	Standard (≤75% federal cost share)			Repetitive loss (75% federal cost share)			Severe repetitive loss (90–100% federal cost share)		
	Number of grants	Value of grants	Federal share obligated	Number of grants	Value of grants	Federal share obligated	Number of grants	Value of grants	Federal share obligated
2006	93	$38,326,383	$28,399,846	.....	$	$	2	$147,974	$147,974
2007	85	45,485,645	33,225,037	.....	.....	.....	.....	.....	.....
2008	70	36,449,791	24,638,444	.....	.....	.....	1	34,540	31,086
2009	54	79,692,889	57,976,016	3	2,973,885	2,431,695	3	611,432	550,289
2010	35	32,133,654	22,507,910	2	1,454,583	881,884	.....	.....	.....
2011	17	17,218,947	11,035,040	.....	.....	.....	.....	.....	.....
2012	25	32,610,483	20,247,542	.....	.....	.....	.....	.....	.....
Average	54	40,273,970	28,289,976	3	632,638	473,368	2	113,421	104,193
Total	379	281,917,792	198,029,835	5	4,428,468	3,313,579	6	793,946	729,349

[110] FEMA assumes that the mitigation project level grant data with applications comprising mixed property categories resulting in blended cost share percentages (any total cost share not equal to 100 percent, 90 percent, or 75 percent Federal) would be rounded up to the nearest threshold category. This would not round up project values or Federal cost shares in dollar terms, only their tabulation and consideration as RL or SRL. An application with a determined Federal cost share of 91–99 percent would be counted as part of the 100 percent SRL category, while applications with 76–89 percent Federal cost shares would be counted as part of the 90 percent Federal RL category.

The 390 grants from pre-BW–12 were one of three types—Standard Mitigation (up to 75 percent Federal cost share); RL (75 percent Federal cost share); or SRL (90–100 percent Federal cost share). Prior to BW–12, there were 379 Standard Mitigation grants with a total value of $281,917,792. FEMA's share was $198,029,835 and the recipients' share was $83,887,957 (70 percent average Federal cost share). For RL grants, there were five grants with a total value of $4,428,468. FEMA's share was $3,313,579 and the recipients' share was $1,114,889 (75 percent Federal cost share). For SRL grants, there were six grants made with a total value of $793,946. FEMA's share was $729,349 and the recipients' share was $64,597 (92 percent Federal cost share).

Post-BW–12 (2013–2017), FEMA provided a total of 527 grants to 204 recipients for 2,873 properties. The total value of those grants was $682,040,624. FEMA's share was $622,171,437 and recipients' share was $59,869,187. Table 5 shows the distribution of these grants by category.

TABLE 5—POST-BW–12 MITIGATION PROJECTS AND ASSOCIATED VALUE BY GRANT CATEGORY
[2018$]

Year	Standard (≤75% federal cost share)			Repetitive loss (75–90% federal cost share)			Severe repetitive loss (100% federal cost share)		
	Number of grants	Value of grants	Federal share obligated	Number of grants	Value of grants	Federal share obligated	Number of grants	Value of grants	Federal share obligated
2013	18	$10,723,474	$7,079,996	5	$11,904,781	$10,163,082	65	$98,392,747	$88,681,628
2014	28	8,730,394	5,245,019	5	6,731,307	5,749,293	68	73,550,347	74,444,363
2015	16	7,187,417	5,375,058	8	33,162,836	29,399,251	80	122,139,120	117,708,589
2016	26	11,762,427	8,729,565	12	29,128,628	24,800,531	99	170,742,360	156,950,119
2017	33	13,430,244	9,967,987	5	5,835,914	4,880,298	59	78,618,628	72,996,658
Average	24	10,366,791	7,279,525	7	17,352,693	14,998,491	74	108,688,640	102,156,271
Total	121	51,833,956	36,397,625	35	86,763,466	74,992,455	371	543,443,202	510,781,357

These 527 grants were one of three types—Standard Mitigation (up to 75 percent Federal cost share); RL (75–90 percent Federal cost share); or SRL (90–100 percent Federal cost share) (all post-BW–12 cost shares). There were 121 Standard Mitigation grants with a total value of $51,833,956. FEMA's share was $36,397,625 and the recipients' share was $15,436,331 (70 percent average Federal cost share). For RL grants, there were 35 grants with a total value of $86,763,466. FEMA's share was $74,992,455 and the recipients' share was $11,771,011 (86 percent Federal cost share). For SRL grants, there were 371 grants made with a total value of $543,443,202. FEMA's share was $510,781,357 and the recipients' share was $325,661,845 (94 percent Federal cost share).

These grants often include some ineligible costs, including cost overruns or underruns, the use of insurance proceeds that FEMA deducted as a duplication of benefits,[111] or increased cost of compliance (ICC),[112] so the actual cost shares do not equal the percentages listed above. For example, although SRL grants have a 100 percent Federal cost share, the actual average Federal share was 94 percent.

Changing Cost Shares and to a Fully Competitive Grant Process for FMA

Changing the cost shares had a distributional impact, where the proportion of Federal funds increased while the recipients' proportion decreased by the same amount. Similarly, the shift from State allocations of grant funding to a competitive-based program that allows grants to be allocated to the most vulnerable properties, resulting in distributional impacts where recipients in certain States receive more in grant funding where others see a decrease. FEMA was not able to isolate this effect from the effect of changing the cost shares, since they were implemented at the same time.

First, FEMA analyzed the shift in grant priorities as a distributional impact between grant programs. This was done by applying the change in percent share of standard, RL, and SRL grants (from pre-BW–12 to post-BW–12), to the total FMA grant funding post-BW–12, showing the relative decreases and increases by type of FMA grant in terms of post-BW–12 grant funding caused by making the grants competitive and shifting funding to riskier properties.

- The five-year total share of standard mitigation grants decreased by $617,928,805 post-BW–12 (7.6 percent of total funding post-BW–12 − 98.2 percent of funding pre-BW–12) × $682,040,624 total grant funds post-BW–12)).
- The five-year total share of RL grants increased by $76,388,550 post-BW–12 (12.7 percent − 1.5 percent × $682,040,624).
- The five-year total share of SRL grants increased by $541,540,225 post-BW–12 (79.7 percent − 0.3 percent × $682,040,624).

This shows the total five-year relative increases and decreases between FMA programs in terms of post-BW–12 grant funding: (−$617,928,805 for standard grants + $76,388,550 for SL grants + $541,540,225 SRL grants = $0).

Table 6 shows changes in the total number of grants as well as the Federal and non-Federal shares for all grants pre-BW–12 and post-BW–12 with the percent change in grants and funding.

[111] Duplication of Benefits refers to assistance from more than one source that is used for the same mitigation purpose or activity. The purpose may apply to the whole project or only part of it. HMA funds cannot duplicate funds received by or available to applicants or subapplicants from other sources for the same purpose. Examples of other sources include insurance claims, other assistance programs (including previous project or planning grants and subawards from HMA programs), legal awards, or other benefits associated with properties or damage that are the subject of litigation. HMA does not require that property owners seek assistance from other sources (except for insurance claims). However, it is the responsibility of the property owner to report other benefits received, any applications for other assistance, the availability of insurance proceeds, or the potential for other compensation, such as from pending legal claims for damages, relating to the property. References: Sec. 312 of the Stafford Act; 44 CFR 79.6(d)(7); Hazard Mitigation Assistance Guidance (February 27, 2015), Part III, D.5, pages 31–32; HMA Tool for Identifying Duplication of Benefits *http://www.fema.gov/library/viewRecord.do?id=6815.*

[112] Increased Cost of Compliance (ICC) provides up to $30,000 to help cover the cost of mitigation measures that will reduce flood risk. ICC coverage is a part of most standard flood insurance policies available under the NFIP. *https://www.fema.gov/media-library/assets/documents/1130.*

TABLE 6—CHANGE IN AVERAGE ANNUAL NUMBER OF GRANTS AND FUNDING PRE-BW–12 TO POST-BW–12

[2018$]

	Pre-BW–12	Percent pre-BW–12	Post-BW–12	Percent post-BW–12	Percent change
Standard Mitigation					
Grants per Year	54	91.5	24	22.9	−68.6
Funding per year	$40,273,970	98.2	$10,366,791	7.6	−90.6
Repetitive Loss					
Grants per Year	3	5.1	7	6.7	+1.6
Funding per year	$632,638	1.5	$17,352,693	12.7	+11.2
Severe Repetitive Loss					
Grants per Year	2	3.4	74	70.5	+67.1
Funding per year	$113,421	0.3	$108,688,640	79.7	+79.4

When comparing pre-BW–12 standard mitigation grants to post-BW–12, both the average annual number of approved grants and the average annual total amount of funding dropped from $40.3 million to $10.4 million. For RL structures, the average annual number of approved grants increased and the amount of funding increased from $1.8 million to $17.4 million. For SRL structures, both the average annual number of approved grants and the average annual funding increased from $0.25 million to $108.7 million when compared to pre-BW–12. This reflects BW–12 shifting priority from standard mitigations to RL and SRL structures. FEMA's data indicate a trend toward both larger project sizes and more recently an increased number of RL and SRL projects.

FEMA then analyzed the distributional impacts of the Federal cost shares that resulted from both the shift in priorities and the changes in cost shares. The Federal cost share for standard mitigation grants remained at 75 percent over the post-BW–12 period analyzed. The cost share for RL grants increased from an average of 75 percent pre-BW–12 to 86 percent post-BW–12. SRL grants had an average 92 percent cost share pre-BW–12 and a 94 percent cost share post-BW–12. FEMA also analyzed the change in the Federal cost share for the three grant categories together, which shows the impact of BW–12's changes to cost share amounts as well as shifting funding to RL and SRL grants, which have higher cost shares.

The total Federal share of all FMA grant categories pre-BW–12 was 70.4 percent ($287,140,206 ÷ $202,072,763). Post BW–12, the Federal share was 91.2 percent ($682,040,624 ÷ $622,171,437). The increase in transfers from FEMA to grantees as a result of the changed cost shares and changed priorities, in terms of post-BW–12 grant funding, was $141,864,450 (91.2 percent − 70.4 percent × $682,040,624) over five years, or an average increase of $28,372,890 per year.

Under a no-action baseline, the proposed rule would result in no transfer impacts, as FEMA has already implemented the updated cost share percentages in the 2013 HMA Guidance. Under a pre-statutory (pre-BW–12) baseline, the revisions to the cost share and re-prioritization to grants with higher cost shares result in distributional transfer impacts shifting funding to the most vulnerable properties and an increase in transfers from FEMA to grant recipients. The discounted total 10-year transfers from FEMA to grant recipients are $283.7 million ($28.4 million annualized [113]).

Mitigation Planning Grants. BW–12 lowered the funding cap on the amount of money that could be used for the flood portion of the individual multi-hazard mitigation plans to $50,000 per recipient and $25,000 per subrecipient, but removed a restriction that grantees could only receive funding for planning grants once every 5 years. Lowering the cap on Federal funds results in decreased funding per applicant. However, FEMA believes this is offset by the removal of the frequency restriction, which results in a negligible change in the number of approved applications and awards. FEMA found the data does not show a substantial change in the number of applications, and thus FEMA assumed that the removal of the 5-year restriction is countered by the lowered cap on funding, resulting in minimal distributional impacts as shown in Table 7. Because FEMA implemented these changes concurrently, FEMA was unable to isolate the effects of individual changes.

TABLE 7—MITIGATION PLANNING GRANTS 2006–2017

[2018$]

Year	Applications	Approved grants	Average grant amount
2006	167	92	$286,765
2007	561	481	89,709
2008	523	374	82,248
2009	491	346	82,248
2010	364	288	81,514
2011	417	363	102,173

[113] The annualized amounts for 3 percent and 7 percent are equal to the estimated annual transfers of $28.4 million because the amounts for each year are identical and the first year is discounted.

TABLE 7—MITIGATION PLANNING GRANTS 2006–2017—Continued

[2018$]

Year	Applications	Approved grants	Average grant amount
2012	173	155	142,411
Average Pre-BW–12	385	300	107,838
2013	260	228	115,022
2014	293	264	87,772
2015	351	315	93,000
2016	329	287	170,262
2017	422	377	98,268
Average Post-BW–12	331	294	111,899

Since 2013, FEMA has applied the new caps on funding for FMA planning grants per recipient and subrecipient. The caps align with and reflect FEMA's shift to focus the majority of FMA program funds on mitigating the risk to the most vulnerable properties. FEMA is no longer constrained by any limit on how often a recipient or subrecipient can receive a planning grant or the total amount that can be granted to a recipient. Further, the lower caps per recipient and subrecipient allow FEMA to assist more recipients and subrecipients.

Alternatives

Most of the changes in this proposed rule are based on statute. FEMA has limited discretion in determining which changes to make. The changes that carry an economic impact under a pre-statutory (pre-BW–12) baseline are the proposed changes to 44 CFR 79.4 (proposed § 77.4): FMA Grant Federal Cost Shares and 44 CFR 79.6 (proposed § 77.6): Flood Portion of Multi-Hazard Mitigation Plans. BW–12 prescribed these changes. These changes are neither new nor discretionary and FEMA did not consider alternatives.

TABLE 8—A–4 ACCOUNTING STATEMENT

[2018$]

Period of analysis: 2006 to 2017

Category	7 Percent discount rate	3 Percent discount rate	Source citation (RIA, preamble, etc.)
BENEFITS:			
Annualized Monetized $millions/year.	.085463	.085463	Preamble (RA)
Annualized Quantified	N/A	N/A.	
Qualitative	• Allows FEMA to target most vulnerable properties and streamline mitigation grant process. • Modernize and standardize regulations to match current practice and statute and increase readability. • Shift from State-based allocations to a competitive process, allowing FEMA to select applications according to FEMA priorities rather than location. • Eliminate limits on in-kind contributions allowing recipients more flexibility to cover their portion of the cost share.		Preamble (RA).
COSTS:			
Annualized Monetized $millions/year.	0.000742	0.000635	Preamble (RA).
Annualized quantified	N/A	N/A.	
Qualitative	N/A.		
TRANSFERS:			
Annualized Monetized $millions/year.	28.4	28.4	Preamble (RA).
From/To	Increase in transfers from FEMA to HMA recipients		Preamble (RA).

Category	Effects	Source citation (RIA, preamble, etc.)
State, Local, and/or Tribal Government.	Qualitative benefits. Increase in transfers from FEMA to State, local, Tribal governments.	Preamble (RA).

Category	Effects	Source citation (RIA, preamble, etc.)
Small business	There were 231 Small entity recipients from 2006–2017. Prior to BW–12, an average of 16 recipients per year were small entities. Post-BW–12, there were an average of 24 small entity recipients per year. Small entities were more likely to receive RL or SRL grants and slightly less likely to receive standard mitigation grants, so the Federal cost shares for small entities were, on average, higher post-BW–12.	Preamble (IRFA).
Wages	None.	
Growth	None.	

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires agency review of proposed and final rules to assess their impact on small entities. When an agency promulgates a notice of proposed rulemaking under 5 U.S.C. 553, the agency must prepare an Initial Regulatory Flexibility Analysis (IRFA) unless it determines and certifies pursuant to 5 U.S.C. 605(b) that a rule, if promulgated, would not have a significant impact on a substantial number of small entities. FEMA believes this proposed rule does not have a significant economic impact on a substantial number of small entities. However, FEMA is publishing this IRFA to aid the public in commenting on the potential small entity impacts of the proposed requirements in this NPRM. FEMA invites all interested parties to submit data and information regarding the potential direct economic impacts on small entities that would result from the adoption of this NPRM. FEMA will consider all comments received in the public comment process.

In accordance with the Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, 110 Stat. 857), FEMA prepared this IRFA to examine the effects of the adjustments made by BW–12 and implemented by FEMA in the 2013 HMA Guidance on small entities. A small entity may be: A small independent business, defined as independently owned and operated, is organized for profit, and is not dominant in its field per the Small Business Act (5 U.S.C. 632); a small not-for-profit organization (any not-for-profit enterprise which is independently owned and operated and is not dominant in its field); or a small governmental jurisdiction (locality with fewer than 50,000 people) per 5 U.S.C. 601–612.

1. A Description of the Reasons Why Action by the Agency Is Being Considered

FEMA initiated this rulemaking to codify legislative requirements included in the Biggert-Waters Flood Insurance Reform Act of 2012, Public Law 112–141, 126 Stat. 916 (BW–12), which amended the National Flood Insurance Act of 1968 (NFIA) and required changes to all major components of the National Flood Insurance Program (NFIP), including mitigation grants authorized under the NFIA. FEMA implemented the legislative requirements in BW–12 through policy/guidance in 2013 and is now proposing to codify these changes in regulation, to reflect current agency practice, and to clarify existing regulations.

Annually, FEMA provides grant funding to reduce or eliminate risk of flood damage to buildings that are insured under the NFIP. Before BW–12, FEMA administered three distinct NFIP grant programs: (1) The Flood Mitigation Assistance (FMA) Program; (2) the Repetitive Flood Claims (RFC) Program; and (3) the Severe Repetitive Loss (SRL) Program. BW–12 eliminated the RFC and SRL programs and consolidated aspects of those programs into the FMA Program.

There are two BW–12 provisions that FEMA codifies in this rule that result in substantive modifications to the FMA regulations: (1) Cost shares for mitigation projects and (2) the amount of FMA funds available for mitigation planning grants. BW–12 requires these changes and FEMA implemented them through the HMA Guidance in 2013. In addition, the proposed rule would make nonsubstantive revisions intended to clarify the current grant regulations at 44 CFR parts 79, 80, 201, and 206, subpart N by adding new definitions and substitute terms that reflect the current version of 2 CFR parts 200 and 3002. Other nonsubstantive changes in the proposed rule remove references to programs eliminated by BW–12. In general, the changes in the proposed rule do not reduce the amount of funding appropriated for the FMA program or the number of grant recipients. Rather, the proposed rule alters the distribution of those funds to recipients with NFIP insured facilities with the highest risk of flood damage. Specifically, BW–12 requires changes to the Federal cost shares used for FMA grants. These changes to the cost shares prioritize the most vulnerable severe repetitive loss properties by increasing FEMA's cost share portion from 75 percent Federal to 75–90 percent Federal for RL properties and from 90 to 100 percent Federal to 100 percent Federal for SRL properties. FEMA does not change the cost share for ''standard'' mitigation properties; that cost share remains at the current level of 75 percent Federal.

FEMA includes a detailed marginal analysis table which lists all of the changes made by BW–12; that table is posted in the public docket for this rulemaking available on *www.regulations.gov* under Docket ID FEMA–2019–0011. Most of the changes in this rule are nonsubstantive clarifications. Many of the changes remove language describing a program or a feature of the FMA program that expired or is no longer relevant, applicable, or necessary. FEMA expects that the changes offer negligible or inconsequential benefits to FEMA and other administrating authorities.

2. A Succinct Statement of the Objectives of, and Legal Basis for, the Proposed Rule

The objective of this proposed rule is to codify the legislative requirements in BW–12 and to clarify existing regulations. Specifically, this proposed rule would make substantive changes intended to codify BW–12 by removing 44 CFR part 78 and substantially revising Part 79. In addition, the proposed rule would make nonsubstantive revisions intended to clarify 44 CFR parts 79, 80, 201, and 206, subpart N by adding new definitions and substitute terms that reflect the current version of 2 CFR parts 200 and 3002. Other nonsubstantive changes included in the proposed rule

would remove references to programs eliminated by BW–12.

3. A Description of and, Where Feasible, an Estimate of the Number of Small Entities To Which the Proposed Rule Will Apply

The proposed rule directly affects all eligible FMA grant recipients. FEMA estimates that the changes from BW–12 affect FMA grant recipients that are small governmental jurisdictions with a population of less than 50,000, as defined at 5 U.S.C. 601(5).[114] To estimate the effects of the adjustments made by BW–12, and codified in this rule, FEMA used the same methodology used in the regulatory analysis.[115] In general, FEMA identified the affected population—recipients of FEMA's FMA grants—and analyzed how the changes affect those recipients. Using those results, FEMA then evaluated which recipients qualified as ''small entities.'' Eligible FMA grant recipients may include States, U.S. territories, and Indian Tribal governments; subrecipients may include local governments and governmental organizations such as flood, sewer, and water districts. FEMA removed from its RFA dataset and analysis any recipients that are States and U.S. territories because they have populations greater than 50,000. FEMA also removed any Indian Tribal governments because they are not included in the definition of a small entity.[116] The remaining recipients were either local governments or governmental organizations. FEMA used the U.S. Census Bureau's annual population estimates for 2018 produced by its Population Estimates Program (PEP) [117] to determine the population for each recipient.[118] Table 9 summarizes the number of small entities affected by the changes in BW–12.

TABLE 9—ESTIMATED NUMBER OF SMALL ENTITIES AFFECTED BY PROPOSED RULE

	Year	Grants to small entities	Properties within grants	Small entity recipients
Pre-BW–12	2006	30	67	30
	2007	25	39	25
	2008	16	14	16
	2009	18	41	18
	2010	11	76	11
	2011	4	12	4
	2012	8	75	8
Post-BW–12	2013	23	64	23
	2014	27	66	27
	2015	18	71	18
	2016	25	56	25
	2017	26	78	26
Total Small Entity Recipients		231	659	231
Total All Recipients		917	3,887	448
Small Entity Recipients as a Percent of Total Recipients		25.2%	17.0%	51.6%
Pre-BW–12:	Total	112	324	112
	Annual Average	16	46	16
Post-BW–12:	Total	119	335	119
	Annual Average	24	67	24

Between 2006 and 2017, FEMA awarded a total of 917 FMA grants to 448 recipients to mitigate flood risk to 3,887 properties. Of the total 448 recipients, 231 recipients, or 25.2 percent, had populations under 50,000 and are considered small entities. These small entities used the FMA grants to mitigate flood risk to 659 vulnerable properties. These 231 small entity recipients are all local governments.

Pre-BW–12, FEMA awarded 112 grants to small entities. Of these, 109 were for standard mitigation with an average Federal cost share of 73 percent, 2 were RL with an average Federal cost share of 82 percent, and 1 was SRL with a cost share of 90 percent.

[114] *See* 5 U.S.C. 601(3)–(6). In general, the term ''small entity'' can have the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction'' for purposes of this analysis. Specifically, section 601(3) defines a ''small business'' as having the same meaning as ''small business concern'' under section 3 of the Small Business Act. This includes any small business concern that is independently owned and operated that is not dominant in its field of operation. Section 601(4) defines a ''small organization'' as any not-for-profit enterprise that is independently owned and operated that is not dominant in its field of operation. Section 601(5) defines ''small governmental jurisdiction'' as governments of cities, counties, towns, townships, villages, school districts, or special districts with a population of less than 50,000. Acessed and downloaded June 4, 2019. *http://uscode.house.gov/view.xhtml?req=(title:5 section:601 edition:prelim)* OR (*granuleid:USC-prelim-title5-section601) &f=treesort&edition=prelim&num=0&jumpTo=true.*

[115] FEMA's methodology is included in section IV. Regulatory Analysis of this NPRM

[116] The Regulatory Flexibility Act (RFA) defines a small entity as a small business, small nonprofit organization, or a small governmental jurisdiction. Section 601(5) defines small governmental jurisdictions as governments of cities, counties, towns, townships, villages, school districts, or special districts with a population of less than 50,000.

[117] FEMA used the U.S. Census Bureau's PEP estimates file entitled, ''sub-est2018_all.csv'' because it provided 2018 estimated populations for all states and all subgovernmental jurisdictions, including counties, parishes, etc., towns, cities, villages, etc. Accessed and downloaded June 4, 2019. *https://www2.census.gov/programs-surveys/popest/datasets/2010-2018/cities/totals/.*

[118] FEMA used the population of the county, parish, or borough in which the grant project was located as a proxy to determine the populations for governmental organizations. For example, FEMA used the New Castle County, DE 2018 population of 559,335 to determine if the New Castle Conservation District was a small entity. In this example, the population of 559,335 is greater than the 50,000 small entity threshold; thus, the new Castle Conservation District is not a small entity.

TABLE 10—PRE-BW–12 PROJECTS AND VALUE BY GRANT CATEGORY (2018$) AWARDED TO SMALL ENTITIES

Year	Standard (≤75% federal cost share)			Repetitive loss (RL) (75% federal cost share)			Severe repetitive loss (SRL) (90%–100% federal cost share)		
	Grants	Value of grants	Federal share obligated	Grants	$ Value of grants	Federal share obligated	Grants	Value of grants	Federal share obligated
2006	30	$5,907,776	$4,388,166						
2007	25	10,819,810	7,647,471						
2008	16	2,150,269	1,575,275						
2009	15	7,924,904	5,763,784	2	$2,350,766	$1,917,922	1	$58,406	$52,565
2010	11	15,128,995	11,345,865						
2011	4	2,897,824	2,042,931						
2012	8	6,393,968	4,789,345						
Total	109	51,223,546	37,552,837	2	2,350,766	1,917,922	1	58,406	52,565

Post-BW–12, FEMA awarded 119 grants to small entities. Of these, 40 were standard mitigation with an average Federal cost share of 69 percent, 3 were RL with an average Federal cost share of 88 percent, and 76 were SRL with an average Federal cost share of 90 percent. While the cost shares did not change significantly, more applicants received SRL grants when compared to the pre-BW–12 period. This shows the prioritization of more vulnerable properties.

TABLE 11—POST-BW–12 PROJECTS AND VALUE BY GRANT CATEGORY (2018$) AWARDED TO SMALL ENTITIES

Year	Standard (≤75% federal cost share)			Repetitive loss (RL) (75%–90% federal cost share)			Severe repetitive loss (SRL) (100% federal cost share)		
	Grants	Value of grants	Federal share obligated	Grants	Value of grants	Federal share obligated	Grants	Value of grants	Federal share obligated
2013	8	$955,085	$427,739	1	$7,145,136	$6,337,841	14	$5,618,711	$3,711,417
2014	11	2,529,635	1,594,317				16	12,335,444	12,017,816
2015	3	2,434,059	1,825,543				15	10,486,133	9,829,253
2016	6	285,707	194,186	2	1,766,776	1,528,423	17	10,488,578	9,134,257
2017	12	5,098,868	3,812,839				14	9,034,842	8,474,084
Total	40	11,303,354	7,854,624	3	8,911,912	7,866,264	76	47,963,708	43,166,827

4. A Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Rule, Including an Estimate of the Classes of Small Entities Which Will Be Subject to the Requirement and the Types of Professional Skills Necessary for Preparation of the Report or Record

This proposed rulemaking would codify FEMA's current practice and make changes for clarity and accuracy. For that reason, FEMA does not anticipate this rulemaking places an increase in burden on small entities.

5. Identification, to the Extent Practicable, of All Relevant Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule

There are no relevant Federal rules that duplicate, overlap, or conflict with the proposed rule.

6. A Description of Any Significant Alternatives to the Proposed Rule Which Accomplish the Stated Objectives of Applicable Statutes and Which Minimize Any Significant Economic Impact of the Proposed Rule on Small Entities

BW–12 mandated most of the changes in this proposed rule, and therefore FEMA has limited discretion in implementing these changes. These are not new or discretionary program changes and for this reason, FEMA did not consider alternatives. Given that this rule is largely distributive in nature, entailing transfers between less vulnerable and more vulnerable groups of properties at all levels, no less burdensome alternatives to the proposed rule are available. In the absence of this proposed rule, small entities would experience negative repercussions that might result from inconsistences between the statutes, regulations, and agency policy.

7. Conclusion

FEMA invites all interested parties to submit data and information regarding the potential economic impact that would result from adoption of the proposals in this NPRM. FEMA will consider all comments received in the public comment process. FEMA is interested in the potential impacts from the proposed rule on small entities and requests public comment on these potential impacts. If you think that this rule would have a significant economic impact on you, your business, your organization, or your local government, please submit a comment to the docket at the address under the **ADDRESSES** section. In your comment, explain why, how, and to what degree you think this rule would have an economic impact on you. After reviewing the public comments, FEMA may certify the final rule as not having a significant economic impact on a substantial number of small entities. FEMA will consider all comments received in the public comment process when making a final determination.

C. Unfunded Mandates Reform Act of 1995

Pursuant to Section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 2 U.S.C. 1531), each Federal agency ''shall, unless otherwise prohibited by law, assess the effects of

Federal regulatory actions on state, local, and Tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law).'' Section 202 of the Act (2 U.S.C. 1532) further requires that ''before promulgating any general notice of proposed rulemaking that is likely to result in the promulgation of any rule that includes any Federal mandate that may result in expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement'' detailing the effect on State, local, and Tribal governments and the private sector. The proposed rule would not result in such an expenditure, and thus preparation of such a statement is not required.

D. National Environmental Policy Act of 1969 (NEPA)

Under the National Environmental Policy Act of 1969 (NEPA), as amended, 42 U.S.C. 4321 *et seq.* an agency must prepare an Environmental Assessment (EA) and Environmental Impact Statement (EIS) for any rulemaking that significantly affects the quality of the human environment. FEMA has determined that this rulemaking does not significantly affect the quality of the human environment and consequently has not prepared an EA or EIS.

Categorical Exclusion A3 included in the list of exclusion categories at Department of Homeland Security Instruction Manual 023–01–001–01, Revision 01, Implementation of the National Environmental Policy Act, Appendix A, issued November 6, 2014, covers the promulgation of rules, issuance of rulings or interpretations, and the development and publication of policies, orders, directives, notices, procedures, manuals, and advisory circulars if they meet certain criteria provided in A3(a–f). This proposed rule meets the criteria in A3(a), (b), (c), and (d). The proposed rule would make a number of regulatory revisions that are strictly administrative. In addition, the proposed rule would amend an existing regulation without changing its environmental effect, and would also implement, without substantive change, statutory requirements and guidance documents. Because no extraordinary circumstances have been identified, this rule does not require the preparation of either an EA or an EIS as defined by NEPA. *See* Department of Homeland Security Instruction Manual 023–01–001–01, Revision 01, Implementation of the National Environmental Policy Act, section (V)(B)(2).

E. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (PRA), as amended, 44 U.S.C. 3501–3520, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the agency obtains approval from the Office of Management and Budget (OMB) for the collection and the collection displays a valid OMB control number. *See* 44 U.S.C. 3506, 3507. This rule contains collections of information that are subject to review by OMB. The information collections included in this rule are approved by OMB under control numbers 1660–0072 (Flood Mitigation Assistance (eGrants) and Grant Supplement Information), 1660–0062 (State/Local/Tribal Hazard Mitigation Plans), 1660–0026 (State Administrative Plan for the Hazard Mitigation Grant Program), and 1660–0076 (Hazard Mitigation Grant Program Application and Reporting). Currently, FEMA is working to reinstate 1660–0103 (Property Acquisition and Relocation for Open Space).

This proposed rulemaking would call for no new collections of information under the PRA. This proposed rule includes information currently collected by FEMA and approved in OMB information collections 1660–0072, 1660–0062, 1660–0026, and 1660–0076. Currently, FEMA is working to reinstate 1660–0103. The actions of the proposed rulemaking do not impose any additional burden to this collection of information. The proposed changes in this rulemaking would not change the forms, the substance of the forms, or the number of recipients who would submit the forms to FEMA.

F. Privacy Act/E-Government Act

Under the Privacy Act of 1974, 5 U.S.C. 552a, an agency must determine whether implementation of a proposed regulation will result in a system of records. A record is any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his/her education, financial transactions, medical history, and criminal or employment history and that contains his/her name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph. *See* 5 U.S.C. 552a(a)(4). A system of records is a group of records under the control of an agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual. An agency cannot disclose any record which is contained in a system of records except by following specific procedures.

The E-Government Act of 2002, 44 U.S.C. 3501 note, also requires specific procedures when an agency takes action to develop or procure information technology that collects, maintains, or disseminates information that is in an identifiable form. This Act also applies when an agency initiates a new collection of information that will be collected, maintained, or disseminated using information technology if it includes any information in an identifiable form permitting the physical or online contacting of a specific individual. A Privacy Threshold Analysis was completed.

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

Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, 65 FR 67249, November 9, 2000, applies to agency regulations that have Tribal implications, that is, regulations 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. Under this Executive Order, to the extent practicable and permitted by law, no agency shall promulgate any regulation that has Tribal implications, that imposes substantial direct compliance costs on Indian Tribal governments, and that is not required by statute, unless funds necessary to pay the direct costs incurred by the Indian Tribal government or the Tribe in complying with the regulation are provided by the Federal Government, or the agency consults with Tribal officials.

Although Indian Tribal governments are potentially eligible applicants under HMA programs, FEMA has determined that this rule 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. There is no substantial direct compliance cost associated with this proposed rule. The HMA programs are voluntary programs that provide funding to applicants, including Tribal governments, for eligible mitigation planning and projects that reduce disaster losses and protect life and property from future disaster

damages. An Indian Tribal government may participate as either an applicant/recipient or a subapplicant/subrecipient. FEMA does not expect the regulatory changes in this proposed rule to disproportionately affect Indian Tribal governments acting as recipients.

H. Executive Order 13132, Federalism

Executive Order 13132, Federalism, 64 FR 43255, August 10, 1999, sets forth principles and criteria that agencies must adhere to in formulating and implementing policies that have federalism implications, that is, regulations that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Federal agencies must closely examine the statutory authority supporting any action that would limit the policymaking discretion of the States, and to the extent practicable, must consult with State and local officials before implementing any such action.

FEMA has reviewed this proposed rule under Executive Order 13132 and has determined that this 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, and therefore does not have federalism implications as defined by the Executive Order. FEMA has determined that this rule does not significantly affect the rights, roles, and responsibilities of States, and involves no preemption of State law nor does it limit State policymaking discretion. This rulemaking proposes amendments to regulations governing voluntary grant programs that may be used by State, local and Tribal governments to fund eligible mitigation activities that reduce disaster losses and protect life and property from future disaster damages. States are not required to seek grant funding, and this rulemaking does not limit their policymaking discretion.

I. Executive Order 11988, Floodplain Management

Pursuant to Executive Order 11988, each agency is required to provide leadership and take action to reduce the risk of flood loss, to minimize the impact of floods on human safety, health and welfare, and to restore and preserve the natural and beneficial values served by floodplains in carrying out its responsibilities for (1) acquiring, managing, and disposing of Federal lands and facilities; (2) providing Federally undertaken, financed, or assisted construction and improvements; and (3) conducting Federal activities and programs affecting land use, including but not limited to water and related land resources planning, regulating, and licensing activities. In carrying out these responsibilities, each agency must evaluate the potential effects of any actions it may take in a floodplain; to ensure that its planning programs and budget requests reflect consideration of flood hazards and floodplain management; and to prescribe procedures to implement the policies and requirements of the Executive Order.

Before promulgating any regulation, an agency must determine whether the proposed regulations will affect a floodplain(s), and if so, the agency must consider alternatives to avoid adverse effects and incompatible development in the floodplain(s). If the head of the agency finds that the only practicable alternative consistent with the law and with the policy set forth in Executive Order 11988 is to promulgate a regulation that affects a floodplain(s), the agency must, prior to promulgating the regulation, design or modify the regulation in order to minimize potential harm to or within the floodplain, consistent with the agency's floodplain management regulations and prepare and circulate a notice containing an explanation of why the action is proposed to be located in the floodplain. The purpose of the proposed rule is to update FEMA's HMA program regulations to reflect statutory changes that have already been implemented. While the proposed rule would revise the regulations FMA administered by the NFIP, it would not impact other NFIA regulations that pertain to land use, floodplain management, or flood insurance. The majority of the revisions FEMA is proposing in this rulemaking apply to the regulations for the FMA program, which is a voluntary grant program that provides funding for activities designed to reduce the risk of flood damage to structures insured under the NFIP. When FEMA undertakes specific actions that may have effects on floodplain management, FEMA follows the procedures set forth in 44 CFR part 9 to assure compliance with this Executive Order. These procedures include a specific, 8-step process for conducting floodplain management and wetland reviews. The proposed rule would not change this process.

J. Executive Order 11990, Protection of Wetlands

Pursuant to Executive Order 11990, each agency must provide leadership and take action to minimize the destruction, loss or degradation of wetlands, and to preserve and enhance the natural and beneficial values of wetlands in carrying out the agency's responsibilities for (1) acquiring, managing, and disposing of Federal lands and facilities; and (2) providing Federally undertaken, financed, or assisted construction and improvements; and (3) conducting Federal activities and programs affecting land use, including but not limited to water and related land resources planning, regulating, and licensing activities. Each agency, to the extent permitted by law, must avoid undertaking or providing assistance for new construction located in wetlands unless the head of the agency finds (1) that there is no practicable alternative to such construction, and (2) that the proposed action includes all practicable measures to minimize harm to wetlands which may result from such use. In making this finding the head of the agency may take into account economic, environmental and other pertinent factors.

In carrying out the activities described in the Executive Order, each agency must consider factors relevant to a proposal's effect on the survival and quality of the wetlands. Among these factors are: Public health, safety, and welfare, including water supply, quality, recharge and discharge; pollution; flood and storm hazards; and sediment and erosion; maintenance of natural systems, including conservation and long-term productivity of existing flora and fauna, species and habitat diversity and stability, hydrologic utility, fish, wildlife, timber, and food and fiber resources; and other uses of wetlands in the public interest, including recreational, scientific, and cultural uses.

The requirements of Executive Order 11990 apply in the context of the provision of Federal financial assistance relating to, among other things, construction and property improvement activities. However, the changes proposed in this rule would not have an effect on land use or wetlands. The purpose of the proposed rule is to update FEMA's HMA program regulations to reflect statutory changes that have already been implemented. While the proposed rule would revise the regulations for FMA administered by the NFIP, it would not impact other NFIP regulations that pertain to land

use, floodplain management, or flood insurance. The majority of the revisions FEMA is proposing in this rulemaking apply to the regulations for the FMA program, which is a voluntary grant program that provides funding for activities designed to reduce the risk of flood damage to structures insured under the NFIP. When FEMA undertakes specific actions that may have effects on wetlands, FEMA follows the procedures set forth in 44 CFR part 9 to assure compliance with this Executive Order. These procedures include a specific, 8-step process for conducting floodplain management and wetland reviews. The proposed rule would not change this process.

K. Executive Order 12898, Environmental Justice

Pursuant to Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994, as amended by Executive Order 12948, 60 FR 6381, February 1, 1995, FEMA incorporates environmental justice into its policies and programs. The Executive Order requires each Federal agency to conduct its programs, policies, and activities that substantially affect human health or the environment in a manner that ensures that those programs, policies, and activities do not have the effect of excluding persons from participation in programs, denying persons the benefits of programs, or subjecting persons to discrimination because of race, color, or national origin.

This rulemaking will not have a disproportionately high or adverse effect on human health or the environment. This rulemaking will not have a disproportionately high or adverse effect on human health or the environment. Therefore the requirements of Executive Order 12898 do not apply to this rule.

L. Congressional Review of Agency Rulemaking

Under the Congressional Review of Agency Rulemaking Act (CRA), 5 U.S.C. 801–808, before a rule can take effect, the Federal agency promulgating the rule must submit to Congress and to the Government Accountability Office (GAO) a copy of the rule, a concise general statement relating to the rule, including whether it is a major rule, the proposed effective date of the rule, a copy of any cost-benefit analysis, descriptions of the agency's actions under the Regulatory Flexibility Act and the Unfunded Mandates Reform Act, and any other information or statements required by relevant executive orders.

FEMA will send this rule to the Congress and to GAO pursuant to the CRA if the rule is finalized. The rule is not a major rule within the meaning of the CRA. It will not have an annual effect on the economy of $100,000,000 or more, it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, and it will not have 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.

List of Subjects

44 CFR Part 77

Flood insurance, Grant programs.

44 CFR Parts 78 and 79

Flood insurance, Grant programs.

44 CFR Part 80

Disaster assistance, Grant programs.

44 CFR Part 201

Administrative practice and procedure, Disaster assistance, Grant programs, Reporting and recordkeeping requirements.

44 CFR Part 206

Administrative practice and procedure, Coastal zone, Community facilities, Disaster assistance, Fire prevention, Grant programs-housing and community development, Housing, Insurance, Intergovernmental relations, Loan programs-housing and community development, Natural resources, Penalties, and Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, FEMA proposes to amend 44 CFR parts 77, 78, 79, 80, 201, and 206 as follows:

PART 78—[REMOVED AND RESERVED]

■ 1. Remove and reserve part 78 in its entirety.

PART 79—FLOOD MITIGATION GRANTS [REDESIGNATED AS PART 77 AND AMENDED]

■ 2. Revise the authority citation for part 79 to read as follows:

Authority: 6 U.S.C. 101 *et seq.;* 42 U.S.C. 4001 *et seq.;* 42 U.S.C. 4104c, 4104d.

■ 3. Redesignate part 79 as part 77 and amend the references to §§ 79.1 through 79.9 as follows:

Old section	New section
79.1	77.1
79.2	77.2
79.3	77.3
79.4	77.4
79.5	77.5
79.6	77.6
79.7	77.7
79.8	77.8
79.9	77.9

■ 4. Amend § 77.1 by, revising the section heading and paragraphs (a) and (b), and removing paragraph (c).

The revisions read as follows:

§ 77.1 Purpose and applicability.

(a) The purpose of this part is to prescribe actions, procedures, and requirements for administration of the Flood Mitigation Assistance (FMA) grant program made available under the National Flood Insurance Act of 1968, as amended, and the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4001 *et seq.* The purpose of the FMA program is to assist States, Indian Tribal governments, and communities for planning and carrying out mitigation activities designed to reduce the risk of flood damage to structures insured under the National Flood Insurance Program (NFIP).

(b) This part applies to the administration of funds under the FMA program for which the application period opens on or after [EFFECTIVE DATE OF THE FINAL RULE].

■ 5. Amend § 77.2 by revising paragraphs (a) through (m) and adding paragraphs (n) through (q) to read as follows:

§ 77.2 Definitions.

(a) Except as otherwise provided in this part, the definitions set forth in § 59.1 of this subchapter are applicable to this part.

(b) *Applicant* means the entity, such as a State or Indian Tribal government, applying to FEMA for a Federal award under the FMA program. Once funds have been awarded, the applicant becomes the recipient and may also be a pass-through entity.

(c) *Closeout* means the process by which FEMA or the pass-through entity determines that all applicable administrative actions and all required work of the Federal award have been completed and takes actions as described in 2 CFR 200.343, ''Closeout.''

(d) *Community* means:

(1) A political subdivision, including any Indian Tribe, authorized Tribal organization, Alaska Native village or authorized native organization, that has zoning and building code jurisdiction over a particular area having special

flood hazards, and is participating in the NFIP; or

(2) A political subdivision of a State or other authority that is designated by political subdivisions, all of which meet the requirements of paragraph (d)(1) of this section, to administer grants for mitigation activities for such political subdivisions.

(e) *Federal award* means the Federal financial assistance a recipient or subrecipient receives directly from FEMA or indirectly from a pass-through entity. The terms ''award'' and ''grant'' may also be used to describe a Federal award under this part.

(f) *Indian Tribal government* means any Federally recognized governing body of an Indian or Alaska Native Tribe, band, nation, pueblo, village, or community that the Secretary of Interior acknowledges to exist as an Indian Tribe under the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a. This does not include Alaska Native corporations, the ownership of which is vested in private individuals.

(g) *Management costs* mean any indirect costs, administrative expenses, and other expenses not directly chargeable to a specific project that are reasonably incurred by a recipient or subrecipient in administering and managing an award or subaward.

(h) *Pass-through entity* means a recipient that provides a subaward to a subrecipient to carry out part of the FMA program.

(i) *Recipient* means the State or Indian Tribal government that receives a Federal award directly from FEMA to carry out an activity under the FMA program. A recipient may also be a pass-through entity. The term recipient does not include subrecipients.

(j) *Repetitive loss structure* means a structure covered under an NFIP flood insurance policy that:

(1) Has incurred flood-related damage on 2 occasions, in which the cost of repair, on average, equaled or exceeded 25% of the value of the structure at the time of each such flood event; and

(2) At the time of the second incidence of flood related damage, the contract for flood insurance contains increased cost of compliance coverage.

(k) *Severe repetitive loss structure* means a structure that is covered under an NFIP flood insurance policy and has incurred flood-related damage:

(1) For which 4 or more separate claims payments have been made under flood insurance coverage under subchapter B of this chapter, with the amount of each claim (including building and contents payments) exceeding $5,000, and with the cumulative amount of such claims payments exceeding $20,000; or

(2) For which at least 2 separate flood insurance claims payments (building payments only) have been made, with cumulative amount of such claims exceeding the value of the insured structure.

(l) *State* means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(m) *Subaward* means an award provided by a pass-through entity to a subrecipient, for the subrecipient to carry out part of a Federal award received by the pass-through entity. It does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program. A subaward may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract.

(n) *Subapplicant* means a State agency, community, or Indian Tribal government submitting a subapplication to the applicant for assistance under the FMA program. Upon grant award, the subapplicant is referred to as the subrecipient.

(o) *Subrecipient* means the State agency, community, or Indian Tribal government that receives a subaward from a pass-through entity for the subrecipient to carry out an activity under the FMA program.

(p) *Administrator* means the head of the Federal Emergency Management Agency, or his/her designated representative.

(q) *Regional Administrator* means the head of a Federal Emergency Management Agency regional office, or his/her designated representative.

■ 6. Amend § 77.3 by revising paragraphs (a) through (c) and removing paragraph (d).

The revisions read as follows:

§ 77.3 Responsibilities.

(a) *Federal Emergency Management Agency (FEMA).* Administer and provide oversight to all FEMA-related hazard mitigation programs and grants, including:

(1) Issue program implementation procedures, as necessary, which will include information on availability of funding;

(2) Award all grants to the recipient after evaluating subaward applications for eligibility and ensuring compliance with applicable Federal laws, giving priority to such properties, or to the subset of such properties, as the Administrator may determine are in the best interest of the NFIF;

(3) Provide technical assistance and training to State, local and Indian Tribal governments regarding the mitigation and grants management process;

(4) Review and approve State, Indian Tribal, and local mitigation plans in accordance with part 201 of this chapter;

(5) Comply with applicable Federal statutory, regulatory, and Executive Order requirements related to environmental and historic preservation compliance, including reviewing and supplementing, if necessary, the environmental analyses conducted by the State and subrecipient in accordance with applicable laws, regulations, and agency policy;

(6) Monitor implementation of awards through quarterly reports; and

(7) Review all closeout documentation for compliance and sending the recipient a request for additional supporting documentation, if needed.

(b) *Recipient.* The recipient must have working knowledge of NFIP goals, requirements, and processes and ensure that the program is coordinated with other mitigation activities. Recipients will:

(1) Have a FEMA approved Mitigation Plan in accordance with part 201 of this chapter;

(2) Provide technical assistance and training to communities on mitigation planning, mitigation project activities, developing subaward applications, and implementing approved subawards;

(3) Prioritize and recommend subaward applications to be approved by FEMA, based on the applicable mitigation plan(s), other evaluation criteria, and the eligibility criteria described in § 77.6;

(4) Award FEMA-approved subawards;

(5) Monitor and evaluate the progress of the mitigation activity in accordance with the approved original scope of work and budget through quarterly reports;

(6) Closeout the subaward in accordance with 2 CFR 200.343 and 200.344, and applicable FEMA guidance; and

(7) Comply with program requirements under this part, grant management requirements identified under 2 CFR parts 200 and 3002, the grant agreement articles, and other applicable Federal, State, Tribal and local laws and regulations.

(c) *Subrecipient.* The subrecipient (or subapplicant, as applicable) will:

(1) Complete and submit subaward applications to the recipient for FMA planning and project subawards;

(2) Implement all approved subawards;

(3) Monitor and evaluate the progress of the mitigation activity in accordance with the approved original scope of work and budget through quarterly reports;

(4) Comply with program requirements under this part, grant management requirements identified under 2 CFR parts 200 and 3002, the grant agreement articles, and other applicable Federal, State, Tribal and local laws and regulations; and

(5) Closeout the subaward in accordance with 2 CFR 200.343 and 200.344, and applicable FEMA guidance.

■ 7. Revise § 77.4 to read as follows:

§ 77.4 Availability of funding.

(a) *Allocation.* (1) For the amount made available for the FMA program, the Administrator will allocate the available funds based upon criteria established for each application period. The criteria may include the number of NFIP policies, severe repetitive loss structures, repetitive loss structures, and any other factors the Administrator determines are in the best interest of the NFIF.

(2) The amount of FMA funds used may not exceed $50,000 for any mitigation plan of a State or $25,000 for any mitigation plan of a community.

(b) *Cost share.* All mitigation activities approved under the grant will be subject to the following cost share provisions:

(1) For each severe repetitive loss structure, FEMA may contribute either:

(i) Up to 100 percent of all eligible costs if the activities are technically feasible and cost effective; or

(ii) Up to the amount of the expected savings to the NFIP for acquisition or relocation activities;

(2) For repetitive loss structures, FEMA may contribute up to 90 percent of the eligible costs;

(3) For all other mitigation activities, FEMA may contribute up to 75 percent of all eligible costs.

(4) For projects that contain a combination of severe repetitive loss, repetitive loss, and/or other insured structures, the cost share will be calculated as appropriate for each type of structure submitted in the project subapplication.

(c) *Failure to make award within 5 years.* Any FMA application or subapplication that does not receive a Federal award within 5 years of the application/subapplication submission date is considered to be denied, and any funding amounts allocated for such applications/subapplications will be made available for other FMA awards and subawards.

■ 8. Revise § 77.5 to read as follows:

§ 77.5 Application process.

(a) *Applicant.* (1) Applicants will be notified of the availability of funding for the FMA program pursuant to 2 CFR 200.202 and 200.203.

(2) The applicant is responsible for soliciting applications from eligible communities, or subapplicants, and for reviewing and prioritizing applications prior to forwarding them to FEMA for review and award.

(b) *Subapplicant.* Communities or other subapplicants who choose to apply must develop subapplications within the timeframes and requirements established by FEMA and must submit subapplications to the applicant.

■ 9. Revise § 77.6 to read as follows:

§ 77.6 Eligibility.

(a) *NFIP requirements.* (1) States, Indian Tribal governments, and communities must be participating in the NFIP and may not be suspended or withdrawn under the program.

(2) For projects that impact individual structures, for example, acquisitions and elevations, an NFIP policy for the structure must be in effect prior to the opening of the application period and be maintained for the life of the structure.

(b) *Plan requirement*—(1) *Applicants.* States must have a FEMA-approved mitigation plan meeting the requirements of § 201.4 of this chapter that provides for reduction of flood losses to structures for which NFIP coverage is available. Indian Tribal governments must have a FEMA-approved mitigation plan meeting the requirements of § 201.7 of this chapter that provides for reduction of flood losses to structures for which NFIP coverage is available. The FEMA-approved mitigation plan is required at the time of application and award.

(2) *Subapplicants.* To be eligible for FMA project grants, subapplicants must have an approved mitigation plan in accordance with part 201 of this chapter that provides for reduction of flood losses to structures for which NFIP coverage is available. The FEMA-approved mitigation plan is required at the time of application and award.

(c) *Eligible activities*—(1) *Planning.* FMA planning grants may be used to develop or update State, Indian Tribal and/or local mitigation plans that meet the planning criteria outlined in part 201 of this chapter and provide for reduction of flood losses to structures for which NFIP coverage is available.

(2) *Projects.* Projects funded under the FMA program are limited to activities that reduce flood damages to properties insured under the NFIP. Applications involving any activities for which implementation has already been initiated or completed are not eligible for funding, and will not be considered. Eligible activities are:

(i) Acquisition of real property from property owners, and demolition or relocation of buildings and/or structures to areas outside of the floodplain to convert the property to open space use in perpetuity, in accordance with part 80 of this subchapter;

(ii) Elevation of existing structures to at least base flood levels or higher, if required by FEMA or if required by any State or local ordinance, and in accordance with criteria established by the Administrator;

(iii) Floodproofing of existing non-residential structures in accordance with the requirements of the NFIP or higher standards if required by FEMA or if required by any State or local ordinance, and in accordance with criteria established by the Administrator;

(iv) Floodproofing of historic structures as defined in § 59.1 of this subchapter;

(v) Demolition and rebuilding of properties to at least base flood levels or higher, if required by FEMA or if required by any State or local ordinance, and in accordance with criteria established by the Administrator;

(vi) Localized flood risk reduction projects that lessen the frequency or severity of flooding and decrease predicted flood damages, and that do not duplicate the flood prevention activities of other Federal agencies. Non-localized flood risk reduction projects such as dikes, levees, floodwalls, seawalls, groins, jetties, dams and large-scale waterway channelization projects are not eligible;

(vii) Elevation, relocation, or floodproofing of utilities; and

(viii) Other mitigation activities not described or identified in (c)(2)(i) through (vii) of this section that are described in the State, Tribal or local mitigation plan.

(3) *Technical assistance.* If a recipient applied for and was awarded at least $1 million in the prior fiscal year, that recipient may be eligible to receive a technical assistance grant for up to $50,000.

(d) *Minimum project criteria.* In addition to being an eligible project type, mitigation grant projects must also:

(1) Be in conformance with State, Tribal and/or local mitigation plans approved under part 201 of this chapter

for the jurisdiction where the project is located;

(2) Be in conformance with applicable environmental and historic preservation laws, regulations, and agency policy, including parts 9 and 60 of this chapter, and other applicable Federal, State, Tribal, and local laws and regulations;

(3) Be technically feasible and cost-effective; or, eliminate future payments from the NFIF for severe repetitive loss structures through an acquisition or relocation activity;

(4) Solve a problem independently, or constitute a functional portion of a long-term solution where there is assurance that the project as a whole will be completed. This assurance will include documentation identifying the remaining funds necessary to complete the project, and the timeframe for completing the project;

(5) Consider long-term changes to the areas and entities it protects, and have manageable future maintenance and modification requirements. The subrecipient is responsible for the continued maintenance needed to preserve the hazard mitigation benefits of these measures; and

(6) Not duplicate benefits available from another source for the same purpose or assistance that another Federal agency or program has more primary authority to provide.

§ 77.7 [Removed]

■ 10. Remove § 77.7 in its entirety.

■ 11. Redesignate § 77.8 as § 77.7 and amend newly redesignated § 77.7 by revising paragraphs (a) through (c) to read as follows:

§ 77.7 Allowable costs.

(a) *General.* General policies for allowable costs for implementing awards and subawards are addressed in 2 CFR 200.101, 200.102, 200.400–200.475.

(1) *Eligible management costs*—(i) *Recipient.* Recipients are eligible to receive management costs consisting of a maximum of 10 percent of the planning and project activities awarded to the recipient, each fiscal year under FMA. These costs must be included in the application to FEMA.

(ii) *Subrecipient.* Subapplicants may include a maximum of 5 percent of the total funds requested for their subapplication for management costs to support the implementation of their planning or project activity. These costs must be included in the subapplication to the recipient.

(2) *Indirect costs.* Indirect costs of administering the FMA program are eligible as part of the 10 percent management costs for the recipient or the 5 percent management costs of the subrecipient, but in no case do they make the recipient eligible for additional management costs that exceed the caps identified in paragraph (a)(1) of this section. In addition, all costs must be in accordance with the provisions of 2 CFR parts 200 and 3002.

(b) *Pre-award costs.* FEMA may fund eligible pre-award costs related to developing the application or subapplication at its discretion and as funds are available. Recipients and subrecipients may be reimbursed for eligible pre-award costs for activities directly related to the development of the project or planning proposal. These costs can only be incurred during the open application period for the FMA program. Costs associated with implementation of the activity but incurred prior to award are not eligible. Therefore, activities where implementation is initiated or completed prior to award are not eligible and will not be reimbursed.

(c) *Duplication of benefits.* Grant funds may not duplicate benefits received by or available to applicants, subapplicants and project participants from insurance, other assistance programs, legal awards, or any other source to address the same purpose. Such individual or entity must notify the recipient and FEMA of all benefits that it receives or anticipates from other sources for the same purpose. FEMA will reduce the subaward by the amounts available for the same purpose from another source.

* * * * *

■ 12. Redesignate § 77.9 as § 77.8 and revise the newly redesignated § 77.8 to read as follows:

§ 77.8 Grant administration.

(a) *General.* Recipients must comply with the requirements contained in 2 CFR parts 200 and 3002 and FEMA award requirements, including submission of performance and financial status reports. Recipients must also ensure that subrecipients are aware of and comply with 2 CFR parts 200 and 3002.

(b) *Cost overruns.* (1) During the implementation of an approved grant, the recipient may find that actual costs are exceeding the approved award amount. While there is no guarantee of additional funding, FEMA will only consider requests made by the recipient to pay for such overruns if:

(i) Funds are available to meet the requested increase in funding; and

(ii) The amended grant award meets the eligibility requirements, including cost share requirements, identified in this section.

(2) Recipients may use cost underruns from ongoing subawards to offset overruns incurred by another subaward(s) awarded under the same award. All costs for which funding is requested must have been included in the original subapplication's cost estimate. In cases where an underrun is not available to cover an overrun, the Administrator may, with justification from the recipient and subrecipient, use other available FMA funds to cover the cost overrun.

(3) For all cost overruns that exceed the amount approved under the award, and which require additional Federal funds, the recipient must submit a written request with a recommendation, including a justification for the additional funding to the Regional Administrator for a determination. If approved, the Regional Administrator will increase the award through an amendment to the original award document.

(c) *Recapture.* At the time of closeout, FEMA will recapture any funds provided to a State or a community under this part if the applicant has not provided the appropriate matching funds, the approved project has not been completed within the timeframes specified in the grant agreement, or the completed project does not meet the criteria specified in this part.

(d) *Remedies for noncompliance.* FEMA may terminate an award or take other remedies for noncompliance in accordance with 2 CFR 200.338 through 200.342.

(e) *Reconsideration.* FEMA will reconsider determinations of noncompliance, additional award conditions, or its decision to terminate a Federal award. Requests for reconsideration must be made in writing to FEMA within 60 calendar days after receipt of a notice of the action, and in accordance with submission procedures set out in guidance. FEMA will notify the requester of the disposition of the request for reconsideration. If the decision is to grant the request for reconsideration, FEMA will take appropriate implementing action.

■ 13. Add and reserve part 79.

PART 80—PROPERTY ACQUISITION AND RELOCATION FOR OPEN SPACE

■ 14. Revise the authority citation for part 80 to read as follows:

Authority: Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 through 5207; the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4001 *et seq.;* Homeland Security Act of 2002, 6 U.S.C. 101.

■ 15. Amend § 80.3 by revising paragraphs (a) through (m) and adding paragraphs (n) and (o) to read as follows:

§ 80.3 Definitions.

(a) Except as noted in this part, the definitions applicable to the funding program apply to implementation of this part. In addition, for purposes of this part:

(b) *Applicant* means a State or Indian Tribal government applying to FEMA for a Federal award that will be accountable for the use of funds. Once funds have been awarded, the applicant becomes the recipient and may also be a pass-through entity.

(c) *Federal award* means the Federal financial assistance that a recipient or subrecipient receives directly from FEMA or indirectly from a pass-through entity. The terms ''award'' and ''grant'' may also be used to describe a ''Federal award'' under this part.

(d) *Market Value* means the price that the seller is willing to accept and a buyer is willing to pay on the open market and in an arm's length transaction.

(e) *National of the United States* means a person within the meaning of the term as defined in the Immigration and Nationality Act, 8 U.S.C. 1101(a)(22).

(f) *Pass-through entity* means a recipient that provides a subaward to a subrecipient.

(g) *Purchase offer* is the initial value assigned to the property, which is later adjusted by applicable additions and deductions, resulting in a final offer amount to a property owner.

(h) *Qualified alien* means a person within the meaning of the term as defined at 8 U.S.C. 1641.

(i) *Qualified conservation organization* means a qualified organization with a conservation purpose pursuant to 26 CFR 1.170A–14 and applicable implementing regulations, that is such an organization at the time it acquires the property interest and that was such an organization at the time of the major disaster declaration, or for at least 2 years prior to the opening of the grant application period.

(j) *Recipient* means the State or Tribal government that receives a Federal award directly from FEMA. A recipient may also be a pass-through entity. The term recipient does not include subrecipients.

(k) *Subapplicant* means the entity that submits an application for FEMA mitigation assistance to the State or Indian Tribal applicant/recipient. With respect to open space acquisition projects under the Hazard Mitigation Grant Program (HMGP), this term has the same meaning as given to the term ''applicant'' in part 206, subpart N of this chapter. Upon grant award, the subapplicant is referred to as the subrecipient.

(l) *Subaward* means an award provided by a pass-through entity to a subrecipient, for the subrecipient to carry out part of a Federal award received by the pass-through entity.

(m) *Subrecipient* means the State agency, community or Indian Tribal government or other legal entity to which a subaward is awarded and which is accountable to the recipient for the use of the funds provided.

(n) *Administrator* means the head of the Federal Emergency Management Agency, or his/her designated representative.

(o) *Regional Administrator* means the head of a Federal Emergency Management Agency regional office, or his/her designated representative.

§ 80.5 [Amended]

■ 16. Amend § 80.5 by removing the word ''grantee'' and adding in its place the word ''recipient'' in paragraphs (a)(1), (b) introductory text, (c) introductory text, (c)(1), (7) and (8); and by removing the word ''subgrantee'' and adding in its place the word ''subrecipient'' in the introductory text, paragraphs (a)(5), (b) introductory text, (b)(1) and (3), (c) introductory text, and (d).

■ 17. Amend § 80.9 by revising paragraphs (b) and (c) to read as follows:

§ 80.9 Eligible and ineligible costs.

* * * * *

(b) *Pre-award costs.* FEMA may fund eligible pre-award project costs at its discretion and as funds are available. Recipients and subrecipients may be reimbursed for eligible pre-award costs for activities directly related to the development of the project proposal. These costs can only be incurred during the open application period of the respective grant program. Costs associated with implementation of the project but incurred prior to grant award are not eligible. Therefore, activities where implementation is initiated or completed prior to award are not eligible and will not be reimbursed.

(c) *Duplication of benefits.* Grant funds may not duplicate benefits received by or available to applicants, subapplicants and other project participants from insurance, other assistance programs, legal awards, or any other source to address the same purpose. Such individual or entity must notify the subapplicant and FEMA of all benefits that it receives, anticipates, or has available from other sources for the same purpose. FEMA will reduce the subaward by the amounts available for the same purpose from another source.

* * * * *

■ 18. Amend § 80.11 by revising paragraph (a) to read as follows:

§ 80.11 Project eligibility.

(a) *Voluntary participation.* Eligible acquisition projects are those where the property owner participates voluntarily, and the recipient/subrecipient will not use its eminent domain authority to acquire the property for the open space purposes should negotiations fail.

* * * * *

■ 19. Amend § 80.13 by revising paragraph (a)(3) to read as follows:

§ 80.13 Application information.

(a) * * *

(3) The deed restriction language, which must be consistent with the FEMA model deed restriction that the local government will record with the property deeds. Any variation from the model deed restriction language can only be made with prior approval from FEMA's Office of Chief Counsel;

* * * * *

■ 20. Revise § 80.17 to read as follows:

§ 80.17 Project implementation.

(a) *Hazardous materials.* The subrecipient must take steps to ensure it does not acquire or include in the project properties contaminated with hazardous materials by seeking information from property owners and from other sources on the use and presence of contaminants affecting the property from owners of properties that are or were industrial or commercial, or adjacent to such. A contaminated property must be certified clean prior to participation. This excludes permitted disposal of incidental demolition and household hazardous wastes. FEMA mitigation grant funds may not be used for clean up or remediation of contaminated properties.

(b) *Clear title.* The subrecipient will obtain a title insurance policy demonstrating that fee title conveys to the subrecipient for each property to ensure that it acquires only a property with clear title. The property interest generally must transfer by a general warranty deed. Any incompatible easements or other encumbrances to the property must be extinguished before acquisition.

(c) *Purchase offer and supplemental payments.* (1) The amount of purchase offer is the current market value of the property or the market value of the property immediately before the

relevant event affecting the property (''pre-event'').

(i) The relevant event for Robert T. Stafford Disaster Relief and Emergency Assistance Act assistance under HMGP is the major disaster under which funds are available; for assistance under the Pre-disaster Mitigation program (PDM) (42 U.S.C. 5133), it is the most recent major disaster. Where multiple disasters have affected the same property, the recipient and subrecipient will determine which is the relevant event.

(ii) The relevant event for assistance under the National Flood Insurance Act is the most recent event resulting in a National Flood Insurance Program (NFIP) claim of at least $5000.

(2) The recipient should coordinate with the subrecipient in their determination of whether the valuation should be based on pre-event or current market value. Generally, the same method to determine market value should be used for all participants in the project.

(3) A property owner who did not own the property at the time of the relevant event, or who is not a National of the United States or qualified alien, is not eligible for a purchase offer based on pre-event market value of the property. Subrecipients who offer pre-event market value to the property owner must have already obtained certification during the application process that the property owner is either a National of the United States or a qualified alien.

(4) Certain tenants who must relocate as a result of the project are entitled to relocation benefits under the Uniform Relocation Assistance and Real Property Acquisition Act (such as moving expenses, replacement housing rental payments, and relocation assistance advisory services) in accordance with 49 CFR part 24.

(5) If a purchase offer for a residential property is less than the cost of the homeowner-occupant to purchase a comparable replacement dwelling outside the hazard-prone area in the same community, subrecipients for mitigation grant programs may make such a payment available in accordance with criteria determined by the Administrator.

(6) The subrecipient must inform each property owner, in writing, of what it considers to be the market value of the property, the method of valuation and basis for the purchase offer, and the final offer amount. The offer will also clearly state that the property owner's participation in the project is voluntary.

(d) *Removal of existing buildings.* Existing incompatible facilities must be removed by demolition or by relocation outside of the hazard area within 90 days of settlement of the property transaction. The FEMA Regional Administrator may grant an exception to this deadline only for a particular property based upon written justification if extenuating circumstances exist, but will specify a final date for removal.

(e) *Deed Restriction.* The subrecipient, upon settlement of the property transaction, must record with the deed of the subject property notice of applicable land use restrictions and related procedures described in this part, consistent with FEMA model deed restriction language.

■ 21. Amend § 80.19 by revising paragraphs (a) introductory text, (a)(3), and (b) through (e) to read as follows:

§ 80.19 Land use and oversight.

* * * * *

(a) *Open space requirements.* The property must be dedicated and maintained in perpetuity as open space for the conservation of natural floodplain functions.

* * * * *

(3) Any improvements on the property must be in accordance with proper floodplain management policies and practices. Structures built on the property according to paragraph (a)(2) of this section must be floodproofed or elevated to at least the base flood level plus 1 foot of freeboard, or greater, if required by FEMA, or if required by any State or local ordinance, and in accordance with criteria established by the Administrator.

* * * * *

(b) *Subsequent transfer.* After acquiring the property interest, the subrecipient, including successors in interest, will convey any interest in the property only if the Regional Administrator, through the State, gives prior written approval of the transferee in accordance with this paragraph.

(1) The request by the subrecipient, through the State, to the Regional Administrator must include a signed statement from the proposed transferee that it acknowledges and agrees to be bound by the terms of this section, and documentation of its status as a qualified conservation organization if applicable.

(2) The subrecipient may convey a property interest only to a public entity or to a qualified conservation organization. However, the subrecipient may convey an easement or lease to a private individual or entity for purposes compatible with the uses described in paragraph (a) of this section, with the prior approval of the Regional Administrator, and so long as the conveyance does not include authority to control and enforce the terms and conditions of this section.

(3) If title to the property is transferred to a public entity other than one with a conservation mission, it must be conveyed subject to a conservation easement that must be recorded with the deed and must incorporate all terms and conditions set forth in this section, including the easement holder's responsibility to enforce the easement. This must be accomplished by one of the following means:

(i) The subrecipient will convey, in accordance with this paragraph (b), a conservation easement to an entity other than the title holder, which must be recorded with the deed, or

(ii) At the time of title transfer, the subrecipient will retain such conservation easement, and record it with the deed.

(4) Conveyance of any property interest must reference and incorporate the original deed restrictions providing notice of the conditions in this section and must incorporate a provision for the property interest to revert to the subrecipient or recipient in the event that the transferee ceases to exist or loses its eligible status under this section.

(c) *Inspection.* FEMA, its representatives and assigns, including the recipient will have the right to enter upon the property, at reasonable times and with reasonable notice, for the purpose of inspecting the property to ensure compliance with the terms of this part, the property conveyance and of the grant award.

(d) *Monitoring and reporting.* Every 3 years the subrecipient (in coordination with any current successor in interest) through the recipient, must submit to the FEMA Regional Administrator a report certifying that the subrecipient has inspected the property within the month preceding the report, and that the property continues to be maintained consistent with the provisions of this part, the property conveyance and the grant award.

(e) *Enforcement.* The subrecipient, recipient, FEMA, and their respective representatives, successors and assigns, are responsible for taking measures to bring the property back into compliance if the property is not maintained according to the terms of this part, the conveyance, and the grant award. The relative rights and responsibilities of FEMA, the recipient, the subrecipient, and subsequent holders of the property interest at the time of enforcement, include the following:

(1) The recipient will notify the subrecipient and any current holder of the property interest in writing and advise them that they have 60 days to correct the violation. If the subrecipient or any current holder of the property interest fails to demonstrate a good faith effort to come into compliance with the terms of the grant within the 60-day period, the recipient will enforce the terms of the grant by taking any measures it deems appropriate, including but not limited to bringing an action at law or in equity in a court of competent jurisdiction.

(2) FEMA, its representatives, and assignees may enforce the terms of the grant by taking any measures it deems appropriate, including but not limited to 1 or more of the following:

(i) Withholding FEMA mitigation awards or assistance from the State and subrecipient; and current holder of the property interest.

(ii) Requiring transfer of title. The subrecipient or the current holder of the property interest will bear the costs of bringing the property back into compliance with the terms of the grant; or

(iii) Bringing an action at law or in equity in a court of competent jurisdiction against any or all of the following parties: the recipient, the subrecipient, and their respective successors.

■ 22. Amend § 80.21 by revising the introductory text and paragraph (d) to read as follows:

§ 80.21 Closeout requirements.

Upon closeout of the grant, the subrecipient, through the recipient, must provide FEMA, with the following:

* * * * *

(d) Identification of each property as a repetitive loss structure, if applicable; and

* * * * *

PART 201—MITIGATION PLANNING

■ 23. Revise the authority citation for part 201 to read as follows:

Authority: Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 through 5207; Homeland Security Act of 2002, 6 U.S.C. 101.

■ 24. Amend § 201.1 by revising paragraph (a) to read as follows:

§ 201.1 Purpose.

(a) The purpose of this part is to provide information on the policies and procedures for mitigation planning as required by the provisions of section 322 of the Stafford Act, 42 U.S.C. 5165.

* * * * *

■ 25. Revise § 201.2 to read as follows:

§ 201.2 Definitions.

Administrator means the head of the Federal Emergency Management Agency, or his/her designated representative.

Applicant means the entity applying to FEMA for a Federal award that will be accountable for the use of funds.

Federal award means the Federal financial assistance that a recipient or subrecipient receives directly from FEMA or indirectly from a pass-through entity. The term ''grant'' or ''award'' may also be used to describe a Federal award under this part.

Flood Mitigation Assistance (FMA) means the program authorized by section 1366 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4104c, and implemented at part 77.

Hazard mitigation means any sustained action taken to reduce or eliminate the long-term risk to human life and property from hazards.

Hazard Mitigation Grant Program (HMGP) means the program authorized under section 404 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5170c, and implemented at part 206, subpart N of this chapter.

Indian Tribal government means any Federally recognized governing body of an Indian or Alaska Native Tribe, band, nation, pueblo, village, or community that the Secretary of Interior acknowledges to exist as an Indian Tribe under the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a. This does not include Alaska Native corporations, the ownership of which is vested in private individuals.

Local government is any county, municipality, city, town, township, public authority, school district, special district, intrastate district, council of governments (regardless of whether the council of governments is incorporated as a nonprofit corporation under State law), regional or interstate government entity, or agency or instrumentality of a local government; any Indian Tribe or authorized Tribal organization, or Alaska Native village or organization; and any rural community, unincorporated town or village, or other public entity.

Managing State means a State to which FEMA has delegated the authority to administer and manage the HMGP under the criteria established by FEMA pursuant to 42 U.S.C. 5170c(c). FEMA may also delegate authority to Tribal governments to administer and manage the HMGP as a Managing State.

Pass-through entity means a recipient that provides a subaward to a subrecipient to carry out part of a Federal program.

Pre-Disaster Mitigation Program (PDM) means the program authorized under section 203 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5133.

Regional Administrator means the head of a Federal Emergency Management Agency regional office, or his/her designated representative.

Recipient means the government that receives a Federal award directly from FEMA. A recipient may also be a pass-through entity. The term recipient does not include subrecipients. The recipient is the entire legal entity even if only a particular component of the entity is designated in the grant award document. Generally, the State is the recipient. However, an Indian Tribal government may choose to be a recipient, or may act as a subrecipient under the State. An Indian Tribal government acting as recipient will assume the responsibilities of a ''State'', as described in this part, for the purposes of administering the grant.

Repetitive loss structure means a structure as defined at § 77.2 of this chapter.

Severe repetitive loss structure is a structure as defined at § 77.2 of this chapter.

Small and impoverished communities means a community of 3,000 or fewer individuals that is identified by the State as a rural community, and is not a remote area within the corporate boundaries of a larger city; is economically disadvantaged, by having an average per capita annual income of residents not exceeding 80 percent of national, per capita income, based on best available data; the local unemployment rate exceeds by one percentage point or more, the most recently reported, average yearly national unemployment rate; and any other factors identified in the State Plan in which the community is located.

The Stafford Act refers to the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93–288, as amended (42 U.S.C. 5121–5207).

State is any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

State Hazard Mitigation Officer is the official representative of State government who is the primary point of contact with FEMA, other Federal agencies, and local governments in mitigation planning and implementation of mitigation programs

and activities required under the Stafford Act.

Subapplicant means an entity submitting a subapplication to the applicant for a subaward to carry out part of a Federal award.

Subaward means an award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of a Federal award.

Subrecipient means the entity that receives a subaward from a pass-through entity. Depending on the program, subrecipients of hazard mitigation assistance subawards can be a State agency, local government, private nonprofit organization, or Indian Tribal government. Subrecipients of FMA subawards can be a State agency, community, or Indian Tribal government, as described in 44 CFR part 77. Indian Tribal governments acting as a subrecipient are accountable to the State recipient.

■ 26. Amend § 201.3 by revising paragraphs (a), (b)(2), (c)(1), and (e)(1) to read as follows:

§ 201.3 Responsibilities.

(a) *General.* This section identifies the key responsibilities of FEMA, States, and local/Tribal governments in carrying out section 322 of the Stafford Act, 42 U.S.C. 5165.

(b) * * *

(2) Provide technical assistance and training to State, local, and Indian Tribal governments regarding the mitigation planning process;

* * * * *

(c) * * *

(1) Prepare and submit to FEMA a Standard State Mitigation Plan following the criteria established in § 201.4 as a condition of receiving non-emergency Stafford Act assistance and FEMA mitigation grants. In accordance with § 77.6(b) of this chapter, applicants and subapplicants for FMA project grants must have a FEMA-approved mitigation plan that addresses identified flood hazards and provides for reduction of flood losses to structures for which NFIP coverage is available.

* * * * *

(e) * * *

(1) Prepare and submit to FEMA a Tribal Mitigation Plan following the criteria established in § 201.7 as a condition of receiving non-emergency Stafford Act assistance and FEMA mitigation grants as a recipient. This plan will also allow Indian Tribal governments to apply through the State, as a subrecipient, for any FEMA mitigation project grant. In accordance with § 77.6(b) of this chapter, applicants and subapplicants for FMA project grants must have a FEMA-approved mitigation plan that addresses identified flood hazards and provides for reduction of flood losses to structures for which NFIP coverage is available.

* * * * *

■ 27. Amend § 201.4 by revising paragraphs (c)(2) through (4) to read as follows:

§ 201.4 Standard State Mitigation Plans.

* * * * *

(c) * * *

(2) *Risk assessments* that provide the factual basis for activities proposed in the strategy portion of the mitigation plan. Statewide risk assessments must characterize and analyze natural hazards and risks to provide a statewide overview. This overview will allow the State to compare potential losses throughout the State and to determine their priorities for implementing mitigation measures under the strategy, and to prioritize jurisdictions for receiving technical and financial support in developing more detailed local risk and vulnerability assessments. The risk assessment must include the following:

(i) An overview of the type and location of all natural hazards that can affect the State, including information on previous occurrences of hazard events, as well as the probability of future hazard events, using maps where appropriate;

(ii) An overview and analysis of the State's vulnerability to the hazards described in this paragraph (c)(2), based on estimates provided in local risk assessments as well as the State risk assessment. The State must describe vulnerability in terms of the jurisdictions most threatened by the identified hazards, and most vulnerable to damage and loss associated with hazard events. State owned or operated critical facilities located in the identified hazard areas must also be addressed;

(iii) An overview and analysis of potential losses to the identified vulnerable structures, based on estimates provided in local risk assessments as well as the State risk assessment. The State must estimate the potential dollar losses to State owned or operated buildings, infrastructure, and critical facilities located in the identified hazard areas.

(3) A *Mitigation Strategy* that provides the State's blueprint for reducing the losses identified in the risk assessment. This section must include:

(i) A description of State goals to guide the selection of activities to mitigate and reduce potential losses.

(ii) A discussion of the State's pre- and post-disaster hazard management policies, programs, and capabilities to mitigate the hazards in the area, including: An evaluation of State laws, regulations, policies, and programs related to hazard mitigation as well as to development in hazard-prone areas; a discussion of State funding capabilities for hazard mitigation projects; and a general description and analysis of the effectiveness of local mitigation policies, programs, and capabilities.

(iii) An identification, evaluation, and prioritization of cost-effective, environmentally sound, and technically feasible mitigation actions and activities the State is considering and an explanation of how each activity contributes to the overall mitigation strategy. This section should be linked to local plans, where specific local actions and projects are identified.

(iv) Identification of current and potential sources of Federal, State, local, or private funding to implement mitigation activities.

(v) In accordance with § 77.6(b) of this chapter, applicants and subapplicants for FMA project grants must have a FEMA-approved mitigation plan that addresses identified flood hazards and provides for reduction of flood losses to structures for which NFIP coverage is available.

(4) A section on the *Coordination of Local Mitigation Planning* that includes the following:

(i) A description of the State process to support, through funding and technical assistance, the development of local mitigation plans.

(ii) A description of the State process and timeframe by which the local plans will be reviewed, coordinated, and linked to the State Mitigation Plan.

(iii) Criteria for prioritizing communities and local jurisdictions that would receive planning and project grants under available funding programs, which should include consideration for communities with the highest risks, repetitive loss structures, and most intense development pressures. Further, that for non-planning grants, a principal criterion for prioritizing grants will be the extent to which benefits are maximized according to a cost benefit review of proposed projects and their associated costs.

* * * * *

■ 28. Amend § 201.6 by revising paragraphs (a) through (c) to read as follows:

§ 201.6 Local Mitigation Plans.

* * * * *

(a) *Plan requirements.* (1) A local government must have a mitigation plan

approved pursuant to this section in order to receive HMGP project grants. A local government must have a mitigation plan approved pursuant to this section in order to apply for and receive mitigation project grants under all other mitigation grant programs.

(2) Plans prepared for the FMA program, described at part 77 of this chapter, need only address these requirements as they relate to flood hazards in order to be eligible for FMA project grants. However, these plans must be clearly identified as being flood mitigation plans, and they will not meet the eligibility criteria for other mitigation grant programs, unless flooding is the only natural hazard the jurisdiction faces.

(3) Regional Administrators may grant an exception to the plan requirement in extraordinary circumstances, such as in a small and impoverished community, when justification is provided. In these cases, a plan will be completed within 12 months of the award of the project grant. If a plan is not provided within this timeframe, the project grant will be terminated, and any costs incurred after notice of grant's termination will not be reimbursed by FEMA.

(4) Multi-jurisdictional plans (*e.g.* watershed plans) may be accepted, as appropriate, as long as each jurisdiction has participated in the process and has officially adopted the plan. State-wide plans will not be accepted as multi-jurisdictional plans.

(b) *Planning process.* An open public involvement process is essential to the development of an effective plan. In order to develop a more comprehensive approach to reducing the effects of natural disasters, the planning process must include:

(1) An opportunity for the public to comment on the plan during the drafting stage and prior to plan approval;

(2) An opportunity for neighboring communities, local and regional agencies involved in hazard mitigation activities, and agencies that have the authority to regulate development, as well as businesses, academia and other private and nonprofit interests to be involved in the planning process; and

(3) Review and incorporation, if appropriate, of existing plans, studies, reports, and technical information.

(c) *Plan content.* The plan must include the following:

(1) Documentation of the *planning process* used to develop the plan, including how it was prepared, who was involved in the process, and how the public was involved.

(2) A *risk assessment* that provides the factual basis for activities proposed in the strategy to reduce losses from identified hazards. Local risk assessments must provide sufficient information to enable the jurisdiction to identify and prioritize appropriate mitigation actions to reduce losses from identified hazards. The risk assessment must include:

(i) A description of the type, location, and extent of all natural hazards that can affect the jurisdiction. The plan must include information on previous occurrences of hazard events and on the probability of future hazard events.

(ii) A description of the jurisdiction's vulnerability to the hazards described in paragraph (c)(2)(i) of this section. This description must include an overall summary of each hazard and its impact on the community. All plans approved after October 1, 2008 must also address NFIP insured structures that have been repetitively damaged by floods. The plan should describe vulnerability in terms of:

(A) The types and numbers of existing and future buildings, infrastructure, and critical facilities located in the identified hazard areas;

(B) An estimate of the potential dollar losses to vulnerable structures identified in paragraph (c)(2)(ii)(A) of this section and a description of the methodology used to prepare the estimate;

(C) Providing a general description of land uses and development trends within the community so that mitigation options can be considered in future land use decisions.

(iii) For multi-jurisdictional plans, the risk assessment section must assess each jurisdiction's risks where they vary from the risks facing the entire planning area.

(3) A *mitigation strategy* that provides the jurisdiction's blueprint for reducing the potential losses identified in the risk assessment, based on existing authorities, policies, programs and resources, and its ability to expand on and improve these existing tools. This section must include:

(i) A description of mitigation goals to reduce or avoid long-term vulnerabilities to the identified hazards.

(ii) A section that identifies and analyzes a comprehensive range of specific mitigation actions and projects being considered to reduce the effects of each hazard, with particular emphasis on new and existing buildings and infrastructure. All plans approved by FEMA after October 1, 2008, must also address the jurisdiction's participation in the NFIP, and continued compliance with NFIP requirements, as appropriate.

(iii) An action plan describing how the actions identified in paragraph (c)(3)(ii) of this section will be prioritized, implemented, and administered by the local jurisdiction. Prioritization will include a special emphasis on the extent to which benefits are maximized according to a cost benefit review of the proposed projects and their associated costs.

(iv) For multi-jurisdictional plans, there must be identifiable action items specific to the jurisdiction requesting FEMA approval or credit of the plan.

(4) A *plan maintenance process* that includes:

(i) A section describing the method and schedule of monitoring, evaluating, and updating the mitigation plan within a five-year cycle.

(ii) A process by which local governments incorporate the requirements of the mitigation plan into other planning mechanisms such as comprehensive or capital improvement plans, when appropriate.

(iii) Discussion on how the community will continue public participation in the plan maintenance process.

(5) *Documentation* that the plan has been formally adopted by the governing body of the jurisdiction requesting approval of the plan (*e.g.,* City Council, County Commissioner, Tribal Council). For multi-jurisdictional plans, each jurisdiction requesting approval of the plan must document that it has been formally adopted.

* * * * *

■ 29. Amend § 201.7 by revising paragraphs (a), (c), and (d) to read as follows:

§ 201.7 Tribal Mitigation Plans.

* * * * *

(a) *Plan requirement.* (1) Indian Tribal governments applying to FEMA as a recipient must have an approved Tribal Mitigation Plan meeting the requirements of this section as a condition of receiving non-emergency Stafford Act assistance and FEMA mitigation grants. Emergency assistance provided under 42 U.S.C. 5170a, 5170b, 5173, 5174, 5177, 5179, 5180, 5182, 5183, 5184, 5192 will not be affected. Mitigation planning grants provided through the PDM program, authorized under section 203 of the Stafford Act, 42 U.S.C. 5133, will also continue to be available.

(2) Indian Tribal governments applying through the State as a subrecipient must have an approved Tribal Mitigation Plan meeting the requirements of this section in order to receive HMGP project grants. A Tribe must have an approved Tribal Mitigation Plan in order to apply for and receive FEMA mitigation project grants under all other mitigation grant programs. The provisions in

§ 201.6(a)(3) are available to Tribes applying as subrecipients.

(3) Multi-jurisdictional plans (*e.g.* county-wide or watershed plans) may be accepted, as appropriate, as long as the Indian Tribal government has participated in the process and has officially adopted the plan. Indian Tribal governments must address all the elements identified in this section to ensure eligibility as a recipient or as a subrecipient.

* * * * *

(c) *Plan content.* The plan must include the following:

(1) Documentation of the *planning process* used to develop the plan, including how it was prepared, who was involved in the process, and how the public was involved. This must include:

(i) An opportunity for the public to comment on the plan during the drafting stage and prior to plan approval, including a description of how the Indian Tribal government defined ''public;''

(ii) As appropriate, an opportunity for neighboring communities, Tribal and regional agencies involved in hazard mitigation activities, and agencies that have the authority to regulate development, as well as businesses, academia, and other private and nonprofit interests to be involved in the planning process;

(iii) Review and incorporation, if appropriate, of existing plans, studies, and reports; and

(iv) Be integrated to the extent possible with other ongoing Tribal planning efforts as well as other FEMA programs and initiatives.

(2) A *risk assessment* that provides the factual basis for activities proposed in the strategy to reduce losses from identified hazards. Tribal risk assessments must provide sufficient information to enable the Indian Tribal government to identify and prioritize appropriate mitigation actions to reduce losses from identified hazards. The risk assessment must include:

(i) A description of the type, location, and extent of all natural hazards that can affect the Tribal planning area. The plan must include information on previous occurrences of hazard events and on the probability of future hazard events.

(ii) A description of the Indian Tribal government's vulnerability to the hazards described in paragraph (c)(2)(i) of this section. This description must include an overall summary of each hazard and its impact on the Tribe. The plan should describe vulnerability in terms of:

(A) The types and numbers of existing and future buildings, infrastructure, and critical facilities located in the identified hazard areas;

(B) An estimate of the potential dollar losses to vulnerable structures identified in paragraph (c)(2)(ii)(A) of this section and a description of the methodology used to prepare the estimate;

(C) A general description of land uses and development trends within the Tribal planning area so that mitigation options can be considered in future land use decisions; and

(D) Cultural and sacred sites that are significant, even if they cannot be valued in monetary terms.

(3) A *mitigation strategy* that provides the Indian Tribal government's blueprint for reducing the potential losses identified in the risk assessment, based on existing authorities, policies, programs and resources, and its ability to expand on and improve these existing tools. This section must include:

(i) A description of mitigation goals to reduce or avoid long-term vulnerabilities to the identified hazards.

(ii) A section that identifies and analyzes a comprehensive range of specific mitigation actions and projects being considered to reduce the effects of each hazard, with particular emphasis on new and existing buildings and infrastructure.

(iii) An action plan describing how the actions identified in paragraph (c)(3)(ii) of this section will be prioritized, implemented, and administered by the Indian Tribal government.

(iv) A discussion of the Indian Tribal government's pre- and post-disaster hazard management policies, programs, and capabilities to mitigate the hazards in the area, including: An evaluation of Tribal laws, regulations, policies, and programs related to hazard mitigation as well as to development in hazard-prone areas; and a discussion of Tribal funding capabilities for hazard mitigation projects.

(v) Identification of current and potential sources of Federal, Tribal, or private funding to implement mitigation activities.

(vi) In accordance with § 77.6(b) of this chapter, applicants and subapplicants for FMA project grants must have a FEMA-approved mitigation plan that addresses identified flood hazards and provides for reduction of flood losses to structures for which NFIP coverage is available.

(4) A *plan maintenance process* that includes:

(i) A section describing the method and schedule of monitoring, evaluating, and updating the mitigation plan.

(ii) A system for monitoring implementation of mitigation measures and project closeouts.

(iii) A process by which the Indian Tribal government incorporates the requirements of the mitigation plan into other planning mechanisms such as reservation master plans or capital improvement plans, when appropriate.

(iv) Discussion on how the Indian Tribal government will continue public participation in the plan maintenance process.

(v) A system for reviewing progress on achieving goals as well as activities and projects identified in the mitigation strategy.

(5) The plan must be formally adopted by the governing body of the Indian Tribal government prior to submittal to FEMA for final review and approval.

(6) The plan must include assurances that the Indian Tribal government will comply with all applicable Federal statutes and regulations in effect with respect to the periods for which it receives grant funding, including 2 CFR parts 200 and 3002. The Indian Tribal government will amend its plan whenever necessary to reflect changes in Tribal or Federal laws and statutes.

(d) *Plan review and updates.* (1) Plans must be submitted to the appropriate FEMA Regional Office for formal review and approval. Indian Tribal governments who would like the option of being a subrecipient under the State must also submit their plan to the State Hazard Mitigation Officer for review and coordination.

(2) The Regional review will be completed within 45 days after receipt from the Indian Tribal government, whenever possible.

(3) Indian Tribal governments must review and revise their plan to reflect changes in development, progress in local mitigation efforts, and changes in priorities, and resubmit it for approval within 5 years in order to continue to be eligible for non-emergency Stafford Act assistance and FEMA mitigation grant funding.

PART 206—FEDERAL DISASTER ASSISTANCE

■ 30. The authority citation for part 206 is revised to read as follows:

Authority: Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 through 5207; Homeland Security Act of 2002, 6 U.S.C. 101 *et seq.;* Department of Homeland Security Delegation 9001.1; sec. 1105, Pub. L. 113–2, 127 Stat. 43 (42 U.S.C. 5189a note).

■ 31. Revise § 206.431 to read as follows:

§ 206.431 Definitions.

Activity means any mitigation measure, project, or action proposed to reduce risk of future damage, hardship, loss or suffering from disasters.

Applicant means the non-Federal entity consisting of a State or Indian Tribal government, applying to FEMA for a Federal award under the Hazard Mitigation Grant Program. Upon award, the applicant becomes the recipient and may also be a pass-through entity.

Enhanced State Mitigation Plan is the hazard mitigation plan approved under 44 CFR part 201 as a condition of receiving increased funding under the HMGP.

Grant application means the request to FEMA for HMGP funding, as outlined in § 206.436, by a State or Tribal government that will act as recipient.

Grant award means total of Federal and non-Federal contributions to complete the approved scope of work.

Indian Tribal government means any Federally recognized governing body of an Indian or Alaska Native Tribe, band, nation, pueblo, village, or community that the Secretary of Interior acknowledges to exist as an Indian Tribe under the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a. This does not include Alaska Native corporations, the ownership of which is vested in private individuals. Indian Tribal governments have the option to apply as an applicant or subapplicant.

Local Mitigation Plan is the hazard mitigation plan required of a local government acting as a subrecipient as a condition of receiving a project subaward under the HMGP as outlined in 44 CFR 201.6.

Pass-through entity means a recipient that provides a subaward to a subrecipient.

Recipient means the State or Indian Tribal government that receives a Federal award directly from FEMA. A recipient may also be a pass-through entity. The term recipient does not include subrecipients. The recipient is the entire legal entity even if only a particular component of the entity is designated in the grant award document. Generally, the State is the recipient. However, an Indian Tribal government may choose to be a recipient, or may act as a subrecipient under the State. An Indian Tribal government acting as recipient will assume the responsibilities of a ''State'', as described in this part, for the purposes of administering the grant.

Standard State Mitigation Plan is the hazard mitigation plan approved under 44 CFR part 201, as a condition of receiving Stafford Act assistance as outlined in § 201.4 of this chapter.

State Administrative Plan for the Hazard Mitigation Grant Program means the plan developed by the State to describe the procedures for administration of the HMGP.

Subapplicant means the State agency, local government, eligible private nonprofit organization, or Indian Tribal government submitting a subapplication to the applicant for financial assistance under HMGP. Upon award, the subapplicant becomes the subrecipient.

Subaward means an award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of a Federal award.

Subaward application means the request to the recipient for HMGP funding by the eligible subrecipient, as outlined in § 206.436.

Subrecipient means the government or other legal entity to which a subaward is awarded and which is accountable to the recipient for the use of the funds provided. Subrecipients can be a State agency, local government, private nonprofit organization, or Indian Tribal government as outlined in § 206.433. Indian Tribal governments acting as a subrecipient are accountable to the State recipient.

Tribal Mitigation Plan is the hazard mitigation plan required of an Indian Tribal government acting as a recipient or subrecipient as a condition of receiving a project award or subaward under the HMGP as outlined in 44 CFR 201.7.

■ 32. Amend § 206.432 by revising paragraphs (b) introductory text, (b)(2) and (3), and (c) to read as follows:

§ 206.432 Federal grant assistance.

* * * * *

(b) *Amounts of assistance.* The total Federal contribution of funds is based on the estimated aggregate grant amount to be made under the Stafford Act for the major disaster (less associated administrative costs), and must be as follows:

* * * * *

(2) *Twenty (20) percent.* A State with an approved Enhanced State Mitigation Plan, in effect before the disaster declaration, which meets the requirements outlined in § 201.5 of this subchapter will be eligible for assistance under the HMGP not to exceed 20 percent of such amounts, for amounts not more than $35.333 billion.

(3) The estimates of Federal assistance under this paragraph (b) will be based on the Regional Administrator's estimate of all eligible costs, actual grants, and appropriate mission assignments.

(c) *Cost sharing.* All mitigation measures approved under the State's grant will be subject to the cost sharing provisions established in the FEMA-State Agreement. FEMA may contribute up to 75 percent of the cost of measures approved for funding under the Hazard Mitigation Grant Program for major disasters declared on or after June 10, 1993. The non-Federal share may exceed the Federal share. FEMA will not contribute to costs above the Federally approved estimate.

■ 33. Amend § 206.433 by revising paragraph (a) to read as follows:

§ 206.433 State responsibilities.

(a) *Recipient.* The State will be the recipient to which funds are awarded and will be accountable for the use of those funds. There may be subrecipients within the State government.

* * * * *

■ 34. Amend § 206.434 by revising paragraphs (a), (b), (c)(1) and (5), (d)(1), and (e) to read as follows:

§ 206.434 Eligibility.

(a) *Eligible entities.* The following are eligible to apply for the Hazard Mitigation Program Grant:

(1) Applicants—States and Indian Tribal governments;

(2) Subapplicants—(i) State agencies and local governments;

(ii) Private nonprofit organizations that own or operate a private nonprofit facility as defined in § 206.221(e). A qualified conservation organization as defined at § 80.3(h) of this chapter is the only private nonprofit organization eligible to apply for acquisition or relocation for open space projects;

(iii) Indian Tribal governments.

(b) *Plan requirement.* (1) Local and Indian Tribal government applicants for project subawards must have an approved local or Tribal Mitigation Plan in accordance with 44 CFR part 201 before receipt of HMGP subaward funding for projects.

(2) Regional Administrators may grant an exception to this requirement in extraordinary circumstances, such as in a small and impoverished community when justification is provided. In these cases, a plan will be completed within 12 months of the award of the project subaward. If a plan is not provided within this timeframe, the project subaward will be terminated, and any costs incurred after notice of subaward's termination will not be reimbursed by FEMA.

(c) * * *

(1) Be in conformance with the State Mitigation Plan and Local or Tribal Mitigation Plan approved under 44 CFR part 201; or for Indian Tribal governments acting as recipients, be in

conformance with the Tribal Mitigation Plan approved under 44 CFR 201.7;

* * * * *

(5) Be cost-effective and substantially reduce the risk of future damage, hardship, loss, or suffering resulting from a major disaster. The recipient must demonstrate this by documenting that the project;

(i) Addresses a problem that has been repetitive, or a problem that poses a significant risk to public health and safety if left unsolved,

(ii) Will not cost more than the anticipated value of the reduction in both direct damages and subsequent negative impacts to the area if future disasters were to occur,

(iii) Has been determined to be the most practical, effective, and environmentally sound alternative after consideration of a range of options,

(iv) Contributes, to the extent practicable, to a long-term solution to the problem it is intended to address,

(v) Considers long-term changes to the areas and entities it protects, and has manageable future maintenance and modification requirements.

(d) *Eligible activities*—(1) *Planning.* Up to 7% of the State's HMGP award may be used to develop State, Tribal and/or local mitigation plans to meet the planning criteria outlined in 44 CFR part 201.

* * * * *

(e) *Property acquisitions and relocation requirements.* Property acquisitions and relocation projects for open space proposed for funding pursuant to a major disaster declared on or after December 3, 2007 must be implemented in accordance with part 80 of this chapter.

* * * * *

§ 206.435 [Amended]

■ 35. Amend § 206.435 by removing the word ''shall'' and adding in its place the word ''will'' in the last sentence of paragraph (a).

■ 36. Amend § 206.436 by revising paragraphs (a), (b), (c) introductory text, (c)(1), (e), and (g) to read as follows:

§ 206.436 Application procedures.

(a) *General.* This section describes the procedures to be used by the recipient in submitting an application for HMGP funding. Under the HMGP, the State or Indian Tribal government is the recipient and is responsible for processing subawards to applicants in accordance with 2 CFR parts 200 and 3002. Subrecipients are accountable to the recipient.

(b) *Governor's Authorized Representative.* The Governor's Authorized Representative serves as the grant administrator for all funds provided under the Hazard Mitigation Grant Program. The Governor's Authorized Representative's responsibilities as they pertain to procedures outlined in this section include providing technical advice and assistance to eligible subrecipients, and ensuring that all potential applicants are aware of assistance available and submission of those documents necessary for grant award.

(c) *Hazard mitigation application.* Upon identification of mitigation measures, the State (Governor's Authorized Representative) will submit its Hazard Mitigation Grant Program application to the FEMA Regional Administrator. The application will identify one or more mitigation measures for which funding is requested. The application must include a Standard Form (SF) 424, Application for Federal Assistance, SF 424D, Assurances for Construction Programs, if appropriate, and a narrative statement. The narrative statement will contain any pertinent project management information not included in the State's administrative plan for Hazard Mitigation. The narrative statement will also serve to identify the specific mitigation measures for which funding is requested. Information required for each mitigation measure must include the following:

(1) Name of the subrecipient, if any;

* * * * *

(e) *Extensions.* The State may request the Regional Administrator to extend the application time limit by 30 to 90 day increments, not to exceed a total of 180 days. The recipient must include a justification in its request.

* * * * *

(g) *Indian Tribal recipients.* Indian Tribal governments may submit a SF 424 directly to the Regional Administrator.

■ 37. Amend § 206.437 by revising paragraphs (a), (b)(4)(i), (x), and (xiii), and (d) to read as follows:

§ 206.437 State administrative plan.

(a) *General.* The State must develop a plan for the administration of the Hazard Mitigation Grant Program.

(b) * * *

(4) * * *

(i) Identify and notify potential applicants (subrecipients) of the availability of the program;

* * * * *

(x) Provide technical assistance as required to subrecipient(s);

* * * * *

(xiii) Determine the percentage or amount of pass-through funds for management costs provided under 44 CFR part 207 that the recipient will make available to subrecipients, and the basis, criteria, or formula for determining the subrecipient percentage or amount.

* * * * *

(d) *Approval.* The State must submit the administrative plan to the Regional Administrator for approval. Following each major disaster declaration, the State must prepare any updates, amendments, or plan revisions required to meet current policy guidance or changes in the administration of the Hazard Mitigation Grant Program. Funds will not be awarded until the State Administrative Plan is approved by the FEMA Regional Administrator.

■ 38. Revise § 206.438 to read as follows:

§ 206.438 Project management.

(a) *General.* The State serving as recipient has primary responsibility for project management and accountability of funds as indicated in 2 CFR parts 200 and 3002 and 44 CFR part 206. The State is responsible for ensuring that subrecipients meet all program and administrative requirements.

(b) *Cost overruns.* During the execution of work on an approved mitigation measure the Governor's Authorized Representative may find that actual project costs are exceeding the approved estimates. Cost overruns which can be met without additional Federal funds, or which can be met by offsetting cost underruns on other projects, need not be submitted to the Regional Administrator for approval, so long as the full scope of work on all affected projects can still be met. For cost overruns which exceed Federal obligated funds and which require additional Federal funds, the Governor's Authorized Representative will evaluate each cost overrun and submit a request with a recommendation to the Regional Administrator for a determination. The applicant's justification for additional costs and other pertinent material must accompany the request. The Regional Administrator will notify the Governor's Authorized Representative in writing of the determination and process a supplement, if necessary. All requests that are not justified must be denied by the Governor's Authorized Representative. In no case will the total amount obligated to the State exceed the funding limits set forth in § 206.432(b). Any such problems or circumstances affecting project costs must be identified through the quarterly progress reports required in paragraph (c) of this section.

(c) *Progress reports.* The recipient must submit a quarterly progress report

to FEMA indicating the status and completion date for each measure funded. Any problems or circumstances affecting completion dates, scope of work, or project costs which are expected to result in noncompliance with the approved grant conditions must be described in the report.

(d) *Payment of claims.* The Governor's Authorized Representative will make a claim to the Regional Administrator for reimbursement of allowable costs for each approved measure. In submitting such claims the Governor's Authorized Representative must certify that reported costs were incurred in the performance of eligible work, that the approved work was completed and that the mitigation measure is in compliance with the provisions of the FEMA-State Agreement. The Regional Administrator will determine the eligible amount of reimbursement for each claim and approve payment. If a mitigation measure is not completed, and there is not adequate justification for noncompletion, no Federal funding will be provided for that measure.

(e) *Audit requirements.* Uniform audit requirements as set forth in 2 CFR parts 200 and 3002 and 44 CFR part 206 apply to all grant assistance provided under this subpart. FEMA may elect to conduct a Federal audit on the disaster assistance award or on any of the subawards.

§ 206.439 [Amended]

■ 39. Amend § 206.439 by revising the second sentence of paragraph (c) to read as follows:

§ 206.439 Allowable costs.

* * * * *

(c) * * * Recipients and subrecipients may be reimbursed for eligible pre-award costs for activities directly related to the development of the project or planning proposal. * * *

■ 40. Amend § 206.440 by revising the introductory text and paragraphs (a), (b) heading, (c) heading, (c)(2) and (3), (d), and (e)(3) to read as follows:

§ 206.440 Appeals.

An eligible applicant, subrecipient, or recipient may appeal any determination previously made related to an application for or the provision of Federal assistance according to the procedures in this section.

(a) *Format and content.* The applicant or recipient will make the appeal in writing through the recipient to the Regional Administrator. The recipient-will review and evaluate all subrecipient appeals before submission to the Regional Administrator. The recipient may make recipient-related appeals to the Regional Administrator. The appeal must contain documented justification supporting the appellant's position, specifying the monetary figure in dispute and the provisions in Federal law, regulation, or policy with which the appellant believes the initial action was inconsistent.

* * * * *

(b) *Levels of appeal.*

* * * * *

(c) *Time limits.*

* * * * *

(2) The recipient will review and forward appeals from an applicant or subrecipient, with a written recommendation, to the Regional Administrator within 60 days of receipt.

(3) Within 90 days following receipt of an appeal, the Regional Administrator (for first appeals) or Assistant Administrator for the Mitigation Directorate (for second appeals) will notify the recipient in writing of the disposition of the appeal or of the need for additional information. A request by the Regional Administrator or Assistant Administrator for the Mitigation Directorate for additional information will include a date by which the information must be provided. Within 90 days following the receipt of the requested additional information or following expiration of the period for providing the information, the Regional Administrator or Assistant Administrator for the Mitigation Directorate will notify the recipient in writing of the disposition of the appeal. If the decision is to grant the appeal, the Regional Administrator will take appropriate implementing action.

(d) *Technical advice.* In appeals involving highly technical issues, the Regional Administrator or Assistant Administrator for the Mitigation Directorate may, at his or her discretion, submit the appeal to an independent scientific or technical person or group having expertise in the subject matter of the appeal for advice or recommendation. The period for this technical review may be in addition to other allotted time periods. Within 90 days of receipt of the report, the Regional Administrator or Assistant Administrator for the Mitigation Directorate will notify the recipient in writing of the disposition of the appeal.

(e) * * *

(3) The decision of the FEMA official at the next higher appeal level will be the final administrative decision of FEMA.

Pete Gaynor,

Administrator, Federal Emergency Management Agency.

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Part IV

Environmental Protection Agency

40 CFR Part 257
Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals From Electric Utilities; A Holistic Approach to Closure Part A: Deadline To Initiate Closure; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 257

[EPA–HQ–OLEM–2019–0172 and EPA–HQ–OLEM–2018–0524; FRL–10013–20–OLEM]

RIN 2050–AH10

Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals From Electric Utilities; A Holistic Approach to Closure Part A: Deadline To Initiate Closure

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On April 17, 2015, the Environmental Protection Agency (EPA or the Agency) promulgated national minimum criteria for existing and new coal combustion residuals (CCR) landfills and existing and new CCR surface impoundments. On August 21, 2018, the U.S. Court of Appeals for the D.C. Circuit issued its opinion in the case of *Utility Solid Waste Activities Group* v. *EPA,* 901 F.3d 414 (per curiam) (*USWAG*). This rule finalizes regulations, proposed on December 2, 2019, to implement the court's vacatur of the 2015 provisions. The court vacated provisions that allowed unlined impoundments to continue receiving coal ash unless they leak, and classified ''clay-lined'' impoundments as lined, thereby allowing such units to operate indefinitely. In addition, EPA is establishing a revised date by which unlined surface impoundments must cease receiving waste and initiate closure, following its reconsideration of those dates in light of the *USWAG* decision. Lastly, EPA is finalizing amendments proposed on August 14, 2019, to the requirements for the annual groundwater monitoring and corrective action report and the requirements for the publicly accessible CCR internet sites.

DATES: This final rule is effective on September 28, 2020.

ADDRESSES: EPA has established two dockets for this action under Docket ID No. EPA–HQ–OLEM–2019–0172 and EPA–HQ–OLEM–2018–0524. 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.*

FOR FURTHER INFORMATION CONTACT: For information concerning this final rule, contact Kirsten Hillyer, Materials Recovery and Waste Management Division, Office of Resource Conservation and Recovery, Environmental Protection Agency, 1200 Pennsylvania Avenue NW, MC: 5304P, Washington, DC 20460; telephone number: (703) 347–0369; email address: *Hillyer.Kirsten@epa.gov.* For more information on this rulemaking, please visit *https://www.epa.gov/coalash.*

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I. Executive Summary

A. Purpose of the Regulatory Action

This rule takes final action on the proposed rule published on December 2, 2019 (84 FR 65941), as well as two issues included in the proposal issued on August 14, 2019 (84 FR 40353). This unit of the preamble summarizes public participation activities associated with both proposed rules. EPA is publishing this final rule to revise portions of the federal CCR regulations in title 40 of the Code of Federal Regulations (CFR) Part 257 so that they accurately reflect the regulations as they now stand in light of the D.C. Circuit's 2018 decision in *USWAG,* which vacated portions of EPA's 2015 final rule promulgating national minimum criteria for existing and new CCR landfills and existing and new CCR surface impoundments. Specifically, the D.C. Circuit vacated (1) the provisions of the 2015 rule that permitted unlined impoundments to continue receiving coal ash unless they leak (see 40 CFR 257.101(a)); and (2) the provisions of the 2015 rule that classified ''clay-lined'' impoundments as lined (see 40 CFR 257.71(a)(1)(i)).

In addition, this final rule addresses the October 31, 2020 deadline in §§ 257.101(a) and (b)(1)(i), by which CCR surface impoundments must cease receipt of waste; in a separate case, these regulatory provisions were remanded back to EPA by the D.C. Circuit for further reconsideration in light of *USWAG. See Waterkeeper Alliance Inc.* v. *EPA,* No. 18–1289 (D.C. Cir. 2019).

Lastly, EPA is finalizing amendments to the regulations in order to address certain issues concerning publicly accessible internet sites, and groundwater monitoring and corrective action annual reports that have arisen since the April 17, 2015 publication of the CCR rule. These amendments were proposed in a separate August 14, 2019 proposal. 84 FR 40353.

B. Summary of the Major Provisions of the Regulatory Action

In this action, EPA is finalizing five amendments to the part 257 regulations. First, EPA is finalizing a change to the classification of compacted-soil lined or

''clay-lined'' surface impoundments from ''lined'' to ''unlined'' under § 257.71(a)(1)(i). This merely reflects the vacatur ordered in the *USWAG* decision.

Second, EPA is finalizing revisions to the initiation of closure deadlines for unlined CCR surface impoundments, and for units that failed the aquifer location restriction, found in §§ 257.101(a) and (b)(1). These revisions address the *USWAG* decisions with respect to all unlined and ''clay-lined'' impoundments, as well as revisions to the provisions that were remanded to the Agency for further reconsideration by the court in the *Waterkeeper* case. Specifically, EPA is finalizing a new deadline of April 11, 2021, for CCR units to cease receipt of waste and initiate closure because the unit either (1) is an unlined or formerly ''clay-lined'' CCR surface impoundment (§ 257.101(a)) or (2) failed the aquifer location standard (§ 257.101(b)(1)).

Third, EPA is finalizing revisions to the alternative closure provisions, § 257.103. These revisions will grant facilities additional time to develop alternative capacity to manage their wastestreams (both CCR and/or non-CCR), to achieve cease receipt of waste and initiate closure of their CCR surface impoundments. Table 1 below summarizes the deadlines finalized in this action.

Lastly, EPA is finalizing two of the proposed amendments from the August 2019 rule: The addition of an executive summary to the annual groundwater monitoring and corrective action reports; and the amended requirements to the publicly accessible CCR internet sites.

TABLE 1—NEW CEASE RECEIPT OF WASTE AND COMPLETION OF CLOSURE DEADLINES

Regulatory citations for CCR surface impoundments	Deadline date
New cease receipt of waste deadline for unlined and formerly ''clay-lined'' surface impoundments (§ 257.101(a)(1)).	No later than April 11, 2021.
New cease receipt of waste deadline for surface impoundments that failed the minimum depth to aquifer location standard (§ 257.101(b)(1)(i)).	No later than April 11, 2021.
New site-specific alternative to initiation of closure due to lack of capacity (§ 257.103(f)(1)).	No later than October 15, 2023 (maximum of 5 years after *USWAG* decision mandate date). For eligible unlined CCR surface impoundment: No later than October 15, 2024.
New site-specific alternative to initiation of closure due to permanent cessation of a coal-fired boiler(s) by a date certain (§ 257.103(f)(2)).	Completion of Closure: • No later than October 17, 2023 for surface impoundments 40 acres or smaller. • No later than October 17, 2028 for surface impoundments larger than 40 acres.

C. Costs and Benefits

Several developments have changed the estimated costs of the CCR program since the publication of the final rule in 2015. First, reporting data show that the affected universe of surface impoundments is composed of more unlined units and more leaking surface impoundments than were modeled in the 2015 Regulatory Impact Analysis (RIA). The affected universe of impoundments is therefore incurring higher closure costs sooner, which increases the overall cost of the program. Second, the D.C. Circuit vacated provisions of the rule that allowed certain classes of surface impoundments to continue operating until they leaked. This decision forces these units to close sooner than they were modeled to close in the 2015 RIA. This also increases the overall cost of the CCR program. This cost increase is estimated and shown in the RIA. This increase in costs is attributable solely to the existing provisions of the 2015 CCR rule. Overall, the provisions of this final rule decrease costs by extending certain existing compliance deadlines. The final rule is therefore considered a cost savings rule. This action is expected to result in an estimated annualized net cost savings of $26.1 million per year when discounting at 7 percent. It is also expected to have a modest impact on a subset of the benefits monetized in the RIA accompanying the 2015 CCR Rule. Further information on the economic effects of this action can be found in unit IX of this preamble and the RIA.[1]

II. General Information

A. Does this action apply to me?

This final rule applies to all CCR generated by electric utilities and independent power producers that fall within the North American Industry Classification System (NAICS) code 221112 and may affect the following entities: Electric utility facilities and independent power producers that fall under the NAICS code 221112. This discussion is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This discussion lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not described here could also be regulated. To determine whether your entity is regulated by this action, you should carefully examine the applicability criteria found in § 257.50 of title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

B. What action is the Agency taking?

EPA is revising certain provisions of the CCR regulations at 40 CFR part 257 in response to the decisions issued by the D.C. Circuit on August 21, 2018, in *Utility Solid Waste Activities Group* v. *EPA* 901 F.3d 414 (D.C. Cir.), and on March 13, 2019, in *Waterkeeper Alliance Inc.* v. *EPA,* No. 18–1289 (D.C. Cir.). In addition, the Agency is also finalizing two of the proposed amendments from the August 14, 2019 rulemaking that are not related to the *USWAG* and *Waterkeeper* decisions.

This final rule addresses the *USWAG* decision's vacatur of the provisions in the 2015 rule that permitted unlined impoundments to continue receiving waste unless they leak, 40 CFR 257.101(a), and that classified ''clay-lined'' impoundments as lined, thereby allowing such units to operate, 40 CFR 257.71(a)(1)(i). The *USWAG* decision also vacated the exemption from the

[1] US EPA. ''Regulatory Impact Analysis, Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals from Electric Utilities; A Holistic Approach to Closure Part A: Deadline to Initiate Closure''. July 2020.

2015 rule for inactive surface impoundments at inactive power plants, also known as legacy units, which will be addressed in a subsequent advanced notice of proposed rulemaking.

This final rule also addresses the date by which unlined CCR surface impoundments and CCR units that failed the aquifer location standard must cease receiving waste and initiate closure, which the D.C. Circuit remanded to EPA on March 13, 2019 in the *Waterkeeper* case.

EPA is finalizing amendments to the alternative closure provisions, 40 CFR 257.103. EPA is amending the existing provisions (40 CFR 257.103(a) and (b)) to only apply to CCR landfills. EPA is establishing new alternative closure provisions, 40 CFR 257.103(f)(1) and (f)(2), for which a facility must submit a demonstration to EPA for approval to continue operating a CCR surface impoundment. These new alternative closure provisions do not amend the implementation schedules of groundwater monitoring and corrective action, as they remain unchanged. The new alternative closure provisions will grant facilities additional time to cease receipt of waste and initiate closure.

EPA is finalizing amendments to the regulations from the August 2019 proposal, addressing certain issues raised by stakeholders. EPA is amending the annual groundwater monitoring and corrective action report to include an executive summary. Additionally, EPA is finalizing amendments to the publicly accessible CCR internet sites requirements to ensure that they are truly accessible by the public.

EPA intends that the provisions of this rule be severable. In the event that any individual provision or part of this rule is invalidated, EPA intends that this would not render the entire rule invalid, and that any individual provisions that can continue to operate will be left in place.

C. What is the Agency's authority for taking this action?

These regulations are established under the authority of sections 1008(a), 2002(a), 4004, and 4005(a) and (d) of the Solid Waste Disposal Act of 1970, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), the Hazardous and Solid Waste Amendments of 1984 (HSWA), and the Water Infrastructure Improvements for the Nation (WIIN) Act of 2016, 42 U.S.C. 6907(a), 6912(a), 6944, and 6945(a) and (d).

D. What are the incremental costs and benefits of this action?

This action is expected to result in an estimated annualized net cost savings of $26.1 million per year when discounting at 7 percent or an estimated annualized net cost savings of $16.7 million per year when discounting at 3 percent. It is also expected to have a modest impact on a subset of the benefits monetized in the RIA accompanying the 2015 CCR Rule. Further information on the economic effects of this action can be found in unit IX of this preamble.

III. Background

A. The ''2015 CCR Rule''

On April 17, 2015, EPA finalized national minimum criteria for the disposal of CCR as a solid waste under Subtitle D of RCRA. 80 FR 21302. The Agency refers to the April 17, 2015 rule as the ''2015 CCR Rule'' in this preamble. CCR are generated from the combustion of coal by electric utilities and independent power producers for the generation of electricity. CCR include fly ash, bottom ash, boiler slag, and flue gas desulfurization materials and are commonly referred to as coal ash. The CCR regulations are codified in subpart D of part 257 of title 40 of the CFR.

The 2015 CCR Rule regulated existing and new CCR landfills and existing and new CCR surface impoundments, as well as all lateral expansions of these CCR units. The federal national minimum criteria consist of location restrictions (siting limitations), design and operating criteria, groundwater monitoring and corrective action requirements, and closure and post-closure care requirements. In addition, the 2015 CCR Rule put in place recordkeeping, notification, and internet posting provisions that require owners and operators of CCR units to maintain a publicly accessible internet site of rule compliance information. The 2015 CCR Rule does not regulate CCR that are beneficially used. It established a definition of ''beneficial use of CCR'' to distinguish between beneficial use and disposal.

Of particular relevance to this action, the 2015 CCR Rule required that any existing unlined CCR surface impoundment that causes groundwater concentrations to exceed a groundwater protection standard must stop receiving waste (CCR and/or non-CCR wastestreams) within six months of making such exceedance determination. This would also trigger the requirement to initiate either unit retrofit or closure activities.[2] See § 257.101(a)(1) at 80 FR 21490 (April 17, 2015). In the 2015 CCR Rule, the term ''unlined'' CCR surface impoundment included any unit not constructed with one of the following types of liners: (1) A composite liner; (2) an alternative composite liner; or (3) a liner consisting of a minimum of two feet of compacted soil with a hydraulic conductivity of no more than 1×10^{-7} centimeters per second. Lined CCR surface impoundments (as defined in the CCR regulations) that impact groundwater above the specified groundwater protection standard are not required to close and could continue to operate while corrective action is performed, and the source of the leak is addressed.

The 2015 CCR Rule was challenged by several parties, including a coalition of regulated entities and a coalition of environmental organizations (''Environmental Petitioners''). See *USWAG* v. *EPA,* 901 F.3d 414 (D.C. Cir. 2018). The Environmental Petitioners raised two challenges[3] that are relevant to this final rule. First, they challenged the provision that allowed existing, unlined CCR surface impoundments to continue to operate until they cause groundwater contamination. See § 257.101(a)(1) at 80 FR 21490 (April 17, 2015). They contended that EPA failed to show how continued operation of unlined impoundments met RCRA's baseline requirement that any solid waste disposal site pose ''no reasonable probability of adverse effects on health or the environment.'' See 42 U.S.C. 6944(a). The Environmental Petitioners also challenged the provisions that allowed impoundments lined with two feet of clay (*i.e.,* compacted soil) to continue operating even when they leak, requiring only that they remediate the resulting contamination. The petitioners pointed to record evidence that ''clay-lined'' units are likely to leak and contended that EPA's approach ''authorizes an endless cycle of spills and clean-ups'' in violation of RCRA.

B. The 2018 USWAG Decision

The D.C. Circuit issued the *USWAG* decision on August 21, 2018. The Court

[2] Certain units may be eligible for the alternative closure procedures specified in § 257.103, which would change the date by which the unit must stop receiving waste.

[3] Environmental Petitioners also challenged the provisions exempting inactive surface impoundments at inactive power plants from regulation. The Court ruled for the Petitioners on these claims, vacating these provisions and remanding to EPA. However, in contrast to the other provisions addressed in this rule, additional rulemaking is necessary to effectuate the Court's order, as the Court's vacatur alone did not subject these units to regulation. This aspect of the decision will be addressed in a subsequent proposal.

upheld most of the 2015 CCR Rule but ruled for the Environmental Petitioners on the two claims discussed in unit III.A of this preamble. The Court held that EPA acted ''arbitrarily and capriciously and contrary to RCRA'' in failing to require the closure of unlined surface impoundments and in classifying so-called ''clay-lined'' impoundments as lined, based on the record supporting the rule. 901 F.3d at 431–432. The Court ordered that ''the Final Rule be vacated and remanded with respect to the provisions that permit unlined impoundments to continue receiving coal ash unless they leak, § 257.101(a), [and] classify 'clay-lined' impoundments as lined, see 40 CFR 257.71(a)(1)(i).'' *Id.* The Court issued the mandate for this decision on October 15, 2018. Therefore, part of this final rulemaking action updates the regulations to reflect the provisions that the Court vacated.

C. The July 30, 2018 Final Rule and the 2019 Waterkeeper Decision

EPA issued a final rule on July 30, 2018, amending several parts of the CCR federal regulations (83 FR 36435). First, the rule extended the deadlines for two categories of CCR surface impoundments to cease receipt of waste and to initiate closure when closing for cause: (1) Unlined CCR surface impoundments with an exceedance of a groundwater protection standard for any constituent listed on Appendix IV to part 257;[4] and (2) CCR surface impoundments that failed to meet the location criteria in § 257.60(a) (requiring either a minimum of five feet between the unit base and the uppermost aquifer or a demonstration that there will not be an intermittent, recurring, or sustained hydraulic connection between any portion of the base of the unit and the uppermost aquifer). These deadlines were extended until October 31, 2020, and were codified in § 257.101(a)(1) and (b)(1)(i).

Second, the rule established alternative risk-based groundwater protection standards for the four constituents without a maximum contaminant level (MCL) that are listed on Appendix IV to part 257. The four constituents are cobalt, lead, lithium, and molybdenum, and the alternative standards were codified in § 257.95(h)(2).

Third, the rule established procedures allowing for the suspension of groundwater monitoring requirements, provided that it can be demonstrated that there is no potential for migration of any CCR constituent listed in Appendices III and IV of part 257 from the CCR unit to the uppermost aquifer during the active life of the unit and the post-closure care period. See § 257.90(g).

Finally, the rule amended the federal CCR regulations to allow a Participating State Director (or EPA where EPA is the permitting authority) to issue certifications in lieu of requiring a certification from a Professional Engineer. The 2015 CCR Rule required technical demonstrations, when made by the owner or operator, to be certified by a qualified Professional Engineer in order to provide verification of the facility's technical judgments and to otherwise ensure that the provisions of the rule were properly applied. In 2015, states were unable to apply to EPA for approval to operate a permit program to implement the CCR rule. The situation changed with the passage of the Water Infrastructure Improvements for the Nation (WIIN) Act in 2016, which offers the opportunity for state oversight under an approved permit program. The 2018 amendments to the certification requirements reflect the new authority provided by the WIIN Act.

The July 2018 final rule was challenged by Waterkeeper Alliance, who also requested an expedited review of the October 31, 2020, deadline. See *Waterkeeper Alliance Inc, et al* v. *EPA,* No. 18–1289 (D.C. Cir. 2018) (*Waterkeeper* decision). On March 13, 2019, the Court granted EPA's request to remand the July 2018 rule, ''to allow the agency to reconsider that rule in light of th[e] court's decision in [*USWAG*].'' The December 2, 2019 proposed rule reflected EPA's reconsideration of one of the remanded issues contained in the July 2018 rule: Reconsideration of the current deadline of October 31, 2020, for unlined surface impoundments to cease receiving waste. 84 FR 65944. The Agency also stated in the December 2, 2019, proposal that EPA would address its reconsideration of other aspects (*e.g.,* the adopted alternative risk-based groundwater protection standards for cobalt, lead, lithium, and molybdenum) of the July 2018 rule in subsequent rulemaking actions. *Id.*

D. Public Participation With Respect to the August 2019 and December 2019 Proposed Rules

This rule takes final action on the proposed rule published on December 2, 2019 (84 FR 65941), as well as two issues included in the proposal issued on August 14, 2019 (84 FR 40353). This unit of the preamble summarizes public participation activities associated with both proposed rules.

EPA conducted two public hearings to provide the public with the opportunity to present views or information concerning the August 14, 2019 proposal. The first was an in-person public hearing in Arlington, Virginia on October 2, 2019. A total of 41 people provided oral testimony at the hearing; a transcript of the hearing proceedings is available in the proposed rule docket.[5] The second was held on October 10, 2019 as a virtual public hearing using an internet-based software platform. The platform allowed hearing participants to provide oral testimony using a microphone and speakers connected to their computers or using a phone. It provided the ability for any person to listen to the public hearing via their computer. A total of 52 people provided oral testimony during the virtual hearing and another 147 people participated by listening. The transcript for the virtual public hearing is available in the proposed rule docket.[6]

The Agency received approximately 130,000 comments, of which nearly 300 were unique, from members of the public on the August 2019 proposed rule. Commenters included individual electric utilities and independent power producers, national trade associations, state agencies, public interest and environmental groups, and entities involved with the beneficial use of CCR. All public comment letters submitted in response to the proposal can be found in the proposed rule docket, Docket ID EPA–HQ–OLEM–2018–0524. For those elements included in the August 14, 2019 proposed rule that EPA is finalizing in this action (see unit V of this preamble), EPA's responses to public comments are either addressed in this preamble or the response to comment document available in the docket to this final rule.

EPA also conducted one public hearing to provide the public with the opportunity to present views or information concerning the December 2, 2019 proposed rule. On January 7, 2020, the Agency conducted a virtual public

[4] A groundwater protection standard (GWPS) is established using the methods specified in § 257.95(h). For constituents with a maximum contaminant level (MCL), the GWPS is the MCL for that constituent. For the constituents that do not have an established MCL, the GWPS is the health-based level EPA established in the July 30, 2018 rule. If the background level is higher than the MCL or the health-based level, then background should be used as the GWPS.

[5] See docket items EPA–HQ–OLEM–2018–0524–0046 through –0050.

[6] See docket items EPA–HQ–OLEM–2018–0524–0333 through –0335.

hearing using an internet-based software platform that allowed hearing participants to provide oral testimony using a microphone and speakers connected to their computers or using a phone. This platform also provided an opportunity for any person to listen to the public hearing via their computer. A total of 37 people provided oral testimony during the virtual hearing and over 40 other people participated by listening. The transcript for the virtual public hearing is available in the proposed rule docket.[7]

The Agency received over 67,200 comments, of which nearly 150 were unique, comments from members of the public on the December 2019 proposed rule. Commenters included individual electric utilities and independent power producers, national trade associations, state agencies, and public interest and environmental groups. All public comment letters submitted in response to the proposal can be found in the proposed rule docket, Docket ID EPA–HQ–OLEM–2019–0172. EPA's responses to comments on the proposed rule are either addressed in this preamble or the response to comment document available in the docket to this final rule.

IV. Statutory Authority

RCRA section 1008(a) authorizes EPA to publish ''suggested guidelines for solid waste management.'' 42 U.S.C. 6907(a). RCRA defines solid waste management as ''the systematic administration of activities which provide for the collection, source separation, storage, transportation, transfer, processing, treatment, and disposal of solid waste.'' 42 U.S.C. 6903(28).

Pursuant to section 1008(a)(3), the guidelines are to include the minimum criteria to be used by the states to define the solid waste management practices that constitute the open dumping of solid waste or hazardous waste and are prohibited as ''open dumping'' under section 4005. Only those requirements promulgated under the authority of section 1008(a)(3) are enforceable under section 7002 of RCRA.

RCRA section 4004(a) generally requires EPA to promulgate regulations containing criteria for determining which facilities shall be classified as sanitary landfills (and therefore not ''open dumps''). The statute directs that, ''at a minimum, the criteria are to ensure that units are classified as sanitary landfills only if there is no reasonable probability of adverse effects on health or the environment from disposal of solid wastes at such facility.'' 42 U.S.C. 6944(a).

RCRA section 4005(a), entitled ''Closing or upgrading of existing open dumps,'' generally establishes the key implementation and enforcement provisions applicable to EPA regulations issued under sections 1008(a) and 4004(a). Specifically, this section prohibits any solid waste management practices or disposal of solid waste that does not comply with EPA regulations issued under RCRA section 1008(a) and 4004(a). 42 U.S.C. 6944(a). See also 42 U.S.C. 6903(14) (definition of ''open dump''). This prohibition takes effect ''upon promulgation'' of any rules issued under section 1008(a)(3) and is enforceable through a citizen suit brought pursuant to section 7002. As a general matter, this means that facilities must be in compliance with any EPA rules issued under this section no later than the effective date of such rules, or be subject to a citizen suit for ''open dumping.'' See 42 U.S.C. 6945. RCRA section 4005 also directs that open dumps, *i.e.,* facilities out of compliance with EPA's criteria, must be ''closed or upgraded.'' *Id.*

RCRA section 7004 lays out specific requirements relating to public participation in regulatory actions under RCRA. Subsection (b) provides that ''[p]ublic participation in the . . . implementation, and enforcement of any regulation under this chapter shall be provided for, encouraged, and assisted by the Administrator.'' 42 U.S.C. 6974(b).

Comments on EPA Authority. Several commenters stated that RCRA section 4004(a) allows EPA to take into account non-risk considerations, citing EPA statements in the preamble to the 1991 final rule for municipal solid waste landfills (MSWLF).[8] Specifically, these commenters cited to EPA statements that the term ''reasonable'' ''has been read in other contexts to imply a balancing of competing factors,'' and that the ''use of the word 'probability' in 'no reasonable probability' implies the discretion to impose requirements that are less certain to eliminate a perceived health or environmental threat than standards that are 'necessary to protect human health and the environment,' thus allowing for the consideration of other factors such as cost.'' (quoting 56 FR 50978, 50983 (October 9, 1991)). A number of other commenters, however, stated that EPA lacked the authority to consider costs in establishing any regulation under RCRA section 4004(a), citing EPA's prior statements in the 2015 CCR Rule and to the recent D.C. Circuit opinion in *USWAG* v. *EPA.*

EPA disagrees that RCRA section 4004(a) allows EPA to take into account non-risk considerations. The commenters have misunderstood the discussion in the MSWLF preambles. The cited statements reflect EPA's interpretation of the combined authority under both RCRA sections 4010(c) and 4004(a), rather than an interpretation of section 4004(a) standing alone. 56 FR 50983–50984. As EPA has previously explained, the Agency cannot rely on section 4010(c) to issue regulations applicable to CCR facilities. See 80 FR 21333–21334 (April 17, 2015).

By contrast, EPA has consistently interpreted the mandate in section 4004(a), standing alone, not to authorize consideration of costs or any other factor unrelated to the protection of human health and the environment. EPA did not consider costs in establishing the original part 257 regulations, noting in the 1979 preamble that ''[t]he Act does not call for a balancing of the costs of disposal against the ''value'' of ground-water resources.'' 44 FR 53447 (September 13, 1979). Similarly, EPA explained in the 2015 CCR Rule ''that Congress did not authorize the consideration of costs in establishing minimum national standards under RCRA section 4004(a).'' 80 FR 21406. See also, 80 FR 21363, 21432; 83 FR 11597 (March 15, 2018). As several commenters noted, the D.C. Circuit upheld this interpretation, concluding that ''[u]nder any reasonable reading of RCRA there is no textual commitment of authority to the EPA to consider costs in the open dump standards.'' 901 F.3d at 448–449 (D.C. Cir. 2018). Accordingly, EPA has not considered cost in developing any provision of this final rule.[9]

Another commenter stated that EPA lacks the statutory authority to impose a mandatory closure requirement for non-CCR wastestreams, arguing that imposing deadlines under the CCR Rule for wastestreams that are subject to different deadlines under the ELG rule runs afoul of RCRA section 1006(a)—the anti-duplication provision. The commenter argued that the proposal to ban or greatly restrict the receipt of the wastewater at unlined surface impoundments is a duplicative and inconsistent—and thus prohibited—additional regulatory layer on top of the existing NPDES requirements applicable to those same impoundments.

[7] See docket items EPA–HQ–OLEM–2019–0172–0041 and 0042.

[8] 56 FR 50978 (October 9, 1991).

[9] Although EPA did not consider costs in developing this rule, if the Agency had considered costs, the final rule would not have been different. Based on the estimates developed for the RIA, this rule is expected to largely result in cost savings.

According to the commenter, under the proposed ELG regulations, up to 10 percent of bottom ash transport water piping and equipment volume can be discharged per day until December 31, 2023. Companies subject to the ELG requirements will need to permit, design, and construct a recycling system for the bottom ash sluice waters, a new CCR or non-CCR wastewater pond, or convert to dry handling—essentially the same solutions that must be pursued for compliance under the CCR rules. Yet the deadlines for doing so do not align.

The commenter provided a specific example to demonstrate his concern: One of the Ohio Valley Electric Corporation (OVEC) plants is currently sluicing fly ash to a surface impoundment that is subject to the CCR rule. Because that impoundment meets the CCR siting criteria and has monitored no statistically significant increases above background concentrations for any of the CCR parameters, that plant has anticipated continuing to operate the impoundment through no later than December 31, 2023, consistent with the ELG regulations. The proposed CCR rule, with its August 31, 2020, deadline to discontinue sluicing of fly ash to surface impoundments, effectively eliminates up to three years that OVEC had anticipated using to engineer, design, procure, construct and begin operation of the new infrastructure needed to comply with the ELG rule. The CCR rule and the ELG rule must be aligned so that the timeline for discontinuing placement of CCR into a fly ash surface impoundment is consistent with the timeline that that source has for completing dry fly ash conversion under the final ELG rules applicable to this wastestream.

RCRA section 1006(a) does not bar EPA from imposing requirements under one of the listed statutes and RCRA on the same units and waste streams, unless those requirements are inconsistent with a requirement in one of the statutes. 42 U.S.C. 6906(a). This is clear from the second sentence, which provides that ''such integration shall be effected only to the extent that it can be done in a manner consistent with the goals and policies expressed in this chapter and in the other acts referred to in this subsection.'' *Id.* Numerous courts have upheld this interpretation. See, *Ecological Rights Foundation* v. *Pacific Gas & Electric Co.,* 874 F.3d 1083, 1095 (9th Cir., 2017) (''RCRA's anti-duplication provision does not bar RCRA's application unless that application contradicts a specific mandate imposed under the CWA (or another statute listed in RCRA section 1006(a))''); *Goldfarb* v. *Mayor and City Council of Baltimore,* 791 F.3d 500 510 (4th Cir. 2015) (The CWA must require something fundamentally at odds with what RCRA would otherwise require to be ''inconsistent'' under 1006(a)); *Edison Electric Institute* v. *EPA,* 996 F.2d 326, 337 (D.C. Cir.1993) (rejecting ''generalized claim'' that EPA action was barred under section 1006(a) because it interfered with ''the primary purpose'' of the Atomic Energy Act); *U.S.* v. *E.I. du Pont de Nemours & Co.,* Inc., 341 F.Supp.2d 215, 236 (W.D. N.Y. 2004) (approving EPA action as ''not inconsistent'' under RCRA where CERCLA's heightened standard would not be met by release of hazardous substance). The commenter has identified no requirement in the Clean Water Act that is inconsistent with EPA's proposal.

Instead, the commenter argues that the deadlines under the two rules are inconsistent and wholly duplicative. EPA disagrees with both claims. First, the deadlines for the two rules are in fact consistent. To support its claim, the commenter focused exclusively on the proposed date of August 2020, by which facilities must cease receipt of waste into the unit. But EPA also proposed to establish a process by which a facility that needs to continue receiving waste into the unit can do so, by demonstrating that it was not feasible to meet the deadline. See § 257.103(f). Under that proposal, a facility can continue to operate a unit until 2023 if it can demonstrate that that amount of time is necessary to complete its construction of alternative capacity.

Neither are the ELG and CCR proposals duplicative. The CCR requirements are designed to protect groundwater, while the ELG requirements are designed to protect surface waters.

Finally, one commenter stated their belief that EPA was required to have consulted with U.S. Fish and Wildlife Service (FWS) under the Endangered Species Act as part of developing this final rule.

EPA disagrees with the suggestion that consultation was required as part of developing this rule. Under the existing regulations, all CCR units must comply with 40 CFR 257.3–2. 40 CFR 257.52(b). That regulation, which was developed after consultation with FWS, requires facilities not to cause or contribute to the taking of any endangered or threatened species of plant or wildlife, and not to result in the destruction or adverse modification of critical habitat. This obligation is not modified or affected in any way by this final rule. The commenter has presented no facts that convince EPA that re-initiation is warranted by this rule.

V. What final action is EPA taking on the December 2, 2019 proposal?

A. Revisions to § 257.71 To Implement the 2018 USWAG Decision

As discussed in unit III.B of this preamble, the D.C. Circuit found in *USWAG* that the rulemaking record did not support the conclusion that the 2015 CCR Rule would adequately address the adverse effects posed by clay-lined (or compacted soil-lined) CCR surface impoundments. Therefore, the Court vacated the provision that treated ''clay-lined'' surface impoundments differently than unlined impoundments, with the result that such impoundments are now required to be either retrofitted or closed.[10] The affected provision was codified in § 257.71(a)(1)(i), which stated that a unit with a liner consisting of a minimum of two feet of compacted soil with a hydraulic conductivity of no more than 1×10^{-7} centimeters per second was considered to be lined. In the December 2, 2019 proposed rule, EPA proposed to remove § 257.71(a)(1)(i) from the CFR. 84 FR 65944. The Agency also proposed two conforming revisions to § 257.71(a)(3) that were necessary to properly implement the removal of § 257.71(a)(1)(i). *Id.*

In this action, EPA is finalizing these proposed changes to § 257.71(a)(1) and (a)(3). Specifically, the Agency is removing § 257.71(a)(1)(i) from the CFR to reflect its vacatur as a result of the 2018 *USWAG* decision. In addition, EPA is revising § 257.71(a)(3) by removing two cross-references to § 257.71(a)(1)(i) that are no longer appropriate given that paragraph (a)(1)(i) has been removed. See revised § 257.71(a)(3)(i) and (ii).

B. Revisions to § 257.101 as a Result of EPA's Reconsideration

When the 2015 CCR Rule was finalized, § 257.101 required certain existing CCR surface impoundments to close.[11] This included: (1) Unlined CCR

[10] On March 3, 2020, the Agency proposed to allow a limited number of facilities to continue using alternate liners (*i.e.,* liner systems that would otherwise be considered to be unlined systems under the CCR regulations) at existing CCR surface impoundments if the facility can demonstrate to EPA or a Participating State Director that the unit would not adversely affect groundwater, human health, or the environment. 85 FR 12456.

[11] Section 257.101 also requires certain existing CCR landfills and new CCR surface impoundments to close. However, those provisions are not discussed in this preamble section because those CCR units were not affected by the 2018 *USWAG* decision.

surface impoundments whose groundwater monitoring shows an exceedance of a groundwater protection standard (§ 257.101(a)(1)); (2) CCR surface impoundments that do not comply with one or more of the location (siting) criteria (§ 257.101(b)(1)); and (3) CCR surface impoundments that are not designed and operated to achieve minimum factors of safety, which are a component of the structural integrity criteria (§ 257.101(b)(2)). In each of these situations, the 2015 CCR Rule specified that the owner or operator of the CCR unit must cease placing CCR and non-CCR wastestreams into the unit and initiate closure activities (or retrofit the unit under certain circumstances) within a certain period of time after making the relevant determination.

The D.C. Circuit found in the *USWAG* decision that EPA acted ''arbitrarily and capriciously and contrary to RCRA'' in failing to require the closure of all unlined CCR surface impoundments and ordered that ''the Final Rule be vacated and remanded with respect to the provisions that permit unlined impoundments to continue receiving coal ash unless they leak.'' See 901 F.3d at 449. This court-vacated provision is codified in § 257.101(a). The *USWAG* decision did not affect the codified deadlines to cease receipt of waste and initiate closure. These deadlines remained for existing CCR surface impoundments that do not comply with one or more of the location criteria under § 257.101(b)(1), as well as for those impoundments that are not designed and operated to achieve minimum factors of safety under § 257.101(b)(2).

The Agency explained in the December 2, 2019 proposed rule that EPA interprets the *USWAG* decision as only partially vacating § 257.101(a). Specifically, the Agency explained that only the following phrase in § 257.101(a)(1) was vacated by the Court: ''if at any time after October 19, 2015, an owner or operator of an existing unlined CCR surface impoundment determines in any sampling event that the concentrations of one or more constituents listed in Appendix IV of this part are detected at statistically significant levels above the groundwater protection standard established under § 257.95(h) for such CCR unit''. 84 FR 65944–45. The proposal discussed that a vacatur of the entire provision under § 257.101(a) would remove the requirement for unlined CCR surface impoundments to close, which would be inconsistent with the holding that it was arbitrary and capricious for EPA not to have required unlined CCR surface impoundments to close. In response to the December 2, 2019 proposed rule, EPA received no comments opposing the Agency's interpretation of the effect of the *USWAG* decision on § 257.101(a). Therefore, and as EPA discussed in the proposed rule, the vacatur of this phrase from § 257.101(a)(1) results in a requirement that owners and operators must cease placement of both CCR and non-CCR wastestreams into unlined CCR surface impoundments and initiate the closure of such units no later than October 31, 2020. This requirement also applied to both impoundments that were formally considered to be ''clay-lined,'' and unlined impoundments that are inactive.

The October 31, 2020 deadline was established in a final rule published on July 30, 2018 (83 FR 36435). The December 2, 2019 proposal discussed that the July 30, 2018 final rule had not yet been challenged when the court issued its *USWAG* decision on August 21, 2018. As discussed in the proposed rule, the Waterkeeper Alliance subsequently challenged the July 30, 2018 final rule and requested expedited review of the October 31, 2020 deadline. In response, EPA requested a remand of the July 30, 2018 final rule, which the court granted on March 13, 2019 ''to allow the agency to reconsider that rule in light of this court's decision in [USWAG].''

1. EPA's Reconsideration of the October 31, 2020 Deadline

The December 2, 2019 proposed rule reflects EPA's reconsideration of the deadline of October 31, 2020 for unlined CCR surface impoundments to cease receiving CCR and non-CCR wastestreams and initiate closure or retrofit activities.[12] As explained in the proposed rule, the *USWAG* decision faulted EPA for failing to fully estimate the risks associated with the continued operation (and potential leakage) of unlined impoundments and for failing to address the risks from allowing these units to continue to operate until they leak. The court held that RCRA requires the Agency to determine that such risks would be acceptable under the § 4004(a) standard in order to authorize the continued operation of such units. In the absence of such an assessment, the court vacated the provision that allowed for the continued operation of unlined impoundments. 901 F.3d at 430. For the reasons discussed in the proposed rule, the Agency was unable to develop a nationwide risk assessment of continued operation of these unlined CCR surface impoundments. 84 FR 65945.

EPA further explained in the December 2, 2019 proposal that many utilities could not immediately cease the placement of CCR and non-CCR wastestreams into their surface impoundments without causing potentially significant disruptions to plant operations, and thus the provision of electricity to their customers. This is because there is no additional capacity to manage these wastes elsewhere. To support this conclusion, EPA pointed to the information laid out in several industry filings to the *Waterkeeper* court. The *Waterkeeper* court also recognized this, declining to vacate the July 2018 Rule partly because ''EPA and the intervenors have shown that the consequences of vacatur would be disruptive.'' No. 18–1289, Order at 1.

To address these competing considerations in a manner consistent with the statute and the D.C. Circuit's decisions, EPA proposed to require that facilities cease placement of all wastes (both CCR and non-CCR) into impoundments as soon as technically feasible. 84 FR 65945. The proposal explained that such a requirement would meet the RCRA § 4004(a) standard because it requires the facility to do what is possible in the shortest achievable time. Similar to the concept behind a force majeure provision, EPA cannot impose protective measures under this provision that are not technically feasible for any facility to implement. See *USWAG* at 448; *Hughey* v. *JMS Development Corp,* 78 F.3d 1523 (11th Cir. 1996); *Cherry-Burrell Corp* v. *United States,* 367 F.2d 669 (8th Cir. 1966). The proposal further concluded that requiring facilities to expedite the initiation of closure of unlined CCR surface impoundments is consistent with the court's finding that further evidence is needed to permit such units to continue to operate. See *USWAG,* 901 F.3d at 429–430. The proposal explained that EPA lacked the evidence to support the continued operation of such units on a national level and it did not anticipate being able to develop such information in the near-term.

2. Approaches To Identify Alternative Capacity

EPA proposed to determine technical feasibility based on the steps that owners and operators need to take to obtain alternative disposal capacity. Six approaches, and the timeframes needed to implement them, were evaluated. 84 FR 65945–51. The evaluation relied principally on information contained in

[12] As stated in the proposed rule, EPA will address its reconsideration of other aspects of the July 30, 2018, final rule in subsequent rulemaking actions. 84 FR 65944.

the declarations submitted with the *Waterkeeper* briefs, as well as CCR rule compliance information posted on facilities' publicly accessible CCR internet sites (*e.g.,* written retrofit plans required by § 257.102(k)(2)). The proposed rule discussed each technology approach and the Agency's analysis of the average time needed to implement it. This included the entire process to obtain alternative capacity, from the start of the project to its completion, including the general project phases of planning and design, procurement, permitting, and construction, commissioning. Using the average timeframe for each of the six approaches was intended to capture some of the variability due to site-specific circumstances and to provide for an accurate national benchmark. The six technology approaches presented in the proposed rule and the estimated average time necessary to develop each technology approach are shown in Table 2.

TABLE 2—SUMMARY OF PROPOSED TECHNOLOGY APPROACHES

Alternative capacity technology	Average time (months)
Conversion to dry handling ...	36.
Non-CCR wastewater basin ..	21.
Wastewater treatment facility	16 to 21.
New CCR surface impoundment.	27.
Retrofit of a CCR surface impoundment.	31.5 (large unit retrofits).
	4 to 12 (small unit retrofits).
Multiple technology system ...	21 to 36.

(a) Specific Comments on Individual Alternative Capacity Technologies and Average Time Estimates

This preamble unit summarizes the data and information considered for each of the six technology approaches in the proposed rule; the comments received in response to the use of these data and information; and the Agency's response to comments on these approaches. Several commenters submitted actual project timeframes for completed or ongoing efforts to obtain alternative capacity. The Agency evaluated each submission according to the procedures described in this unit of the preamble. In most cases, this project information was used in the final rule alternative capacity analysis.

In general, EPA considered submissions that described completed projects or portions of completed projects to be the most persuasive and reliable. These submissions reflect projects that were in fact completed within the reported timeframe and therefore provided some guarantee that other facilities can replicate those timeframes. As these projects were initiated before the *USWAG* decision, it is likely that they do not represent expedited timeframes. EPA therefore considered them to be outer bounds of the amount of time necessary to complete these projects.

The second most reliable category of information came from submissions in which the commenter provided a detailed narrative description and project schedule, explaining all phases of the project. Submissions that fell into this category generally provided sufficient information to allow the Agency to determine whether the estimated timeframes were reasonable and consistent with those timeframes presented in submissions from commenters describing completed projects. In some cases, EPA discounted some portions of the estimated time where it appeared that the amount of time substantially exceeded the time presented in other submissions or were based on factors unique to that site that are unlikely to be relevant to other facilities nationwide. EPA calculated these adjustments by examining the project schedule and determining whether the task in question overlapped with other tasks. If the discounted task did not overlap with other activities, the Agency reduced the project schedule by the length of time of the task. However, when the task in question partially overlapped with another activity, EPA only reduced the time duration by the amount that did not overlap with a non-discounted task. EPA also reduced some portions of estimates if, based on other submissions, EPA determined that the commenter had assumed that a phase of a project was sequential when in fact it could be completed at the same time as another phase of the project. In this final rule, EPA used the information from both of these categories of submissions to calculate the deadline to cease receipt of waste.

EPA did not use provided information when a project timeline did not include all phases of the project, or when the project timeline was presented with insufficient detail to evaluate it. EPA also excluded estimates that appeared to be outliers when compared to other estimates. As EPA explained in the proposal, outliers should not extend the deadline for all facilities to cease receipt of waste, because such action would not be consistent with ensuring that this transition occurs as quickly as technically feasible. Rather, such situations are more appropriately accounted for and addressed, if necessary, under the alternative closure process in § 257.103.

Conversion to dry handling. The first technology approach EPA considered in the proposed rule was conversion to dry handling of CCR. Some facilities use wet sluicing (*e.g.,* water) to convey CCR from the boiler to a CCR surface impoundment. In the context of this rulemaking, a conversion from wet sluicing to another means of CCR ash conveyance (*e.g.,* mechanical) would allow the facility to cease use of the unlined CCR surface impoundment once the conversion is complete (assuming, in this example, that no other wastestreams are also directed to the unlined impoundment). EPA proposed that the average amount of time needed to implement the conversion to dry handling is 36 months, although the proposed rule presented information that times ranged from 36 to 48 months. 84 FR 65946. The Agency also recognized that some facilities may need new capacity to dispose of the CCR after a conversion to dry handling is complete, such as a CCR landfill. EPA stated that it did not have information on the time needed to construct a new landfill and therefore the time needed to obtain such capacity was not included in the proposed 36-month timeframe. The proposed rule solicited information on whether landfills are being constructed for alternative capacity in conjunction with dry handling system conversions and, if so, the timeframes to put in place such capacity. 84 FR 65947.

In response, several commenters stated that CCR landfills are constructed as part of the conversion to dry handling and that the time required to construct and permit these landfills is significant. These commenters argued, therefore, that EPA should include the time required to obtain capacity for a CCR landfill in its calculation of the time it takes a facility to convert to dry handling. These commenters provided information on seven examples from Delaware, Kentucky, Missouri, and South Carolina showing that the process from initial application to operational permit issuance of a CCR landfill had taken approximately three to five years. The commenters further explained that construction of three of these new CCR landfills was done as part of the process of converting to dry handling. However, none of the landfill construction information provided by the commenters included integrated project schedules showing both the construction of the landfill and the dry ash handling conversion, which could proceed simultaneously.

The Agency disagrees that the final rule approach should include the time to construct a CCR landfill in its calculation of the time it takes a facility to convert to dry handling. After further consideration, EPA views a combined dry ash handling conversion and new CCR landfill construction project to be more analogous to a multiple technology system, which is discussed in the ''Multiple technology system'' section of this preamble. In this instance, the multiple technology system would consist of a dry handling conversion project and a separate disposal capacity project. The Agency is taking this position in the final rule because some dry handling conversion projects do not involve the need to obtain disposal capacity for dry CCR, while other conversions do. EPA also notes that it did not receive any integrated project schedules showing the construction of the landfill and the dry ash handling conversion.

EPA also received new project information regarding conversions to dry handling of CCR from Cleco Corporate Holdings LLC (Cleco) and DTE Energy.[13] The information provided by each is briefly summarized below.

Cleco submitted detailed project information and projections for dry ash conversion projects at two different Cleco plants in Louisiana. The first was for the installation of a submerged flight conveyor for bottom ash removal at its Dolet Hills Power Plant (Dolet Hills). A submerged flight conveyor is a type of mechanical ash handling system that collects bottom ash that has fallen from the bottom of the boiler into a water-filled trough.[14] Currently at Dolet Hills, bottom ash is wet sluiced to one of two 33-acre unlined CCR surface impoundments. The commenter stated that prior to the *USWAG* decision, these bottom ash impoundments were not subject to closure for cause. The commenter's project timeline shows that it will take approximately 44.5 months to complete the bottom ash handling conversion. Cleco's comments do not indicate where the bottom ash will be managed after the conversion, but EPA notes that Cleco currently operates a CCR landfill at Dolet Hills for the disposal of fly ash and scrubber sludge. The commenter's conversion project timeline includes approximately nine months for the task of ''joint owner & board approval'' and another five months for a budgetary study. The commenter explains that the coal-fired boiler at Dolet Hills is jointly owned and this time is needed to engage in substantial discussions with and reach concurrence with the joint owners. The commenter further stated that the time allotted for discussions and decision-making with joint owners is based on its experience in reaching consensus with joint owners on the EPA air rulemaking titled the Mercury and Air Toxic Standards rule.[15] The commenter's project timeline also included three months to seek an alternative liner determination pursuant to a proposed process under consideration by the Agency in a separate rulemaking.[16] However, this 17 months (3 + 5 + 9 months) reflected in Cleco's timeline only partially overlaps with the planning and initial design phase of the project, which increased the amount of time estimated to complete the total project.

The second bottom ash dry conversion project described by Cleco was for the installation of a submerged grind conveyor, another type of mechanical ash handling system, for bottom ash removal at its Rodemacher Power Plant. Currently, bottom ash is wet sluiced to a 43-acre unlined CCR surface impoundment. The commenter stated that prior to the *USWAG* decision, the bottom ash impoundment was not subject to closure for cause. The commenter's project timeline shows that it will take approximately 45 months to complete the bottom ash handling conversion. Cleco's comments do not indicate where the bottom ash will be managed after the conversion nor if disposal capacity is needed for generated bottom ash. Similar to the timeline for Dolet Hills, Cleco's conversion project timeline includes approximately 17 months for obtaining joint owner and board approval, conducting the budgetary study, and seeking an alternative liner demonstration.

After evaluating the new information provided by Cleco, EPA is using this information in its final rule calculation of the amount of time needed to convert to dry handling because this commenter provided a detailed narrative description and project schedule explaining all phases of the project that allowed EPA to evaluate the reasonableness of the estimate. However, after reviewing the commenter's project schedule, the Agency is adjusting the dry handling conversion timeframes used in the capacity analysis for the reasons discussed below. As discussed earlier, this commenter explains that the project schedule includes approximately nine months for the task of joint owner and board approval, five months for a budgetary study, and three months to seek an alternative liner determination (a total of 17 months). However, these actions would only partially overlap with the planning and initial design phase of the project. As EPA explained elsewhere in this preamble, the goal of the Agency's alternative capacity analysis is to identify capacity that can be obtained in the shortest feasible time. A schedule based on a protracted lengthy decision-making process is not consistent with this goal. Moreover, the length of time it takes to make a decision is within the facility's (or multiple co-owner's) control and can be expedited as necessary. For similar reasons EPA is not accounting for time taken for the facility to seek a variance under the proposed alternative liner determination provisions. Developing the materials for that process is largely within the facility's control and can therefore be undertaken simultaneously with other measures. Therefore, EPA is eliminating the time to seek an alternative liner determination (three months) and additionally reducing by eight months the upfront 14 months allocated for joint owner and board approval and the budgetary study. This action would retain six months for the planning and initial design phase of the project, which is the same amount of time identified for this phase at proposal. Thus, for purposes of the final rule alternative capacity analysis EPA will use an adjusted estimate of 33.5 months (44.5 minus 11 months) to complete the dry conversion at the Dolet Hills facility and an adjusted estimate of 34 months (45 minus 11 months) to complete the dry conversion at the Rodemacher facility. In addition, the Agency is using the Cleco data points in lieu of the information considered in the proposed rule because it is a more comprehensive analysis of a dry ash handling conversion project. Table 3 in unit V.B.3.a of this preamble shows the information used in the final rule alternative capacity analysis for this technology approach.

DTE Energy submitted comments describing an ongoing dry fly ash handling conversion project of four boilers at its Monroe Power Plant (Monroe) in Michigan. The commenter states that one CCR surface

[13] See docket items EPA–HQ–OLEM–2019–0172–0085 and 0094, respectively.

[14] For additional information on bottom ash handling systems, see USEPA, 2019. ''Supplemental Technical Development Document for Proposed Revisions to the Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category''. EPA–821–R–19–009 (November).

[15] 77 FR 9304 (February 16, 2012).

[16] 85 FR 12456 (March 3, 2020).

impoundment currently receives wet sluiced fly ash and that prior to the *USWAG* decision, this 331-acre impoundment was not subject to closure for cause. The commenter's narrative description of the timeline estimates that the dry fly ash conversion project will take at least 57 months until the dry ash handling systems are operational and wet sluicing of ash can end. Monroe currently operates a CCR landfill. The commenter explained that the conversion construction schedule has been designed to coincide with already scheduled periodic unit outages and has been coordinated with the Midwest Independent System Operator so as to maintain grid stability and electrical reliability.[17] The commenter stated that for plants such as Monroe that have multiple generating units, outages for those units are seldom concurrent. Therefore, the commenter explained that the schedule for the dry ash handling conversions are coordinated into a series of sequential generating unit outages that adds to the required time to install and start up the systems.

After considering the comments submitted by DTE Energy, EPA is not using its project information in the final rule calculation of the amount of time needed to convert all four of its boilers to dry fly ash handling. DTE Energy explained in its comments that two of its boiler units currently have a dual ash handling system that allows fly ash generated from these boilers to be handled dry or wet. The commenter further explained that a portion of the fly ash generated from these two boilers is transported dry (*e.g.,* collected fly ash is conveyed to storage silos using air pressure) and sold for beneficial use, while the remaining portion of fly ash not sold for beneficial use is wet sluiced to its unlined CCR surface impoundment. The commenter further explained that fly ash generated by the other two boilers is currently wet sluiced to the same impoundment. As explained earlier, the project timeline to convert all four boilers to dry handling is estimated to take 57 months; however, the commenter does not explain why closure of the unlined surface impoundment could not be initiated sooner than 57 months given that two boilers are already currently configured to dry handle fly ash. Nor is the project timeline sufficiently detailed for the Agency to discern whether alternative capacity could be obtained sooner than projected.

Non-CCR wastestream basins. The second technology approach for alternative capacity proposed by the Agency was construction of a new wastewater basin for non-CCR wastestreams. A new wastewater basin could be needed in a situation where one or more non-CCR wastestreams are managed in an existing unlined CCR surface impoundment subject to closure. EPA proposed that the average amount of time needed to construct a new basin for non-CCR wastestreams was 21 months, but also explained that available data showed that permitting of the unit can greatly impact the amount of time needed to complete the new capacity. The data in the proposal showed new capacity could be obtained in a range of 18 to 41 months. EPA further explained that when removing the variable permitting component from consideration, the average time to plan and design, procure, and construct and commission the new basin was 21 months. 84 FR 65947.

In response to the proposed rule, several commenters stated that obtaining permits is a necessary component of the process to construct a non-CCR wastestream basin and provided examples of the types of permits, licenses or approvals that may be needed. These commenters argued that EPA must include some time for obtaining permits for this alternative capacity method. The Agency also received new project information from several entities regarding construction of a new wastewater basin for non-CCR wastestreams. However, these projects were done as part of a larger multiple technology system effort. These multiple technology system projects included the construction of non-CCR wastewater basins or storage in conjunction with either dry ash handling conversions or development of other alternative capacity at the New Madrid Power Plant, Thomas Hill Energy Center, Salt River Project, and the Boswell Energy Center. Those project descriptions are not included in the capacity analysis for non-CCR wastestream basins, but are discussed in the ''Multiple technology systems'' section of this preamble. The Agency did not receive any new project information from commenters documenting the time needed to construct a new non-CCR wastewater basin when such project was not part of a multiple technology system.

After considering comments, EPA is adjusting the approach used in the proposed rule to determine the time needed to obtain alternative capacity with a non-CCR wastewater basin. Several commenters were critical of the proposed approach because it removed permitting timeframes considerations from the estimation. The Agency agrees with commenters that obtaining a permit (*e.g.,* the time needed to modify a National Pollutant Discharge Elimination System permit) is a necessary component to putting in place a new non-CCR wastewater capacity. EPA re-evaluated the project schedule associated with the high-end estimate of 41 months considered in the proposed rule. This review determined that the design and permitting phase of the project—18 months of the project duration—includes environmental reviews required under the National Environmental Policy Act (NEPA). As noted in the submission, the NEPA review process ''can take up to a year or longer depending on the level of review'' required. The Agency also reviewed other documents associated with the NEPA review for this non-CCR wastewater basin and found that the process well exceeded a year to complete.[18] But because the majority of facilities are not subject to NEPA, EPA considers this situation to be an outlier that is more appropriately accounted for and, if necessary, addressed under the alternative closure process in § 257.103. Because the NEPA review process overlaps with other project tasks, such as detailed engineering design and preparing permit applications, EPA adjusted the estimate to remove 12 of the 18 months associated with the NEPA review process, rather than deleting the entire 18 months. The resulting six-month time frame is consistent with the estimate provided by other facilities for the engineering design phase. Therefore, for purposes of the final rule alternative capacity analysis EPA will use an adjusted estimate of 29 months (41 minus 12 months) to complete the construction of the non-CCR wastewater basin.

EPA is using the estimate to construct a new non-CCR wastewater basin provided by Southern Company in the final rule alternative capacity analysis. This information was considered in the proposed rule and describes a project estimated to take 18 months. Table 3 in unit V.B.3.a of this preamble shows the information used in the final rule alternative capacity analysis for this approach.

[17] The Federal Energy Regulatory Commission (FERC) defines an Independent System Operator as an independent, federally regulated entity established to coordinate regional transmission in a non-discriminatory manner and ensure the safety and reliability of the electric system.

[18] 83 FR 54162 (October 26, 2018). ''Shawnee Fossil Plant Coal Combustion Residual Management; Issuance of Record of Decision.'' The draft Environmental Impact Statement was released on June 8, 2017, and the final Record of Decision was published on October 26, 2018.

Wastewater treatment facility. The third technology approach considered by EPA at proposal was to build a new wastewater treatment facility (or system) for CCR and/or non-CCR wastestreams. A wastewater treatment system can take different forms, as explained in the proposed rule. For example, a chemical precipitation wastewater treatment system is a system where chemicals are added to the wastewater to alter the physical state of dissolved and suspended solids to facilitate settling and removal of solids. Other systems, such as settling ponds, are designed to remove particulates from wastewater by means of gravity. EPA proposed that the average amount of time needed to construct a wastewater treatment system is 16 to 21 months based on information obtained for a related rulemaking for the Steam Electric Power Generating Effluent Guidelines and Standards (Steam Electric ELG). The Agency also presented an example of a concrete treatment tank system being considered by an electricity producer that estimated the time to obtain alternative capacity to be 27 months. 84 FR 65948.

In response to the proposed rule, several commenters stated that information available in the rulemaking docket estimates significantly longer timeframes to obtain capacity with a wastewater treatment system than EPA's proposed time. These commenters pointed to information in the docket from Arizona Public Service stating that it will require approximately 27 months to complete construction of the wastewater treatment facility.[19] The commenters also identified new information contained in a comment by Southern Company in the Steam Electric rulemaking docket, stating that a complex wastewater treatment project at a plant with over 50 wastestreams can take up to 52 months to implement.[20] The commenters further stated that EPA's proposal fails to consider the time needed to obtain or modify National Pollutant Discharge Elimination System (NPDES) permits, which is a crucial aspect of the process of constructing and implementing a wastewater treatment facility. Therefore, these commenters argued that the Agency should include the time required to obtain or modify NPDES permits in its calculation of the time it takes to implement a wastewater treatment facility as a method of alternative capacity.

The Agency also received new project information from several entities regarding construction of a new wastewater treatment facility. However, these projects were done as part of a larger multiple technology system effort. These multiple technology system projects included the construction of wastewater treatment capacity in conjunction with either dry ash handling conversions or other alternative capacity additions at the New Madrid Power Plant, Thomas Hill Energy Center, and the Leland Olds Station. Those projects are not included in the wastewater treatment system analysis and are discussed in the ''Multiple technology systems'' section of this preamble.

As discussed earlier for the approach for non-CCR waste basins, the Agency agrees with commenters that obtaining or modifying a NPDES permit is a necessary component to establishing new capacity with a wastewater treatment facility. To better capture the range of times needed to obtain or modify a NPDES permit, the final rule is supplementing the Steam Electric ELG information used at proposal with the project information from Arizona Public Service, which shows alternative capacity will be in place within approximately 26 months.[21] In addition, the Steam Electric ELG timeframes were presented as ranging from 16 to 21 months in the proposed rule. For reasons discussed in unit V.B.3 of this preamble, the Agency is representing this information as a mean of the range (*i.e.,* 18.5 months) so as to not overrepresent this information relative to other data. However, EPA is not including in the alternative capacity calculation the information characterized as a ''complex wastewater treatment project at a plant with over 50 wastestreams'' that can take up to 52 months to implement (these comments were also submitted as comments in response to a separate Steam Electric ELG proposed rule). This information is not being included in the calculation because the Agency was unable to determine whether this project at an unspecified facility involved unique or unusually complex site-specific circumstances that would be better addressed through the alternative closure provisions discussed in unit V.C of this preamble. Table 3 in unit V.B.3.a of this preamble shows the information used in the final rule alternative capacity analysis for this technology approach.

New CCR surface impoundment. The fourth technology approach considered by EPA at proposal was to build a new CCR surface impoundment to replace the impoundment subject to closure for cause. Such a unit could be used for CCR alone or could also be used to manage non-CCR wastestreams. EPA proposed that the average length of time needed to build a new CCR surface impoundment is 27 months. 84 FR 65949. As explained in the proposed rule, this average time was developed from available information submitted by three facilities—Xcel Energy, Arizona Public Service, and Southern Company.[22] The proposed 27-month average was comprised of six months for planning and design, six months for permitting (though the preamble presented a range of six to 18 months and acknowledged that the permitting phase can take longer than this range), 14 months for material procurement and construction, and one month for capacity commissioning.

In response to the proposed rule, several commenters stated that EPA must fully consider the additional time required to apply for and obtain the necessary permits when estimating the timeframe for constructing a new CCR surface impoundment. These commenters argued that EPA inappropriately selected the low end of the range needed for permitting (*i.e.,* six months), despite the record showing that it is not a rare occurrence when more time is needed for permitting. These commenters stated that the timeframes must also account for the time needed to install a groundwater monitoring system for the new impoundment given that the federal CCR regulations require that the new impoundment must be in compliance with groundwater monitoring requirements prior to initial receipt of CCR. These CCR requirements include, for example, installing the groundwater monitoring system and developing a groundwater sampling and analysis program.

EPA also received new project information regarding the construction of new CCR surface impoundments from a number of companies, including Xcel Energy (Xcel), Great River Energy (Great River), and CPS Energy.[23] The information provided by each is briefly summarized below.

Xcel submitted detailed project information for a new CCR surface impoundment that is currently under

[19] See docket item EPA–HQ–OLEM–2019–0172–0008.

[20] See docket item EPA–HQ–OW–2009–0819–8457.

[21] EPA re-examined the APS schedule to complete construction of the wastewater treatment facility and determined that the project would take 26 months versus the 27 months presented in the proposed rule.

[22] See docket items EPA–HQ–OLEM–2019–0172–0007, 0008, and 0011, respectively.

[23] See docket items EPA–HQ–OLEM–2019–0172–0067, 0076, and 0070, respectively.

construction to replace an existing 18-acre CCR surface impoundment. That impoundment is used for the temporary storage of bottom ash prior to its excavation and beneficial use or disposal elsewhere. The commenter explained that the existing impoundment at the Sherburne County Generating Plant (Sherburne) in Minnesota is currently considered unlined pursuant to the CCR regulations and that the unit was not subject to closure for cause until the 2018 *USWAG* decision. At proposal, EPA relied on information provided by Xcel in an earlier submission specific to this new CCR surface impoundment. Xcel stated in its comments that even with the benefit of work completed prior to the *USWAG* decision, it does not anticipate that alternative capacity (the new impoundment) will be available until mid-October 2020. The commenter explained that EPA's time estimate at proposal for the new Sherburne impoundment did not include already completed essential tasks related to the new impoundment, including an assessment of options for alternative capacity, and preliminary design, permitting and project planning. Xcel further explained that the actual timeline since project initiation in January 2014 to completion in October 2020 would not be consistent with the standard in the proposed rule to obtain alternative capacity ''as soon as technically feasible,'' because there has not been a continuous and sustained effort to obtain the alternative capacity. Therefore, Xcel reconstructed the activities completed prior to the *USWAG* decision and developed a hypothetical project schedule reflecting a project start date of October 15, 2018 (*i.e.,* the *USWAG* mandate). The commenter stated that expedited durations were used where feasible and provided examples. The commenter further stated that constructing the new CCR surface impoundment would take a minimum of 34 months, which would equate to mid-August 2021 under this hypothetical schedule. Xcel's comments included a narrative description explaining all phases of the entire project and a detailed project schedule, both for the actual and hypothetical cases.

Great River submitted detailed project information for a new CCR surface impoundment at its Coal Creek Station in North Dakota. The commenter stated that the new 66-acre impoundment will replace two existing CCR surface impoundments that receive fly ash, bottom ash, and flue gas desulfurization materials. The existing impoundments are approximately 75 and 100 acres in size, according to the closure plans posted on the plant's CCR compliance website. The commenter also explained that the two existing surface impoundments were considered lined units pursuant to the CCR regulations prior to the 2018 *USWAG* decision. The commenter further stated that Coal Creek Station initiated efforts to obtain alternative disposal capacity immediately following the *USWAG* decision and that constructing the new CCR surface impoundment will take approximately 59.5 months. However, the commenter explained that the future location of the new CCR surface impoundment is currently occupied by two existing, state-regulated non-CCR surface impoundments. The commenter further explained that the proposed plan is for the two non-CCR surface impoundments to be combined into one CCR surface impoundment, and to expedite availability, construction efforts will focus on conversion of only one non-CCR surface impoundment at a time. Great River's comments included a detailed project schedule and a technical memorandum from its engineering consultant explaining the steps of the project in detail from start to finish.

CPS Energy submitted information for a new two-acre CCR surface impoundment at its Calaveras Power Station in Texas. The commenter stated that the new impoundment will replace two existing CCR surface impoundments that receive CCR sludge from the air pollution control equipment. The existing impoundments are each approximately 1.5 acres in size, according to the closure plan posted on the plant's publicly accessible CCR internet site. CPS Energy stated in its comments that constructing the new CCR surface impoundment will take approximately 30 months. While the commenter provided summary information on the amount of time needed to construct the new unit, neither a detailed narrative description nor a detailed project schedule explaining all phases of the project was submitted with the comments.

After evaluating the comments that provided new information, EPA is including the 34-month timeframe for the Xcel project in its final rule calculation of the amount of time needed to put in place new CCR surface impoundment capacity. This commenter provided a detailed narrative description and project schedule explaining all phases of the project that allowed EPA to evaluate the reasonableness of the estimates. EPA is not including, however, the summary information for the new impoundment planned at Coal Creek Station because of the unique real estate challenges at the site. As discussed earlier in this section, construction of the new impoundment cannot commence until one of the former non-CCR surface impoundments is dewatered and cleaned out. According to the commenter's project schedule, these tasks are anticipated to consume at least one of the three construction seasons dedicated to the construction of the new impoundment. Given that the facility is located in North Dakota, an area of the country that has shorter construction seasons, the decision to build the new impoundment at a site occupied by two state-regulated non-CCR surface impoundments affects the project duration by at least one year. While the Agency recognizes that some facilities have legitimate real estate constraints and limitations, EPA considers these situations to be outliers and more appropriately accounted for and addressed, if necessary, under the alternative closure provisions under § 257.103 (see section V.C of this preamble).

The Agency is also not including the summary information provided by CPS Energy in the final rule calculation because the commenter did not provide sufficient detail on its planned alternative capacity project to allow the Agency to evaluate whether the project could have been concluded more quickly.

EPA is using the 28-month estimate to construct a new seven-acre impoundment provided by Arizona Public Service (APS FCPP) for the Four Corners Power Plant in New Mexico in the final rule alternative capacity analysis. The APS FCPP information was considered in the proposed rule and describes the project schedule from start to completion. EPA has included in its calculations the time required to obtain necessary permits and to install a groundwater monitoring system for the new impoundment. The data used in the final rule alternative capacity analysis represent the amount of time to obtain capacity from start to completion, including these permitting and regulatory project elements. Table 3 in unit V.B.3.a of this preamble shows the information used in the final rule alternative capacity analysis for this technology approach.

Retrofit of a CCR surface impoundment. The fifth technology approach considered by EPA at proposal was to retrofit a CCR surface impoundment to meet the requirements specified in the CCR regulations for a new impoundment. Such a unit could

be used for both CCR and non-CCR wastestreams. EPA proposed that the time to retrofit a large surface impoundment (approximately 50 acres) was 31.5 months. 84 FR 65950. The 31.5-month timeframe was based on information provided by Vistra Energy for the Martin Lake Power Plant (Martin Lake) in Texas.[24] While the Martin Lake timeline pertains to a larger retrofit project of four surface impoundments, EPA used it to determine the time needed to retrofit a single impoundment. The Agency also proposed that a small CCR surface impoundment could be retrofitted in four to 12 months. The small impoundment time estimate was based on information extracted from rule information posted on publicly accessible CCR internet sites for three facilities (*i.e.,* written retrofit plans required by § 257.102(k)(2)), including Keystone Generating Station, Weston Generating Station, and Mount Storm Power Station.

In response to the proposed rule, several commenters stated that it was not appropriate for EPA to discount the need for sequential retrofitting of impoundments at the Martin Lake facility and use 31.5 months as the average time to retrofit. Given that Vistra Energy's submission makes clear that retrofitting must occur sequentially in order for the plant to continue operating and generating electricity during the retrofit work, the commenters argued that the final rule should consider the full time to retrofit its impoundments. These commenters also objected to the proposed rule averaging methodology stating that EPA both overrepresented the impoundment retrofit technology approach (*i.e.,* three of the ten data points used to calculate the proposed 22.5-month average time to obtain alternative disposal capacity were derived from impoundment retrofit information), and inappropriately skewed the retrofit time average to small units. The commenters further contended that approximately 68 percent of CCR surface impoundments are larger than 10 acres and more weight should be given to the actual timeframes experienced by facilities in retrofitting these larger impoundments. These commenters also argued that the timeframes must account for situations where the waste boundary of the unit changes during the retrofit to provide the time needed to install a groundwater monitoring system for the retrofitted impoundment, given that the federal CCR regulations require that the impoundment must be in compliance with groundwater monitoring requirements prior to initial receipt of CCR.

The Agency disagrees with commenters that it was inappropriate to discount the need for sequential retrofitting of Martin Lake's four impoundments and instead used the time to retrofit a single impoundment. The Agency is using the Martin Lake information to determine the time to retrofit a single impoundment. The Martin Lake circumstances are unique in that the facility plans to retrofit four impoundments, and each retrofit must occur sequentially because the facility requires a minimum of three impoundments to be operating at any one time in order for the plant to operate. To use the Martin Lake information, the Agency adjusted the total retrofit time so that it is on the same scale as other facilities (*i.e.,* construction times normalized for a single impoundment retrofit). The proposed rule estimated it would take Martin Lake 31.5 months to retrofit a single impoundment.[25] EPA continues to believe that the 31.5-month estimate is appropriate and is using this data point in its final rule alternative capacity analysis to determine the time needed to retrofit of a CCR surface impoundment. Finally, the Agency intends for unique circumstances like Martin Lake to be addressed through the alternative closure provisions of the final rule.

EPA also received new project information regarding the amount of time needed to retrofit a CCR surface impoundment in comments from Arizona Electric Power Cooperative (AEPCO). AEPCO submitted project information for a surface impoundment retrofit project at its Apache Generating Station in Arizona. The commenter stated that this plant has four CCR ash impoundments, which also manage non-CCR wastestreams, and a scrubber sludge impoundment subject to the CCR regulations. The commenter explained that it will need to retrofit one of the ash impoundments and the scrubber sludge impoundment before it can cease placement of CCR in the units at the plant. The existing ash and scrubber sludge impoundments are approximately 33 acres and 42 acres in size, respectively, according to the closure plans posted on the facility's publicly accessible CCR internet site.[26] The commenter noted that these existing surface impoundments were not subject to closure for cause under the CCR regulations prior to the 2018 *USWAG* decision. The commenter further explained that after conducting preliminary design work for evaluating potential alternative capacity, AEPCO decided to retrofit the existing impoundments, which involves removal of approximately 900,000 cubic yards of solids from the existing impoundments. The commenter estimated that it will take approximately 47 months to complete the retrofit of the scrubber sludge impoundment and 55 months to retrofit one ash impoundment; however, both impoundment retrofits, which will be conducted concurrently, must be completed before the facility can cease using the existing impoundments. AEPCO must first obtain Board approval of an initial scoping of the project and initiate project financing activities. The commenter explained that many electric cooperatives finance large projects through the U.S. Department of Agriculture's Rural Utilities Service (RUS) because RUS can offer low-interest federal loans. RUS funding can require an environmental review under the National Environmental Policy Act before funds will be released by RUS to the cooperative. The commenter's project schedule included approximately 16 months for obtaining internal approval of the project, initiating RUS financing, and completing preliminary design work. AEPCO's comments included a narrative description explaining all phases of the project and a detailed project schedule, including an estimate of the impact of pursuing RUS funding for these retrofits.

After evaluating AEPCO's comments, EPA is incorporating the impoundment retrofit projects at Apache Generating Station into the final rule alternative capacity analysis. However, the Agency is adjusting the project timeframes used in the capacity analysis for this facility for reasons discussed below. As discussed earlier, this commenter explained that the project schedule includes 16 months for Board approval activities and initiating a process to obtain lower-cost financing through the RUS program. The environmental review process required by RUS can be a lengthy process—longer than a year in some cases—as noted by this and other

[24] See docket item EPA–HQ–OLEM–2019–0172–0005.

[25] See docket item EPA–HQ–OLEM–2019–0172–0005. EPA subtracted off 27 months for the retrofit of the remaining three impoundments and the six months for contingencies built into the schedule to obtain 31.5 months to retrofit a single impoundment.

[26] ''Closure Plan—Revision No. 1, Apache Generating Station, Arizona Electric Power Cooperative, Inc., Cochise County, Arizona'', October 13, 2016.

commenters.[27] These commenters further explained that borrowers must wait for the conclusion of RUS's environmental review before taking any action on projects that could have an environmental impact or otherwise limit or affect the USDA's final decision.

As EPA explained elsewhere in this preamble, the goal of the Agency's alternative capacity analysis is to identify capacity that can be obtained in the shortest feasible time. A schedule based on a lengthy decision-making and administrative process is not consistent with this goal, especially when other faster financing options are available and within the facility's control. The length of time it takes to make a decision is also within the facility's control and can be expedited as necessary. Therefore, EPA evaluated the timeline to determine the extent that the lengthy decision-making and financing approach impacted the project's schedule. As a result, the Agency is reducing the initial 16-month decision-making and financing activities by nine months. This adjustment would retain seven months for the planning and initial design phase of the project that would occur within the initial 16-month period. The seven-month period is the same amount of time identified for this project phase at proposal. Therefore, for purposes of the final rule alternative capacity analysis EPA will use an adjusted estimate of 38 months (47 minus nine months) to complete the retrofit of the scrubber sludge impoundment and 46 months (55 minus nine months) to retrofit one ash impoundment. Finally, given that the retrofits of the scrubber sludge and ash impoundments were concurrent activities (*i.e.,* the retrofit construction began at the same time), EPA views this as one retrofit project and is including the longer retrofit estimate of 46 months in its alternative capacity analysis because the impoundment retrofits would be completed within this 46-month period.

As discussed elsewhere in this preamble, EPA also received comments that the proposed alternative capacity technology approaches are missing key components of the project planning process (*e.g.,* the time needed to obtain required permits). These commenters stated that EPA must account for any missing components when determining the time needed to obtain alternative capacity. EPA re-evaluated the information available in the three retrofit reports for small impoundment retrofits that supported the proposed rule. Weston Generating Station (Weston) located in Wisconsin operates two sets of bottom ash dewatering and settlement basins (each set is approximately three acres in size). The two sets are operated in parallel thus allowing one set of basins to be taken offline while the second set remains in use. Thus, only one set of basins must be in operation in order for the plant to operate. The schedule provided in its retrofit plan includes time estimates for all project components, including the phases of planning and design, procurement, permitting, construction, and capacity commissioning.[28] This report shows that it will take approximately 12 months to complete the retrofit of the first series of dewatering and settlement basins and an additional three months to complete the retrofit construction of the second series of basins. Weston posted a construction certification at the end of November 2017 documenting the completion of the retrofit project [29] confirming that the actual time needed to complete the retrofit project was consistent with the project schedule considered by EPA in the proposed rule. Therefore, EPA continues to believe that 12 months accurately reflects the amount of time the commenter needs to retrofit a single surface impoundment and is including this data point in the final rule alternative capacity analysis.

Regarding the surface impoundment retrofits at Keystone Generating Station in Pennsylvania and Mount Storm Power Station in West Virginia, EPA's re-evaluation found that the retrofit reports for both plants lack information on the phases of planning and design, procurement and permitting. The Agency was unable to obtain additional information for these retrofit projects. As a result, EPA is no longer considering these retrofit reports as part of the final rule alternative capacity analysis.

Finally, as a result of including new retrofit information from commenters and of the Agency's re-evaluation of information used in the proposed rule, two thirds of the data used in final rule alternative capacity analysis for the impoundment retrofit method is associated with impoundments greater than ten acres. EPA believes this addresses the comment that the retrofit alternative capacity analysis was overrepresented by information from small units under ten acres in size. Table 3 in unit V.B.3.a of this preamble shows the information used in the final rule alternative capacity analysis for this technology approach.

Multiple technology system. The final technology approach considered in the proposed rule was utilizing a combination of technologies that together could provide alternative capacity. An example is a utility that decides to end wet sluicing of bottom ash to a CCR surface impoundment by making modifications to the boiler so that the bottom ash can be handled dry, thereby allowing its unlined CCR surface impoundment to be closed or retrofitted. If, in this example, the existing unlined impoundment was also used to manage non-CCR wastestreams, then the utility would also need to obtain alternative capacity for its non-CCR wastestreams (*e.g.,* a wastewater treatment system). Thus, the combination of a dry ash handling system and wastewater treatment system is an example of a multiple technology system.

EPA proposed that the average amount of time needed to obtain alternative capacity with a multiple technology system was 21 to 36 months, although the Agency generally lacked detailed information on the engineering, design and permitting phases of the underlying projects. In the proposed rule, EPA estimated the time needed for the engineering and design phase and assumed that permitting occurs concurrently with other project steps. The Agency also acknowledged in the proposed rule that the time needed to construct a multiple technology system is highly dependent on the alternative capacity approaches selected and that more time may be needed for planning and design because these systems can be more complex. 84 FR 65950.

In response to the proposed rule, several commenters stated that permitting considerations were omitted from the proposed timelines because permitting was assumed to occur concurrently with other project steps, such as construction. These commenters further stated that this assumption is not supported by the information in the record which demonstrates that permitting is a necessary and key component of the process of developing alternative capacity and that construction work rarely can proceed until all the necessary permits are obtained. Therefore, they argued that the final rule should include some time for obtaining permits. Commenters also stated that the proposed rule approach does not contemplate multiple technology systems when they must be

[27] See docket items EPA–HQ–OLEM–2019–0172–0086 and –0102.

[28] See docket item EPA–HQ–OLEM–2019–0172–0004.

[29] ''Construction Certification for the Weston Units 3 & 4 Ash Basins Liner Retrofit, Wisconsin Public Service Corporation, Weston Generating Station, Rothschild, Wisconsin'', November 29, 2017.

implemented sequentially. An example presented was for a facility that implements a dry ash handling conversion; once the large-volume sluice flows are removed from the impoundment, the facility begins a partial retrofit within that impoundment footprint for other non-CCR wastestreams. The commenters explained that this could be the case when the facility has real estate constraints that prevent construction from beginning until after the sluice flows are removed. Impoundment closure could not begin until after the partial retrofit is completed and the non-CCR wastestreams relocated. Other commenters stated that schedules based on completed projects, such as those of Duke Energy, did not provide enough details to understand whether the facility acted as expeditiously as possible or whether tasks were conducted sequentially or with some overlap.

EPA also received project information from several entities regarding multiple technology systems, including from Associated Electric Cooperative, Inc. (AECI), Minnesota Power, American Electric Power (AEP), Salt River Project Agricultural Improvement and Power District (Salt River Project), and Basin Electric Power Cooperative (Basin Electric).[30] The information provided by each is briefly summarized below.

AECI submitted project timelines and related information for its two CCR-generating facilities in Missouri: New Madrid Power Plant (New Madrid) and Thomas Hill Energy Center (Thomas Hill). The commenter described ongoing efforts at both facilities to put in place new alternative capacity using multiple technology systems. The commenter further explained that both facilities are subject to the CCR rules and the Steam Electric ELG rules. The project timelines provided include six projects required to comply with the CCR and Steam Electric ELG rules. The commenter stated that the proposed rule does not account for several integral steps in the process of obtaining alternative capacity. For example, they contend that EPA's proposal did not fully consider the interactive relationship between multiple technology systems that require iterative engineering design and construction sequencing to accommodate complex system development and functionality, such as a new wastewater treatment facility that will discharge into a non-CCR surface impoundment. The commenter also stated that the proposal did not fully consider the commissioning and start-up testing phase for multiple technology systems. The commenter's experience is that more complex systems with multiple and varying water streams will take more time to allow for start-up of equipment before becoming fully operational. For example, elements such as seasonality, varying plant operating conditions, periodic activities (*e.g.,* boiler washes), and inconsistent flow rates require extensive post-construction operational configuring and calibration of pumps, treatment dosing, and effluent monitoring. In addition, initial design activities, such as feasibility studies and alternatives analyses, are more complex for multiple technology systems, which they argued are not properly accounted for in the proposed rule. The commenter stated that the capacity timelines must account for the inherent complexities with multiple technology systems due to the iterative nature of the process.

Of the six projects AECI described, four are underway at the New Madrid facility, including two separate conversions to dry handling (a dry light ash handling conversion and a dry boiler slag handling conversion); construction of a non-CCR wastestream basin for coal pile runoff and process water; and construction of a new water treatment facility for other wastestreams. According to information provided by the commenter, the dry light ash handling conversion was initiated in April 2015 and is expected to be completed by February 2021, a duration of approximately 71 months. The dry boiler slag handing conversion, which includes conversions for two boilers, also began in April 2015 and is estimated to be completed by August 2023, a duration of approximately 102 months.

The final two projects at the New Madrid facility were initiated in October 2018 following the *USWAG* decision. According to information provided by the commenter, they are planned for completion in November 2021, a duration of approximately 37.5 months. The two projects at the Thomas Hill facility include plans to construct a wastewater treatment facility and non-CCR wastestream basins. The specific projects include constructing a concrete dewatering tank to handle boiler slag wastewaters, a new coal pile runoff pond, and other process water ponds. According to information provided by the commenter, these projects would take approximately 37.5 months to complete.

Minnesota Power also submitted project timelines and related information for its Boswell Energy Center (Boswell) in Minnesota describing ongoing efforts to put in place new alternative capacity using multiple technology systems. The commenter stated that it has two CCR surface impoundments that are subject to closure for cause. The first impoundment receives bottom ash and non-CCR wastestreams and the second impoundment receives flue gas desulfurization (FGD) materials, as well as bottom ash dredge materials from the first impoundment. The commenter stated that a multiple technology system for alternative capacity is being pursued at Boswell that will convert the bottom ash handling systems for two boilers to dry systems and install an FGD dewatering system on one of the boiler systems. In addition, a new wastewater storage unit will be constructed for non-CCR wastestreams. The commenter stated that completion of these projects will allow CCR to be managed at its on-site CCR landfill, allowing for the closure of the two CCR surface impoundments. The project timelines submitted by the commenter show that both dry handling conversions will be completed early in 2023, with one conversion taking 40 months to complete and the other one 52 months. The construction of the non-CCR storage unit is planned to be finished in 34 months.

The commenter stated that the proposed rule timelines were deficient in that they did not adequately address the role and extent to which existing economic regulation requires coordinated decision-making for electric utility investments. These regulations include requirements for review and approval of investments to comply with state and federal environmental requirements, which would apply to the dry handling conversions being implemented. The commenter explained its requirements under the Minnesota statute and argued that the proposal would create an environmental regulatory approach that contradicts the economic regulatory approach under which Minnesota Power must make its decisions. The commenter also stated that the proposal did not allow adequate time for state permitting for dry conversion or solid waste management, which, they contended, can be the longest and most uncertain part of the entire dry conversion process. The commenter explained that construction of conversion activities cannot commence until the permits for those changes are issued by the appropriate state or federal regulatory agency. A dry handling conversion will require a major Title V Permit amendment, due to

[30] See docket items EPA–HQ–OLEM–2019–0172–0087, 0075, 0077, 0079, and 0069, respectively.

increased air emissions that will result from the conversion from wet to dry. The commenter also stated that it is projected to take between nine and 21.5 months to receive final permits, and the commenter provided a letter from the Minnesota Pollution Control Agency indicating that this is a reasonable estimate for its conversion project.

AEP also submitted project planning information regarding timeframes to convert to dry bottom ash and fly ash handling and to develop alternative disposal capacity for non-CCR wastewater streams. AEP explained its methodology for performing engineering design, planning and construction of all construction projects, but that it has not previously converted any of its facilities to a dry bottom ash handling system, nor has it developed alternative storage or treatment options for non-CCR wastewater streams. The commenter presented a typical timeline for obtaining such alternative capacity that indicates that it could take 62 months to complete a new non-CCR wastestream basin and 51 months to complete the dry ash handling conversion. These timeframes appear to be based on a scenario where the non-CCR wastestream basin would be constructed on top of a closing CCR surface impoundment. The commenter notes on its timeline that the impoundment would be closed in phases, so that new alternative disposal capacity can be built in the existing footprint of the impoundment.

Salt River Project also submitted detailed project information for a new CCR surface impoundment and non-CCR wastewater impoundment to replace an existing 330-acre CCR surface impoundment used primarily for the disposal of flue gas desulfurization materials and other non-CCR wastestreams. The commenter stated that the existing impoundment at the Coronado Generating Station in Arizona is currently considered unlined under the CCR regulations and that the unit was not subject to closure for cause until the 2018 *USWAG* decision. The commenter stated that it immediately began a preliminary analysis of compliance options under the CCR rule after the *USWAG* decision and began to evaluate options for developing alternative disposal capacity. The commenter further explained that the facility plans to obtain alternative capacity using a collection of modular surface impoundments for CCR and non-CCR wastestreams having an aggregate surface area of approximately 100 acres. Salt River Project stated that it selected a staged pond construction project approach, which will establish initial alternative capacity for both CCR and non-CCR wastestreams in separate impoundments and allow additional ponds to be constructed as needed in the future. Salt River Project stated it will take approximately 55 months to replace the existing unlined impoundment with the new CCR and non-CCR impoundments. Salt River Project's comments included a narrative description explaining all phases of the entire project and a detailed project schedule.

Basin Electric submitted information for a multiple technology system involving dry bottom ash conversion and construction of a process water treatment system at its Leland Olds Station in North Dakota. The commenter stated that the project took approximately 40 months from start to completion, beginning in January 2016 and ending in the spring of 2019. While the commenter provided summary information on the amount of time needed to construct the new unit, neither a detailed narrative description nor a detailed project schedule explaining all phases of the project were submitted with the comments.

After evaluating the comments that provided new project information, EPA is including the information from Thomas Hill, Boswell Energy Center, Salt River Project, and Leland Olds, as well as an average time derived from the Duke Energy data described in the proposed rule (the Duke Energy data are discussed further in the next paragraph), in its final rule alternative capacity calculation for multiple technology systems. The Agency is not including the information for the New Madrid facility in the final rule calculation. The New Madrid information shows that the engineering design and procurement phases last approximately three years for each boiler's dry handling conversion (the timeline calls for two boilers to be converted sequentially). The commenter did not provide sufficient details for EPA to understand why these timeframes are substantially longer than other dry handling conversions. As a result, the Agency attributes these longer timelines to unique or unusually complex site-specific circumstances that would be better addressed through the alternative closure provisions discussed in unit V.C of this preamble.

EPA is also not including the new information provided by AEP in its final rule alternative capacity calculation for multiple technology systems. As discussed in its comments, the commenter's estimate of 62 months to obtain alternative capacity is governed by the amount of time to construct a non-CCR wastestream basin, which in turn cannot be constructed until real estate becomes available by closing part of a CCR surface impoundment. While the Agency recognizes that some facilities may be constrained by available real estate, the commenter did not provide any design information or site-specific circumstances supporting this construction approach. EPA has not received information from the utility sector stating that it will be commonplace and necessary to build new alternative capacity on top of existing disposal units that first need to be closed. For these reasons, the Agency is not using this new information in the final capacity calculation.

The Agency included information submitted by Duke Energy regarding various multiple technology system projects that have been completed at nine Duke Energy plants in Indiana, Kentucky and North Carolina at proposal. The projects varied at each facility, but they generally involved converting to dry ash handling and construction of non-CCR wastestream basins and/or wastewater treatment facilities. While the submission includes detailed information on the time needed to complete the construction and capacity commissioning phases of the project, less information is available on the project phases prior to construction, such as planning and design, procurement, and permitting. However, because the data reflect completed projects, EPA considers the data are sufficiently reliable to include in its estimate. The commenter provides the total time for all project phases to develop alternative capacity at these nine facilities, which ranged from 30 to 42 months, including the time to obtain necessary permits. However, the commenter did not provide specific timeframes for each of the nine facilities, and because the projects were initiated before the *USWAG* decision, they may not represent expedited timeframes. Even though these timeframes are considered to be the outer bounds of the time necessary to complete these projects, the Agency considers these timeframes persuasive because they provide some guarantee that other facilities can replicate them. Consequently, the Agency is using the average time of the range—36 months—that it took Duke Energy to obtain alternative capacity. Nevertheless, because the timeframe for Duke Energy represents nine facilities, EPA considers this to represent nine data points. When taken with the data from the four other facilities discussed above, EPA has 13

data points to factor into its final alternative capacity calculation.

Regarding commenters stating that the capacity timelines must account for the inherent complexities with multiple technology systems, and the permitting of such systems, the Agency believes this issue is addressed in the final rule by incorporating actual timelines from four additional multiple technology system projects. Table 3 in unit V.B.3.a of this preamble shows the information used in the final rule alternative capacity analysis for this technology approach.

(b) Response to Comments on Other Types of Technology Approaches That Commenters Believe EPA Should Have Considered

Several commenters stated the proposed rule should have addressed additional options for obtaining alternative capacity. For each of these approaches, the commenters argued that alternative capacity could be obtained faster as compared to EPA's proposed timeframes. First, commenters stated that the proposed rule should have considered staged construction. The comments described ''staged construction'' as quickly building some capacity initially followed by the building of additional capacity that will be needed for the long term. A second approach identified by commenters was described as preventing the commingling of stormwater with non-CCR wastestreams which can allow the faster development of alternative capacity. The commenters explained that the quantities of non-CCR wastestreams are magnified because low volume non-CCR wastestreams generated at the facility are allowed to commingle with stormwater. Third, commenters stated that the installation of temporary tanks to manage non-CCR wastes should have been considered in the proposal. The commenters claimed that an approach using temporary tanks would allow the facility to avoid siting-related delays typically associated with in-ground options such as wastewater treatment plants and impoundments. One of these commenters was a vendor of mobile wastewater treatment systems, which can support the dewatering of CCR surface impoundments and the treatment of non-CCR wastestreams. The commenter stated that such mobile treatment systems are commercially proven at full-scale, including at utilities, available on demand, and can be put in place in less time than any of EPA's proposed technology approaches.

EPA disagrees with commenters that ''staged construction'' should be considered as an additional alternative capacity approach on par with the six technology approaches considered. The Agency does not view staged construction as a separate, standalone technology comparable to the existing categories, but instead as a technique that could be employed to expedite a project when feasible. The commenter neither described how the Agency could incorporate staged construction as a separate technology into the final rule alternative capacity analysis, nor identified any source of data or information that could be used. While the commenter identified an example where staged construction was used, EPA notes that there are several other examples where this technique is incorporated in projects supporting the final rule alternative capacity analysis. This suggests that the final rule approach already includes elements of staged construction in the analyses when it was feasible, so it does not merit consideration as a separate approach. In one example, a utility pursuing construction of a new CCR surface impoundment selected a ''staged pond construction project approach, with the first few ponds being constructed for initial commissioning and remaining ponds constructed as needed for future use.'' [31] Another example involved the retrofit of a set of dewatering and settlement basins subsequently followed by the retrofit of a second set of basins.[32] In this example, the facility was able to cease use of the unlined impoundments after the first set of basins were retrofitted, which was the time used in the final rule capacity analysis. A final example of staged construction considered by EPA was a facility planning to build a new CCR surface impoundment in a location currently occupied by two existing, state-regulated non-CCR surface impoundments.[33] The commenter explained that the plan is for the two non-CCR surface impoundments to be combined into one CCR surface impoundment, but to expedite availability, construction efforts will focus on conversion of only one non-CCR surface impoundment at a time.

EPA disagrees with commenters that preventing the commingling of stormwater with non-CCR wastestreams would have had a material effect on the timeframes to obtain alternative capacity. The Agency reviewed the CCR surface impoundment projects included in the final rule alternative capacity analysis and available information indicates that stormwater is not commingled with other wastes. Therefore, the design and size of the new impoundments were not impacted by commingling of stormwater.

The Agency agrees with commenters that temporary tanks could serve as alternative capacity to manage non-CCR wastestreams for either storage or treatment. EPA also agrees that such storage or treatment capacity may likely be implemented on a faster timeframe at some facilities. However, EPA does not have detailed project information covering the entire process of obtaining alternative capacity through this method. For some project phases, such as planning and design, EPA would expect the timeframes to obtain capacity through temporary tanks to be comparable to the technology approaches considered in the final rule. For other project phases, such as procurement and construction, the timeframes to secure alternative capacity may be shorter. Without such detailed information, EPA cannot include the suggested approach in its analysis. Under the alternative closure procedures discussed in unit V.C.3.a of this preamble, the Agency is requiring owners to evaluate the viability of obtaining temporary storage or treatment capacity while other permanent capacity is developed.

3. Establishing the Revised Deadline for Affected Units To Cease Receipt of Waste

For all unlined CCR surface impoundments, EPA proposed to revise the deadline to cease receipt of waste under § 257.101(a)(1) from October 31, 2020, to August 31, 2020, based on the Agency's analysis of the average time needed to obtain alternative disposal capacity. 84 FR 65951. This preamble section explains how EPA calculated the average length of time needed to obtain alternative disposal capacity, how the Agency determined the deadline, key changes that EPA is making in response to comments submitted on the proposed rule, and our responses to many of the comments received. A full response to comments is provided in the response to comments document available in the docket to this rulemaking.

(a) Average Length of Time Needed To Obtain Alternative Disposal Capacity

EPA proposed that the average length of time needed to obtain alternative disposal capacity for an unlined CCR surface impoundment was 22.5 months. 84 FR 65951 (December 2, 2019). The

[31] See docket item EPA–HQ–OLEM–2019–0172–0079.

[32] See docket item EPA–HQ–OLEM–2019–0172–0004.

[33] See docket item EPA–HQ–OLEM–2019–0172–0076.

Agency calculated this average time by summing the ten estimates for the six technology approaches shown in Table 2 of this preamble and dividing by the number of estimates shown in Table 2. The proposal stated that 22.5 months, although an average, would appear to provide enough time for a substantial proportion of facilities to put in place alternative disposal capacity. In addition, EPA explained that 22.5 months would be a sufficient amount of time to retrofit all but the largest surface impoundments, and smaller surface impoundments with unique design situations. *Id.* The proposal stated that these outliers should not be the basis to extend the time for all facilities beyond 22.5 months because such action would not be consistent with ensuring that the development of alternative disposal capacity occurs as quickly as technically feasible; outliers can be accommodated by the proposed alternative closure provisions.[34]

The proposed rule also discussed why the Agency chose to rely on a single average time (*i.e.,* the average of the average times associated with the six technology approaches) to establish a single new deadline to cease receipt of waste. First, the proposal stated that 22.5 months would provide sufficient (but not excessive) time for a substantial proportion of facilities, under a variety of approaches. Second, the proposal explained that some facilities will need less than the average amount of time to obtain the alternative capacity and some will need more. Each of the averages summarized in Table 2 reflects ranges of estimated times to develop alternative capacity, which can vary depending on site conditions and the specific facility operations. The Agency explained in the proposal that to reliably determine which facilities need less time, EPA would need to make individual facility-specific determinations and that trying to craft individualized time frames could ultimately result in longer delays in the initiation of closure for a greater number of facilities than would potentially be caused by reliance on an overall average that most facilities can meet.

Recognizing that a single deadline is necessarily less precise and that some facilities may in fact be able to construct alternative capacity more quickly than EPA's proposed deadline, the Agency also solicited comment on an alternative approach under which the deadline would vary according to the technology adopted. For example, a facility that chose to install a non-CCR wastewater basin would have a different deadline than a facility that constructed a new wastewater treatment facility. 84 FR 65951. In this scenario, the timeframes for each approach could be based on the averages presented in Table 2 of this preamble. The proposal discussed EPA's concern that this option could be challenging to implement and to track compliance. In addition, EPA expressed concern that this approach may not result in measurably shorter time frames for most facilities, given the range of time estimates, and could lead to a greater number of variance requests under the alternative closure provisions. The proposal sought comment on this approach, including, for example, whether this more complicated regulatory approach would result in measurably shorter time frames for most facilities.

Several commenters stated that the Agency's methodology used to calculate the 22.5-month time frame is flawed. These commenters argued that EPA did not calculate a true average of the data points used in the proposal (see Table 2 of this preamble) because the Agency used more than one data point for a single method when calculating the average, which had the effect of overrepresenting that method in the calculated average.[35] In doing so, the commenters explained that EPA has skewed the data by overrepresenting certain technology approaches compared to other approaches with fewer data points, and stated that EPA did not provide a rationale for giving more weight to certain technologies. Accordingly, these commenters urged the Agency to recalculate the average time needed to obtain alternative capacity so that alternative capacity technologies are equally represented.

EPA agrees that the proposed methodology to calculate the average time needed to obtain alternative capacity overrepresented certain technology approaches over others (*e.g.,* the retrofit of a CCR surface impoundment was overrepresented relative to constructing a new CCR surface impoundment). In the final rule, each technology approach is represented by a single average, which is calculated as the arithmetic mean of the individual data points for the specific technology. Thus, the final rule methodology ensures that none of the six technologies is overrepresented compared to another technology.

As discussed in unit V.B.2.a of this preamble, several commenters stated that the estimated timeframes to obtain alternative capacity overlooked key project components that must be completed in order to construct and bring online each of the proposed alternative capacity approaches. As an example, these commenters explained that the proposed time estimates fail to account for the time that is actually needed by regulatory agencies to complete permit reviews and obtain the necessary permits required for construction of alternative capacity. These commenters further explained that the proposed time estimates fail to factor in the additional time needed to accommodate site-specific circumstances such as plant size, the number of boilers at the plant, location of the plant, and the number and volume of wastestreams affected by the conversion.

The Agency also agrees with commenters stating that certain project components (*e.g.,* time to obtain a permit) were missing from the calculations for some technology approaches in the proposed rule. In response to this comment, EPA's final rule calculation relies on information that covers the entire process of obtaining alternative capacity, from the start of the project to its completion, including the general project phases of planning and design, procurement, permitting, and construction and capacity commissioning. For those data used in the proposed rule that were missing a project component, the Agency removed them from the final rule calculation if the missing information could not be located. An example of where the Agency removed a data source from the final rule calculation is the surface impoundment retrofits at Keystone Generating Station in Pennsylvania. As discussed in the ''Retrofit of a CCR surface impoundment'' section of the preamble, EPA's re-evaluation of the retrofit report considered at proposal contained missing components of the project planning process. Because the Agency was unable to obtain additional information for this retrofit project, it was not used as part of the final rule alternative capacity analysis. Individual data handling decisions are discussed further in unit V.B.2.a of this preamble.

For each of the technology approaches evaluated, Table 3 summarizes the individual time estimates to obtain such capacity, as well as average timeframe for each technology. As discussed earlier in unit V.B.2.a of this preamble, the Agency supplemented the data set used in the proposed rule with

[34] The alternative closure provisions are discussed in section V.C of this preamble.

[35] For example, the ''wastewater treatment facility'', ''retrofit of a CCR surface impoundment'', and ''multiple technology system'' technology approaches include two, three and two data points, respectively, while the remaining three approaches each include one data point.

additional project timeframes submitted by commenters. These new timeframes were not simply incorporated into the alternative capacity analysis. Instead, each submission was examined thoroughly, and, in some cases, portions of the estimated time were reduced where EPA determined that those portions were not appropriate for the analysis.

TABLE 3—SUMMARY OF DATA USED IN FINAL RULE ALTERNATIVE CAPACITY ANALYSIS

Alternative capacity technology	Data used in final rule analysis (months)	Average (months)
Conversion to dry handling	33.5, 34	33.8
Non-CCR wastestream basin	18, 29	23.5
Wastewater treatment facility	18.5, 26	22.3
New CCR surface impoundment	28, 34	31.0
Retrofit of a CCR surface impoundment	12, 31.5, 46	29.8
Multiple technology system	36, 36, 36, 36, 36, 36, 36, 36, 37.5, 40, 52, 55.	39.1
Average		29.9

(b) Deadline To Cease Receipt of Waste for Unlined CCR Surface Impoundments

EPA proposed to revise the deadline for unlined CCR surface impoundments under § 257.101(a)(1) from October 31, 2020, to August 31, 2020. 84 FR 65951. The proposed rule explained that this revised deadline would apply to both CCR and non-CCR wastestreams. The proposal also explained that the August 31, 2020 deadline was derived by adding 22.5 months (*i.e.,* the average length of time needed to obtain alternative disposal capacity) to October 15, 2018, which is the date of the issuance of the court's mandate for the *USWAG* decision. The proposal explained that the language of the *USWAG* decision was clear that all units that do not have a composite liner or alternative composite liner (see § 257.71(a)(1)(ii) and (iii)) will be required to cease receiving waste and close. The proposal further explained EPA's belief that owners and operators of unlined CCR surface impoundments would have started preparing to close such units upon issuance of the mandate on October 15, 2018.

Many commenters criticized EPA's proposal to rely on the date of the *USWAG* mandate as the starting point to calculate the deadline for initiating closure. These commenters argued that the *USWAG* decision did not set a new deadline or other requirements regarding the mandatory closure of CCR surface impoundments. Rather, the *USWAG* court vacated the mandatory closure provisions in § 257.101(a) that allowed unlined surface impoundments to continue to operate even when they are not leaking, and the relevant provisions in § 257.71(a)(1) for ''clay-lined'' impoundments, based on the rulemaking record before the court at the time of ruling, which was August 21, 2018. These commenters also noted that the court did not prohibit the Agency from developing future regulations that might allow some unlined and ''clay-lined'' impoundments to continue to operate if EPA determines that those impoundments do not pose a risk to human health and environment, but left open this issue for EPA to address in future rulemakings in response to the court's remand of the case.

Another commenter argued that EPA has issued no formal guidance on the impact of the *USWAG* vacatur or how EPA intends to address the court decision. This commenter stated that the commenter was hesitant to make significant investments involving advanced engineering design, state permitting, and equipment procurement before receiving further guidance on whether and to what extent its ''clay-lined'' impoundments would be affected. This commenter further stated that regulatory uncertainty still persists due to ongoing EPA rulemakings and, as a result, the commenter argued that it was not provided adequate notice required under administrative law that its ''clay-lined'' impoundments would be re-classified as ''unlined'' until EPA issued the December 2, 2019 proposed rule. Therefore, the commenter contended that the date of the *USWAG* decision is not appropriate. Another commenter further argued that ''any effort by the Agency to impose a closure deadline with a start date tied to issuance date of the *USWAG* mandate would have the effect of imposing a retroactive legislative regulation that is impermissible under the RCRA statutory scheme.''

Other commenters stated that EPA's proposal to use the date of the *USWAG* mandate (*i.e.,* October 15, 2018) represents an unlawful deadline extension. With one exception, these commenters argued that the proposed *USWAG* starting point provides owners and operators of unlined CCR surface impoundments with additional time to begin closing impoundments that they would have otherwise been prepared to close consistent with the requirements of the 2015 CCR Rule.[36] These commenters stated that the one exception would be for CCR surface impoundments that did not face closure deadlines but will now have to close following the *USWAG* decision.

The commenters also stated that the proposed deadline of August 31, 2020 represents an unjustified extension of the 2015 CCR Rule requirements for CCR surface impoundments that leak or fail the aquifer location restriction, which were the minimum standard necessary to ensure no reasonable probability of adverse effect on human health and the environment for these types of CCR units. The commenters further explained that neither the current proposal nor the July 30, 2018 final rule [37] provide any evidence showing that a later deadline (than the deadlines finalized in the 2015 CCR Rule) meets RCRA's protectiveness standard. The commenters also argued that the proposed deadline is inconsistent with the *USWAG* decision. The commenters stated that the current

[36] The 2015 CCR Rule required owners and operators of an existing unlined CCR surface impoundment to cease placing CCR and non-CCR wastestreams into such CCR surface impoundment and either retrofit or close the CCR unit within six months of making a determination that the concentrations of one or more constituents listed in Appendix IV to this part are detected at statistically significant levels above the groundwater protection standard established under § 257.95(h).

[37] 83 FR 36435. In this final rule EPA extended the deadline to October 31, 2020 by which facilities must cease the placement of waste in CCR units closing for cause in the situations where the facility has detected a statistically significant increase above a groundwater protection standard and where the impoundment is unable to comply with the aquifer location restriction.

proposal and the July 30, 2018 final rule are based on impermissible considerations of cost and ignore evidence of widespread contamination caused by leaking impoundments.

Finally, these commenters criticized the proposal for failing to actually require facilities to close as soon as feasible. According to these commenters, because it would establish a single deadline, the proposal would effectively grant additional time to units that could in fact close more quickly. The commenters explained that an industry average violates RCRA's protectiveness standard by basing regulatory requirements on what is convenient or most affordable for facilities, rather than the most expeditious schedule that is technically feasible. The commenters also stated that the rulemaking record was lacking in that the proposal did not include a determination about whether the projects reflected in the industry submissions supporting the alternative capacity analyses are representative of conditions at CCR impoundments across the country, whether the projects were completed expeditiously, or whether the facilities picked among the various options based on the need for timely compliance with the CCR rule or on the relative costs of the options.

Finally, many of these commenters stated that the CCR Part A proposed rule failed to meet the RCRA 4004(a) protectiveness standard because EPA failed to consider the risks associated with new groundwater monitoring data, violations of location standards, extensions of the operating life of unlined surface impoundments and known compliance issues with groundwater monitoring, annual inspection and liner requirements.

Other commenters suggested that deadlines be extended a specific amount of time following the publication of the final rule or to specific dates. These commenters recommended that the proposed deadline to cease receipt of waste be pushed back by six months to February 2021. This deadline would provide facilities the time needed to understand their obligations and comply with the new regulations, the commenters argued.

The commenters have misunderstood the basis for EPA's proposal. EPA proposed to start the clock on October 15, 2018 because on that date, all unlined surface impoundments, including those that are ''clay-lined,'' were required to cease receipt of waste and initiate closure no later than October 31, 2020. In other words, EPA's proposal merely reflected the state of the law as it existed on that date.

The court ordered that ''the final rule be vacated and remanded with respect to the provisions that permit unlined impoundments to continue receiving coal ash unless they leak.'' 901 F.3d at 431–432. As explained in the proposal, EPA interprets the court as having vacated only the following phrase in § 257.101(a)(1): ''if at any time after October 19, 2015, an owner or operator of an existing unlined CCR surface impoundment determines in any sampling event that the concentrations of one or more constituents listed in Appendix IV of this part are detected at statistically significant levels above the groundwater protection standard established under § 257.95(h) for such CCR unit . . . .'' The court further ordered that ''the Final Rule be vacated and remanded with respect to the provisions that . . . classify ''clay-lined'' impoundments as lined, see 40 CFR 257.71(a)(1)(i) . . . .'' *Id.* Once the mandate issued on October 15, 2018, the vacatur became effective, and with the deletion of those phrases the regulation in fact required all unlined and ''clay-lined'' CCR surface impoundments to cease receipt of waste no later than October 31, 2020. It is for this reason that EPA believes facilities began to plan for closure on that date—a belief confirmed by several commenters who acknowledged that they began planning to close their impoundments as of this date.

For the same reason, EPA disagrees that any facility lacked notice that ''clay-lined'' units would be required to close. And while it is true that the court did not preclude EPA from developing a record to support a new rule, any such future actions would be purely speculative. EPA does not believe that it would be reasonable for facilities to have relied on the mere potential that EPA might adopt some other requirement in the future.

EPA also disagrees that its proposal to rely on the date of the court's mandate would constitute a retroactive application of law. For a regulation to be retroactive, it must change the prior legal status or consequences of past behavior. See *Landgraf* v. *USI Film Products,* 511 U.S. 244, 269, n.4 (1994) (A rule ''is not made retroactive merely because it draws upon antecedent facts for its operation.''). *Treasure State Resource Industry Ass'n* v. *E.P.A.,* 805 F.3d 300, 305 (D.C. Cir. 2015). By contrast, here EPA has merely relied on a past fact to support future requirements.

As a result, the Agency is finalizing an amended version of the approach presented in the proposed rule to determine the deadline for unlined CCR surface impoundments to cease receipt of waste. Specifically, the deadline to cease receipt of waste in the final rule is based on adding the average time to obtain alternative capacity to October 15, 2018, which is the date of the issuance of the court's mandate for the *USWAG* decision. As discussed in unit V.B.3.a of this preamble, EPA determined the average time to obtain alternative capacity to be 29.9 months (or 29 months, 27 days). Adding 29.9 months to October 15, 2018, results in a deadline to cease receipt of waste and to initiate closure of April 11, 2021, which is the new deadline being codified in § 257.101(a)(1). This deadline applies to all unlined CCR surface impoundments, including ''clay-lined'' impoundments. Note that this deadline also applies to any unlined inactive CCR surface impoundments, pursuant to § 257.100(a), which provides that all requirements applicable to existing impoundments apply also to inactive impoundments. An inactive unit is one that has ceased receipt of CCR. Section 257.53. Although these units have already ceased receipt of CCR, some facilities continue to use the unit to manage other non-CCR wastes. Irrespective of whether the unit continues to receive non-CCR waste or has ceased receipt of all waste, they must now initiate closure by the new deadline.

EPA acknowledges that it was unable to conduct a new risk assessment to support this rulemaking in the timeframe that was available. Nevertheless, this rule is consistent with the decisions from the D.C. Circuit. As explained previously, EPA considers that requiring facilities to cease receipt of waste as soon as is technically feasible necessarily meets the RCRA 4004(a) standard, as EPA cannot impose more stringent requirements than those that can be successfully implemented by at least some entities.

Moreover, although the D.C. Circuit determined that EPA lacked the record to authorize the unlimited operation of unlined CCR surface impoundments—and consequently mandated their closure—neither the *USWAG* nor the *Waterkeeper* decision addressed the timing of such actions or what kind of process would be appropriate or necessary. Rather, both the relevant portion of the 2015 CCR rule and the July 18, 2018 rule were remanded back to EPA to allow the Agency to determine the further actions necessary to be consistent with the decision. As part of this rulemaking, EPA is mandating the closure of all unlined impoundments, which is fully consistent with the holding in *USWAG*

that the closure of these units is warranted based on the record before the Agency. This rule merely creates an orderly process for ensuring that this occurs.

EPA further disagrees that the use of an average effectively based the requirements on what is convenient or that the Agency failed to evaluate whether the industry estimates represented expeditious time frames. As discussed previously, EPA expressly recognized that in many cases the schedules presented did not reflect an expedited timeline and therefore considered those time frames to reflect the upper bound of the amount of time necessary to complete construction. EPA also discounted estimates that were inconsistent with timeframes presented in submissions from commenters describing completed projects, or were based on factors unique to that site that are unlikely to be relevant to other facilities nationwide. EPA also reduced some portions of estimates to account for overlapping tasks.

EPA also disagrees that the final deadline fails to account for representative conditions across the country. Approximately 85 percent of CCR facilities are located in three geographic regions of the U.S.: The Midwest (41 percent), the Southeast (34 percent), and the Southwest (10 percent). The facilities represented in the final rule alternative capacity analysis include multiple facilities in each of these three geographic regions. The final rule analysis includes facilities located in regions with shorter construction seasons due to frigid winters (Minnesota, Wisconsin, North Dakota), as well as regions with the generally mild winters with longer construction seasons (New Mexico, Arizona, Texas). The analysis also includes facilities located in semiarid regions that receive 10 to 20 inches of rain per year (New Mexico and Arizona), as well as subtropical regions that annually receive 40 to 60 inches of precipitation (North Carolina, Kentucky, Louisiana). As a consequence, the data on which EPA relied to develop the final deadline included data from construction projects located in a wide range of geographic and climactic conditions. The Agency also believes the final rule deadline is representative regarding impoundment size, using surface area acreage of the unit as the surrogate of size. The facilities represented in the final rule alternative capacity analysis include a wide range of unit sizes, including units ranging from less than 10 acres to over 100 acres. As a whole EPA considers these to be representative of the range of conditions at CCR surface impoundments across the country.

EPA acknowledges that one approach would have been to calculate a timeframe based on a single technology method to developing alternative capacity—*e.g.,* selecting a single ''best'' or fastest approach, such as converting to dry handling or constructing a wastewater treatment plant. However, EPA disagrees that this would be appropriate; there are many technical reasons that a facility might select one approach over another that have nothing to do with cost or convenience. For example, the facility might not have sufficient available real estate to construct the alternative capacity, and so might need to retrofit their existing surface impoundment so that they can continue to use a single unit to manage all of their wastes.[38] Similarly, if a facility is trying to comply with multiple EPA regulations or moving away from the commingling of CCR and non-CCR wastestreams, adopting a multiple technology approach may ultimately result in faster compliance overall, even if individual components could theoretically be adopted sooner. Another example could be a facility that sluices bottom ash (or fly ash) to a zero-discharge unlined impoundment where construction of a wastewater treatment facility would not be a viable disposal substitute. In addition, EPA currently lacks the technical record to determine that mandating the single fastest technology for constructing alternative capacity can effectively be implemented by all facilities.

EPA agrees that facilities that can cease receipt of waste more quickly than April 11, 2021 must do so. To address the concern that the new deadline would improperly grant more time to facilities that could close more quickly, EPA has revised the regulation to require that facilities close their unlined impoundments ''as soon as technically feasible, but no later than April 11, 2021.'' See § 257.101(a)(1).

EPA further disagrees that the approach in this rule fails to adequately address the risks. As explained in the proposal, EPA lacked the data to develop a revised nationwide risk assessment to support this rulemaking. Although the commenters are correct that facilities have posted substantial amounts of groundwater monitoring data, as EPA explained, this information could not be easily or readily incorporated into a nationwide risk assessment. EPA estimates that it could have taken as long as one year to develop a revised risk assessment even assuming the Agency could obtain the necessary data. This would have further extended this rulemaking process, which EPA had originally hoped to complete in nine months. A delay in the rulemaking would effectively grant facilities additional time to continue operating these units. Ultimately, the approach that the Agency has taken will result in the initiation of closure—with all the risk reduction that entails—much sooner.

In addition, EPA considers that the approach taken in this rule effectively addresses the risk from these facilities. EPA is requiring facilities to close as soon as it is technically feasible to do so. The final rule defines technical feasibility to mean ''possible to do in a way that would likely be successful.'' As EPA has explained, this standard effectively addresses the risk because it is not possible to impose more protective measures than those that can actually be implemented.

As further measures to address the risk from continued operation of these units, the Agency is requiring all surface impoundments that seek additional time to be in compliance with all applicable requirements in 40 CFR part 257, subpart D. And for those facilities seeking an extension under § 257.103(f)(2) the owner or operator must develop a risk mitigation plan for that surface impoundment. If EPA determines that further measures are needed to address the risk during its review of the § 257.103(f)(2) extension request, EPA will require those measures as a condition of its approval. These provisions are discussed in more detail in subsequent Units of this preamble.

Finally, EPA believes that the revised deadline of April 11, 2021 to cease placing waste into the impoundment provides facilities with adequate time to understand and comply with their obligations under the final rule.

(c) Deadline To Cease Receipt of Waste for CCR Surface Impoundments That Failed the Aquifer Location Restriction

The proposed rule explained that the October 31, 2020 cease receipt of waste date applied not only to the unlined leaking CCR surface impoundments subject to § 257.101(a), but also to the units that failed the minimum depth to aquifer location restriction standard subject to § 257.101(b)(1)(i). 84 FR 65951 (December 2, 2019). Therefore, EPA proposed that the deadline to cease receipt of CCR and non-CCR wastestreams for these CCR units also be amended to August 31, 2020.

[38] See docket item EPA–HQ–OLEM–2019–0172–0005 for an example of real estate constraints.

This proposed rule discussed that the new date was selected based on the same rationale explained for unlined CCR surface impoundments. The proposal stated that these units are similarly situated in that these facilities need additional time to develop alternative capacity to transition away from their surface impoundments. As previously discussed, based on the data received from stakeholders, EPA calculated that the average amount of time to take the necessary steps to cease placement of waste into a surface impoundment was approximately 22.5 months. In addition, based on the data on facilities' publicly accessible CCR internet site regarding compliance with the location restriction standards, the majority of the units that failed the aquifer location restriction are also unlined and must close under § 257.101(a). The proposed rule explained that it is therefore logical to establish the same deadline to cease receipt of waste for units that failed the minimum depth to aquifer location restriction standard. The proposal also stated EPA's belief that it is technically infeasible for a majority of these units to be able to cease receipt of waste prior to August 31, 2020 due to the lack of alternative capacities. EPA further raised the concern that requiring the immediate initiation of closure could disrupt operations at the power plants. Therefore, EPA proposed the date of August 31, 2020 for the deadline to cease placement of waste for § 257.101(b)(1)(i) to replace the date of October 31, 2020, which was established in the July 30, 2018 Final Rule.

This final rule uses the same approach as for unlined and ''clay-lined'' units to establish the cease receipt of waste date to April 11, 2021 for CCR surface impoundments that failed to meet the aquifer location restriction.

(d) Revisions to the Groundwater Monitoring and Corrective Action Requirements in § 257.91(d) and § 257.95(g)(5)

The CCR regulations require each CCR unit to have its own groundwater monitoring system, unless the owner or operator chooses to install a multiunit groundwater monitoring system. If a multiunit groundwater monitoring system is installed, the CCR regulations state that the system must be based on the consideration of several factors that are specified in § 257.91(d)(1). Furthermore, the regulations currently provide under § 257.91(d)(2) that if a multiunit groundwater monitoring system includes at least one unlined CCR surface impoundment, and the concentrations of one or more constituents listed in Appendix IV to this part are detected at statistically significant levels above the groundwater protection standard for the multiunit system, then all unlined CCR surface impoundments comprising the multiunit groundwater monitoring system are subject to the requirements under § 257.101(a) to retrofit or close. In addition, under the assessment monitoring provisions in § 257.95(g), owners and operators of all CCR units are required to take certain actions when one or more constituents listed in Appendix IV of part 257 are detected at statistically significant levels above the groundwater protection standard. Section 257.95(g)(5) specifies that existing unlined CCR surface impoundments are subject to the closure requirements under § 257.101(a) if an assessment of corrective measures is required under § 257.96. Another requirement of § 257.95(g) is that the owner and operator must also prepare a notification stating that an assessment of corrective measures has been initiated.

In the December 2, 2019 rule, the Agency proposed to delete the multiunit system requirements under § 257.91(d)(2) because the provision is no longer relevant, as all unlined CCR surface impoundments are required to retrofit or close. 84 FR 65952. EPA received no comments on this proposed action and the Agency is therefore removing and reserving § 257.91(d)(2) in this action. EPA is also revising § 257.95(g)(5) to remove the requirement specifying that existing unlined CCR surface impoundments are subject to the closure requirements under § 257.101(a) if an assessment of corrective measures is required under § 257.96. The Agency is finalizing this revision because it is redundant to the requirement codified in § 257.101(a) for unlined CCR surface impoundments, which requires all unlined impoundments to close or retrofit. However, the Agency is retaining the other requirement of § 257.95(g)(5) that specifies an owner or operator must prepare a notification stating that an assessment of corrective measures has been initiated.

C. Revisions to the Alternative Closure Standards (§ 257.103)

In the December 2, 2019 proposal, EPA proposed three new alternative closure provisions. As explained in the proposal, these provisions were intended to create procedures by which a CCR surface impoundment could obtain additional time to cease the receipt of waste and initiate closure. The original provisions in the 2015 rule, § 257.103(a) and (b), only allow the continued placement of CCR; both exclude the placement of non-CCR wastestreams. EPA proposed to allow a facility to temporarily continue to manage both the CCR and non-CCR wastestreams currently being managed in the CCR surface impoundment. EPA proposed three new alternative closure standards: (1) A short term alternative to initiation of closure (§ 257.103(e)), (2) a site-specific alternative to initiation of closure due to lack of capacity (§ 257.103(f)(1)), and (3) a site-specific alternative to initiation of closure due to permanent cessation of a coal-fired boiler(s) by a date certain (§ 257.103(f)(2)). As explained in the proposal, most of these provisions rely on determinations of how quickly it is feasible for the facility to cease receipt of waste, rather than a determination that continued operation will result in acceptable levels of risk. The exception is that the extension under § 257.103(f)(2) is based on a qualitative risk-risk tradeoff (the increased risk of continuing to operate the unit is offset by the decreased risk of the expedited closure) and a site-specific risk mitigation plan. For all of these, EPA believed it was important to require facilities to submit demonstrations to EPA for approval. This was a significant change from the existing provisions which are self-implementing. Finally, EPA proposed conforming changes to have the existing alternative closure provisions in the 2015 rule, § 257.103(a) and (b), only apply to landfills. The new provisions at § 257.103(f) would then apply only to CCR surface impoundments.

1. Short Term Alternative Deadline To Cease Receipt of Waste (§ 257.103(e))

In the December 2, 2019 proposal, EPA proposed a self-implementing short term alternative to the cease receipt of waste deadline. This alternative was designed for those facilities that need only a little more time to complete development of an alternative capacity technology. EPA proposed that facilities demonstrate and certify that additional time is needed for it to be technically feasible to cease receipt of waste and initiate closure. The provision would have allowed for no more than a three-month extension from the deadlines in § 257.101(a) and (b)(1)(i). The proposal was an acknowledgement that events can occur which are completely out of the facility's control, such as extreme weather or a delay in material fabrication. In essence, this would have been a limited ''force majeure'' provision. EPA proposed requirements of the certification mirroring those in

the current requirements of § 257.103(a). 84 FR 65953. EPA proposed that the owner or operator would have to certify the following: (1) No alternative disposal capacity is available on or off-site (an increase in costs or inconvenience is not sufficient support); (2) the owner or operator has made and continues to make efforts to obtain additional capacity; and (3) the owner or operator is (and must remain) in compliance with all other requirements of part 257. EPA proposed that a brief narrative of each component of the certification would be required to explain why a three-month extension is necessary. EPA proposed that the certification to be placed in the facility's operating record, placed on the facility's publicly accessible CCR internet site, and submitted to EPA as a notification of the facility's intent to comply with the alternative deadline under this provision.

EPA received several comments from environmental groups stating concerns that EPA's proposal failed to establish strict criteria that would actually ensure that this extension would only be used in true ''force majeure'' situations. They additionally commented that the demonstration requirements failed to meet the protectiveness standard of RCRA § 4004(a) because it allowed facilities to consider costs or practicable capability.

Industry groups provided comments that supported this proposal on the grounds that events do happen that are out of the facility's control, such as extreme weather, that have a high impact on their construction schedule. They supported this provision being self-implementing. A few industry groups did comment that the short-term alternative and the site-specific longer alternatives should not be mutually exclusive options. They further commented that because the proposed deadline to cease receipt of waste fell in the middle of construction season it was unlikely for facilities to be able to accurately gauge if they could complete development in three months or if they would need longer depending on the severity of the event.

After evaluating the comments, EPA is not finalizing this provision. As discussed in unit V.B.3, EPA has recalculated the deadline by which facilities must cease receipt of waste based on data received in comments; the new deadline is April 11, 2021. As a consequence, EPA considers that this proposal is no longer necessary. In part, the proposal was intended to account for the short interval between the proposed deadline to cease receipt of waste (August 31, 2020) and the expected promulgation of the final rule (July 2020). Such an interval would be too short for a facility to accommodate unforeseen events that impact the construction schedule. This is no longer the case with the revised deadline. Facilities will have several months between promulgation of the final rule and the date by which they must cease receiving waste, and thus should be able to accommodate the circumstances that would have been addressed by the three-month extension. As a further consideration, because the final deadline was calculated with more data than was available for the proposal, EPA has greater confidence that most facilities will be able to meet the deadline.

EPA is reserving paragraph (e) of § 257.103, where the short-term extension was proposed, rather than renumbering the proposed regulation to avoid confusion.

2. Issues Applicable to Both § 257.103(f)(1) and (f)(2)

(a) Scope of Waste That May Continue To Be Managed in the Surface Impoundment

In the December 2, 2019 proposal EPA proposed to allow facilities under the new alternative closure provisions to obtain approval to continue to place CCR and/or non-CCR wastestreams. The existing alternative closure provisions § 257.103(a) and (b) only allow the continued disposal of CCR. EPA sought comment on whether the proposed site-specific alternative closure provisions should only apply to non-CCR wastestreams. Under such an approach, facilities could continue to dispose of CCR pursuant to the existing provisions § 257.103(a) and (b). As explained in the proposal, in the record before the Agency many facilities highlighted that not having capacity for non-CCR wastestreams is a critical issue that places the operation of the facility at risk. Evidence suggests that the average time to develop alternative capacity for non-CCR wastestreams is often the primary driver of determining a technically feasible timeframe for being able to initiate the closure of surface impoundments that comingle CCR and non-CCR wastestreams.

EPA received several comments from industry groups stating that they believe the existing alternative closure provisions, § 257.103(a) and (b), do not prohibit the continued placement of non-CCR wastestreams. Some commented that facilities should be able to continue to use the existing provisions for continued CCR disposal, and only be required to submit applications under the new provisions if they lack capacity for both CCR and non-CCR wastestreams or for non-CCR wastestreams. They claimed that it was burdensome to submit the demonstrations and they believe the self-implementing extensions are sufficient for CCR wastestreams.

EPA received comments from environmental groups stating that non-CCR wastestreams may be subject to hazardous waste regulations when not co-disposed with CCR in surface impoundments. They argued that owners and operators must determine whether the non-CCR wastestreams are listed wastes or whether they exhibit any of the characteristics of a hazardous waste. They further stated that the December 2019 proposed rule did not identify what constitutes a non-CCR wastestream nor any requirements to evaluate different non-CCR wastestreams to determine whether they contain listed hazardous wastes or display hazardous waste characteristics. Lastly, they stated EPA must evaluate the full nature and extent of the risk before allowing disposal of non-CCR wastestreams without adequate safeguards.

After reviewing the public comments, EPA is maintaining its proposed approach that the new site-specific alternative closure provisions will, upon successful demonstration, allow certain CCR surface impoundments to receive CCR wastestreams, or non-CCR wastestreams, or a combination of both. No commenter provided any information rebutting the Agency's conclusion that the need to find alternative capacity for non-CCR wastestream is often the most critical factor in determining the amount of time needed to initiate closure of the unit.

Moreover, if the new provisions applied exclusively to non-CCR wastestreams there would be two sets of regulatory requirements with different criteria applicable to the same surface impoundment. This would create unnecessary complications in implementing and enforcing the provisions. Nor does it make sense for the more stringent requirements in the new provisions to apply exclusively to the non-CCR wastestreams when the vast majority of hazardous constituents are found in the CCR wastestream. EPA understands the concerns that the demonstrations require a new effort by the facilities. However, these considerations are offset by the benefits that come with the enhanced regulatory oversight of the new provisions and having all wastestreams managed in the

disposal unit under a single set of regulatory requirements.

EPA disagrees that the proposed rule should have defined non-CCR wastestreams. The regulations already define CCR; therefore, a non-CCR wastestream is any other waste managed in the impoundment. See 40 CFR 257.53 and 261.4(b)(4). EPA agrees that some non-CCR wastestreams are not Bevill-exempt (*e.g.,* wastes that are not covered by § 261.4(b)(4)) and consequently they remain subject to all requirements applicable to solid waste, and if they meet the criteria, the requirements applicable to hazardous waste. This includes the requirement to determine whether the waste is hazardous based on either the generator's knowledge or testing. If the waste is hazardous it must be managed according to the requirements of RCRA subtitle C; when going to an impoundment, the impoundment must meet subtitle C requirements. Mixtures of hazardous waste and Bevill exempt wastes are not exempt unless the only hazardous constituents in the mixture are those that are found in the Bevill exempt waste. In addition, mixing a hazardous waste with a Bevill exempt waste may be considered treatment in some circumstances, which would itself require a permit. However, EPA has no data to indicate that non-CCR wastestreams are characteristically hazardous. Given the existing requirements that currently apply to these wastestreams, EPA disagrees that additional requirements are needed or should have been proposed. Finally, EPA explains below, in unit V.2.d, the reasons that these revisions rely primarily on feasibility rather than risk considerations.

(b) Units Potentially Eligible for Alternative Closure Timeframes

In the December 2, 2019 proposal, EPA discussed several options as to the CCR surface impoundments that would be eligible for the new alternative closure provisions. EPA proposed to allow all CCR surface impoundments to be eligible to submit demonstrations for the new alternative closure provisions. This included surface impoundments that failed one or more location restrictions other than the depth to aquifer location restriction. EPA recognized that these units were not included in the July 2018 final rule that established the October 31, 2020 deadline to cease receipt of waste, and consequently their deadline to cease receipt of waste was April 2019. However, EPA proposed to include them in this new approach to create a consistent regulatory system. 84 FR 65,953. EPA also sought comment on whether the proposed site-specific alternatives to initiation of closure provisions should only apply to the CCR surface impoundments forced into closure by the *USWAG* decision (now defined as ''eligible unlined CCR surface impoundments''—*i.e.,* units that were certified as ''clay-lined'' or units that are unlined but not leaking, compliant with all location standards and compliant with structural stability).

Several utility companies provided comments that surface impoundments closing due to § 257.101(b)(1)(ii) should be able to apply for the new alternatives. They further stated that those who had filed a notification of intent to close pursuant to §§ 257.103(a) or (b) should be grandfathered into the new alternatives. Environmental groups stated that this group of units should not be eligible for the new alternative closure provisions because they should have initiated closure in April 2019 and because it would violate the RCRA 4004(a) protectiveness standard.

Industry groups commented that the alternative closure provisions should not be limited to the eligible unlined CCR surface impoundments. They elaborated that lack of capacity for CCR and/or non-CCR wastestreams is not limited to the facilities recently forced into closure but most facilities. By contrast, environmental groups stated that many facilities have been on notice that they would be required to close and should have prepared for that in advance, and so EPA should not grant them even further time. However, even these commenters acknowledged that the surface impoundments that are unlined, not leaking, and passed all location restrictions were forced into closure unexpectedly, and so may need additional time to initiate closure.

Consistent with the proposal, under the final rule all CCR surface impoundments will be subject to the new provisions in § 257.103. EPA continues to believe there is value in subjecting CCR surface impoundments to a common regulatory system. A common regulatory system for CCR surface impoundments requiring the use of § 257.103 will move these units to initiate closure as quickly as possible and decrease any confusion to the public. The new alternative closure provisions will grant facilities no more than the specific amount of time required for them to cease receipt of waste as fast as technically feasible. EPA cannot compel facilities to do the impossible; therefore, these new provisions will ensure facilities cease receipt of waste as fast as technically feasible.

EPA agrees that the eligible unlined CCR surface impoundments should be eligible to apply for the new alternative closure provisions. The owners and operators of these units had no expectation that they would need to close these units in the near future and so would not have begun planning for such an event. They may, therefore, need more time to construct the alternative capacity necessary to allow them to cease receipt of waste.

However, EPA no longer believes that all surface impoundments should be eligible to apply for all of the new alternative closure provisions. Consequently, the final rule provides that only CCR surface impoundments closing pursuant to § 257.101(a) and § 257.101(b)(1)(i) may apply for the new alternative closure provisions under § 257.103(f)(1) and (f)(2) for CCR and/or non-CCR wastestreams. As previously stated, the surface impoundments that failed a non-aquifer location restriction or multiple location restrictions were triggered into closure under § 257.101(b)(1)(ii) and were to initiate closure in April 2019. The only exception would be for the facilities that posted a notification of intent to close pursuant to § 257.103(a) or (b) based on a lack of capacity for only CCR, as those provisions only authorized continued receipt of CCR. EPA agrees with commenters that no one has presented a factual basis for allowing these units to commence or resume the receipt of wastes (*i.e.,* non-CCR wastestreams) two years after they were required to have ceased. This stands in direct contrast to the units subject to the October 31, 2020 deadline, which currently are authorized to continue receiving both CCR and non-CCR wastestreams. Moreover, the purpose of this rulemaking was to reconsider the closure deadlines in the July 2018 final rule in light of the decision in *USWAG.* What matters in this context is how, if at all, EPA should revise the regulatory status quo based on the direction from the D.C. Circuit. The closure deadlines for impoundments closing in accordance with § 257.101(b)(1)(ii) were not affected by either the *USWAG* decision or the July 2018 rule. EPA does not intend in this rulemaking to revisit closure provisions that were unaffected by either of these things, contrary to the commenter who contended that EPA was relying on the decision and its reconsideration to provide a clean slate to recalculate all deadlines.

Therefore, this final rule allows CCR surface impoundments closing due to § 257.101(b)(1)(ii) that have posted a notification pursuant to § 257.103(a) or (b) to apply to be transitioned to the

new alternative closure provisions under § 257.103(f)(1) and (f)(2) for CCR wastestreams only.

(c) Transition for Surface Impoundments Operating Under § 257.103(a) and (b)

In the December 2, 2019 proposal, EPA sought comment on how to transition the facilities that have posted notifications pursuant to § 257.103(a) or (b) due to forced closure under § 257.101(b)(1)(ii) to the new alternative closure provisions. Several utility companies commented that these facilities should be grandfathered into the new provisions without submitting demonstrations to EPA for approval. These commenters additionally stated that these units should be allowed to continue to operate for the amount of time authorized under the existing regulations, which potentially authorize continued operation for as long as 5 years from the notification date. They further stated that the demonstration requirements would add unnecessary burden to the facilities currently closing pursuant to § 257.103(a) and (b).

EPA acknowledges the concern that the demonstrations will add burden to the facilities currently operating under § 257.103(a) and (b). However, the commenters have not provided a compelling rationale for creating two distinct regulatory frameworks for units that are essentially identical. There is substantial value in creating a consistent regulatory framework for all CCR surface impoundments requiring more time to cease receiving waste. As part of that framework, EPA has concluded that closer regulatory oversight is necessary to ensure that facilities initiate closure as soon as technically feasible. EPA has come to this decision based on an evaluation of the current status of compliance of the facilities operating under the self-implementing provisions of § 257.103(a) and (b). For example, notifications and progress reports on facilities' publicly accessible CCR internet sites do not contain all of the information required under § 257.103(a), (b), and (c). Some of these documents do not include the method by which the facility is obtaining alternative capacity, the date by which alternative capacity will be obtained, or a clear demonstration that no other disposal capacity is available on or off-site.[39] Based on this record, it is clear that these provisions require the closer regulatory oversight that comes with requiring prior EPA approval. Consequently, EPA will not grandfather in the facilities that have filed notifications and will require all facilities to submit demonstrations to EPA for approval under the new site-specific alternative closure provisions in order to continue operating that surface impoundment.

Any facility that currently has posted on its publicly accessible CCR internet site a notification to close a CCR surface impoundment pursuant to § 257.103(a) or (b) must submit a demonstration for EPA approval that meets the requirements under § 257.103(f)(1) or (f)(2) in order to continue operating that unit. Therefore, if a facility has a notification posted and is currently operating under § 257.103(a) or (b) due to closure under § 257.101(b)(1)(ii) and does not submit a demonstration to EPA by November 30, 2020, then the facility must cease the receipt of waste into the unit no later than April 11, 2021 and initiate closure.

(d) Consistency With Statutory Standard and USWAG

EPA received comments from environmental groups that the December 2, 2019 proposal with the addition of the new alternative closure provision is inconsistent with the statutory standard and the *USWAG* decision. These commenters stated that the alternative closure provisions allowed unlined CCR surface impoundments to continue to operate when the *USWAG* decision mandated that these units present a risk to human health and the environment and must close. Additionally, they stated that the new alternative closure provisions do not address the risks posed by the continued operation of the surface impoundment, and that as a consequence, the proposed demonstration requirements fail to meet the RCRA protectiveness standard.

EPA disagrees with commenters that these provisions fail to meet the statutory standard as interpreted by the court in *USWAG.* It is true that EPA was unable to conduct a nationwide risk assessment to document that all facilities that obtain an extension under one of the alternative closure provisions will meet the statutory standard; however, both subsections (f)(1) and (f)(2) include conditions designed to address the risks. Both provisions require facilities to affirmatively demonstrate that they are in compliance with all the requirements of part 257, and therefore meet the baseline level of acceptable risk. In addition, as explained in more detail below, subsection (f)(2) requires the submission of a risk mitigation plan as part as a condition of obtaining the extension.

Moreover, with regard to the extensions pursuant to § 257.103(f)(1), as explained in the proposal, EPA considers that requiring facilities to cease receipt of waste as quickly as is feasible necessarily meets the standard in RCRA 4004(a) as it is not possible under this provision to require more stringent—or more protective—measures than can be implemented by at least some facilities. EPA has ensured that the statutory standard has been met by requiring facilities to affirmatively demonstrate to EPA the infeasibility of ceasing receipt of waste by April 11, 2021 and by requiring prior EPA approval of any requested extension, allowing EPA to ensure that units stop receipt of waste as soon as feasible.

EPA also considers that the provisions authorizing extensions pursuant to § 257.103(f)(2) meet the statutory standard. Although facilities are not required to demonstrate that they will cease receipt of waste as soon as feasible under this section, they will be required to expedite the closure of the surface impoundment. Not only will this reduce the risks over the long term, the deadlines will ensure that continued operation of the unit will be limited. Moreover, as discussed at greater length in unit V.C.4, EPA is requiring submission of a risk mitigation plan to address any increased risk from continued operation of the surface impoundment, which EPA will review as part of determining whether to grant the extension. If additional measures to mitigate the risk are necessary to ensure that the statutory standard is met, EPA will require those as a condition of granting the extension.

3. Requirements for Development of Alternative Capacity Infeasible (§ 257.103(f)(1))

In the December 2, 2019 proposal, EPA proposed that a facility can obtain a site-specific deadline to cease receipt of waste by submitting a demonstration that development of alternative capacity for CCR and/or non-CCR wastestreams cannot be completed prior to November 30, 2020 (the end date of the short term alternative) to EPA or the Participating State Director for approval. The owner or operator would be required to demonstrate that it is not technically feasible to complete the development/installation of alternative capacity prior to the deadline to cease receipt of waste. In this demonstration, the facility would need to present in detail the specifics of the process they are undertaking to develop alternative capacities for the necessary CCR and/or non-CCR wastestreams to support the claim that additional time is necessary.

[39] Compiled reports from the facilities utilizing the alternative closure provisions.

(a) Criteria and Documentation

In order to obtain the § 257.103(f)(1) extension, EPA proposed the owner or operator must meet and maintain the criteria listed in the provision. EPA proposed to require that the demonstration for each surface impoundment document or provide evidence for all of the following: (1) That there is no alternative capacity available on or off-site; (2) That CCR and/or non-CCR wastestreams must continue to be managed in the CCR surface impoundment due to the technical infeasibility of obtaining alternative capacity prior to the deadline to cease receipt of waste; as part of this demonstration the facility was required to include an analysis of the adverse impact to plant operations if the CCR surface impoundment in question were to no longer be available for use; (3) a detailed workplan on obtaining alternative capacity for CCR and/or non-CCR wastestreams; and (4) a narrative of how the owner or operator will continue to maintain compliance with all other aspects of the CCR rule (including ongoing groundwater monitoring and corrective action requirements). Additionally, EPA proposed that this showing must be made for each wastestream that would continue to be managed in the unit and the owner or operator would be required to cease receipt of each wastestream when alternative capacity for each wastestream becomes available. Finally, EPA proposed the time to develop the alternative capacity could not extend beyond October 15, 2023, and that the owner or operator must remain in compliance with all the applicable requirements of this subpart.

No alternative capacity on or off-site. The first criterion EPA proposed is generally the same that is required in § 257.103(a)(1)(i). The owner or operator must demonstrate the lack of alternative capacity available on or off-site to manage the waste. EPA also proposed that an increase in costs or inconvenience would not be sufficient to support qualification under this section.

EPA received no comments opposing the inclusion of this requirement in the final rule. One commenter, who believed that costs should not be considered as part of this determination, raised the concern that the regulatory text would not preclude consideration of cost as part of this determination. EPA disagrees that the regulatory text is ambiguous on this point. EPA proposed to include the same provisions currently found at § 257.103(a) and (b); these provisions were challenged on the grounds that the regulation precluded the consideration of costs in making this exact showing. See *USWAG,* 901 F.3d at 448–449. Therefore, EPA considers the regulatory text to be clear on this point and is finalizing the proposed requirement without revision.

Documentation requirements of no alternative capacity on or off-site. EPA proposed to require facilities to provide documentation that no alternative capacity exists on or off-site of the facility that could be used to manage their waste as part of their submission.

EPA received comments from utilities requesting clarification on the acceptable measures for determining lack of off-site alternative disposal capacity. For example, the comments contended that if the facility sluices CCR to their surface impoundment, their off-site disposal options are significantly limited. However, the disposal options greatly increase for dry handled CCR and the off-site capacity evaluation could then be more extensive. EPA received comments from environmental groups stating that EPA should require the facility to demonstrate the lack of alternative capacity for each wastestream. Some commenters also raised concern that some of the proposed regulatory text could be construed to permit a facility to continue disposing CCR into surface impoundments, even when there is alternative capacity of CCR, due to the lack of alternative disposal capacity for the non-CCR wastestreams. Specifically they pointed to changes to the introductory language of § 257.103 that they believed would allow owners or operators of CCR units that are subject to closure to continue receiving CCR in those units even if alternative disposal capacity for CCR is available, as long as they demonstrate that they lack alternative disposal capacity for non-CCR wastestreams.

EPA agrees that the disposal options for sluiced or wet handled CCR are greatly limited compared to the options available for dry handled CCR. However as discussed below there are disposal options even for sluiced or wet handled CCR, and consistent with the proposal the final rule requires owners or operators to document that no options other than the CCR surface impoundment are available on or off-site to manage these wastes.

EPA also agrees that the owner or operator needs to document the lack of alternative capacity both on and off-site for each wastestream they wish to continue placing into the CCR surface impoundment after the April 11, 2021 deadline. As these commenters pointed out, the justification for continuing to use an unlined or leaking unit based on a lack of capacity for one waste does not extend to any other waste for which there is capacity. It was for this reason that EPA proposed to require documentation of the lack of capacity both on and off-site for each individual wastestream, and that the facility cease receipt of any waste for which capacity becomes available. Accordingly, the final rule requires owners and operators to cease using the CCR surface impoundment as soon as feasible, to document the lack of both on and off-site capacity for each individual wastestream, and expressly requires that as capacity for an individual wastestream becomes available, owners or operators are required to use that capacity, which will slowly decrease the amount of waste being disposed in the unit. EPA has also revised the introductory text at § 257.103 to be consistent with these provisions. Specifically, the text now states that the facility may continue only to receive the wastes specified in either paragraph (a), (b), (f)(1), or (f)(2) in the unit provided the owner or operator meets all of the requirements contained in the respective paragraph.

For sluiced CCR and non-CCR wastestreams, EPA expects the owner or operator to evaluate the viability of other wet temporary storage, such as tanks, to use in lieu of the CCR surface impoundment while permanent capacity is developed. Some of these wastestreams can be very large, and therefore tanks may not be a viable or realistic option to handle such volumes; however, tanks could be a viable option for small volume wastestreams. For dry CCR, EPA expects the owner or operator to evaluate the option of transporting the CCR to landfills. The owner or operator must provide documentation of this evaluation of on and off-site capacity for each wastestream. Additionally, the owner or operator must cease receipt of each wastestream when alternative capacity for each wastestream becomes available. This documentation requirement has been incorporated into the requirements of section one of the workplan. The other requirements for the workplan are discussed later in this preamble. This documentation requirement is at § 257.103(f)(1)(iv)(A).

Consistent with the proposal, the costs or the inconvenience of existing capacity will not be considered as part of determining whether the facility qualifies for this alternative. As discussed in unit IV, EPA lacks the authority to include such considerations in this regulation. See USWAG, 901 F.3d at 448–449.

Need to continue using the CCR surface impoundment. EPA proposed that the owner or operator must demonstrate that CCR and/or non-CCR wastestreams must continue to be managed in the CCR surface impoundment due to the technical infeasibility of alternative capacity being available sooner than November 30, 2020.

EPA received one comment about the inclusion of this requirement, on the grounds that the word feasibility could be construed to permit the consideration of cost. According to the commenter, one dictionary defines the word feasibility to mean ''not possible to do easily or conveniently; impracticable,'' and criticized EPA for failing to include a regulatory definition of feasibility. As an initial matter, EPA notes that other dictionaries define feasible to mean ''capable of being done or carried out'' (Merriam website (*https://www.merriam-webster.com/dictionary/feasible*)) and ''possible to do and likely to be successful'' (Cambridge English Dictionary (*https://dictionary.cambridge.org/us/dictionary/english/feasible*)). EPA also disagrees that the proposed rule was unclear on whether cost could be considered as part of this determination. EPA proposed explicit language that clearly stated that costs were not relevant. Nevertheless, to avoid any potential ambiguity EPA will include regulatory definitions of technically feasible and technically infeasible. Specifically, the final rule defines technically feasible to mean ''possible to do in a way that would likely be successful,'' and technically infeasible to mean ''not possible to do in a way that would likely be successful.'' These definitions clearly exclude those circumstances in which a facility could have completed construction but chose not to do so in order to save money, while capturing the full range of force majeure situations in which circumstances beyond a facility's control cause delays. For example, this definition would allow a facility to obtain an extension in response to delays in obtaining a permit as a result of State furloughs or resulting from the COVID–19 public health emergency. However, it would not allow a facility to obtain an extension where the delays were caused by mismanagement or could be overcome by the expenditure of additional resources; for example, where the facility delayed ordering geomembrane, and as a consequence it arrived too close to the end of the construction season.

EPA received no other substantive comments raising concern about the inclusion of this criterion. Therefore, EPA is finalizing this requirement with one minor revision to the regulatory text. As discussed in unit V.B.3, the deadline to cease receipt of waste is now April 11, 2021, so the deadline in § 257.103(f)(1)(ii) will be updated accordingly.

Documentation requirements of need to continue using the CCR surface impoundment. This line of evidence must include an analysis of the adverse impact to plant operations if the CCR surface impoundment in question were to no longer be available for use.

EPA received comments stating that EPA failed to identify any evidence that the lack of capacity alternative closure provision is necessary. They stated that EPA claimed that the 2015 CCR Rule would cause potentially significant disruptions to plant operations and thus the provision of electricity to customers; however, EPA failed to identify any evidence of such risks or identify a single power plant in the country that would be at risk of shutdown if its non-CCR wastestreams could no longer be disposed of in the CCR surface impoundments.

Other commenters stated that the inclusion of an analysis of the adverse impact to plant operations if the CCR surface impoundment in question were to no longer be available for use is a very important factor in the evaluation of a facility's extension request. They stated that the rulemaking record makes clear that their ability to continue providing power to the public could be impacted if facilities are unable to use these surface impoundments (for CCR and/or non-CCR waste management) before they have time to develop alternative disposal capacity.

EPA disagrees that there is no evidence that power plants could be affected if they were forced to prematurely stop using their CCR surface impoundments before alternative capacity is available. The rulemaking record contains submissions from numerous utilities documenting the potential effects of such premature closures. Moreover, EPA proposed to require facilities to include an analysis of the adverse impact to plant operations if the CCR surface impoundment in question were to no longer be available for use. Therefore, each individual demonstration would include the evidence of the adverse impact to each plant's operations, which is the exact evidence the commenters assert is lacking. EPA continues to believe that an analysis of the adverse impact to plant operations if the CCR surface impoundment were to no longer be available for use is directly relevant to the question of whether the facility actually needs to continue using the unit. As a consequence, EPA is retaining this requirement in the final rule without revision.

This documentation requirement has been incorporated into section one of the workplan. The other requirements for the workplan are discussed later in this preamble. This documentation requirement is represented in § 257.103(f)(1)(iv)(A).

Compliance certification and documentation requirements. In the proposal, EPA discussed compliance in three separate places in the regulatory text but only one section in the preamble. In the regulatory text EPA required a certificate of compliance, a narrative compliance strategy and that the owner or operator remain in compliance with the applicable requirements of subpart D of part 257 at all times. Furthermore, the proposed fourth line of evidence of the § 257.103(f)(1) demonstration reiterated the requirement for a narrative compliance strategy for the CCR surface impoundment. The preamble laid out some specific information that EPA believed was critical to determine if the facility was in compliance. EPA proposed that the compliance strategy must discuss the most recent groundwater monitoring data results, the statistical analyses conducted to obtain the results, and the next steps for the groundwater monitoring. EPA also proposed that if the unit has exceeded any of the Appendix IV groundwater protection standards, the owner or operator must provide a copy of any assessment of corrective measures conducted to date. The current regulations require facilities to conduct an assessment of corrective measures followed by selection of a remedy as soon as is feasible, and thus do not permit waiting to implement a remedy until initiation of closure of the unit. As such, if the facility is in the process of remedy selection, a thorough discussion of the evaluation of possible remedies for corrective action must be included in the compliance strategy. The proposal also stated that the facility's publicly accessible CCR internet site must be completely up-to-date and contain all the necessary postings.

Several commenters agreed that compliance with the CCR rule should be a prerequisite to obtain approval for an alternative closure deadline. Others disagreed stating that being in compliance with the CCR rule should not be a prerequisite. EPA continues to believe that compliance should be a prerequisite.

Some commenters expressed concern that some facilities acting in good faith could be found non-compliant by EPA. Specifically, USWAG raised concerns that since the rule is self-implementing and some regulatory text lacks specificity and/or may be ambiguous, there could be differences in opinion on what constitutes compliance. Therefore, USWAG believes that differences in interpretation should be discussed during EPA's review process and any non-compliance issues be addressed as part of a facility's completion of its demonstration. Talen Energy echoed this sentiment stating that there should be a mechanism in place to assist facilities to come into compliance after the alternative closure extension was granted. Finally, USWAG commented that past non-compliance that has been corrected should not penalize a facility in their demonstration process and that, therefore, the compliance status should be as of the date of the demonstration's submission. These comments are also addressed in unit V.C.5 since these comments discuss the process in which to resolve any possible questions of compliance.

Some commenters stated that EPA has known that facilities are violating the groundwater monitoring requirements because the use of intrawell statistical analysis violates the plain language of the CCR rule and is therefore impermissible. They also raised other allegations of non-compliance such as violations of location restrictions, non-compliant liner determinations, violations of annual inspection requirements and various groundwater monitoring requirements or associated posting requirements. The commenters went on to say that EPA's failure to evaluate existing non-compliance with the CCR rule increases the risk to health and the environment and that the Part A proposal does not effectively require owners and operators receiving extensions to comply fully with the CCR rule. Finally, some commenters stated that since the alternative closure extensions fail to address non-compliance, the extensions are arbitrary and capricious and fail to meet the RCRA protectiveness standard.

EPA does not agree that intrawell statistical analysis is per se prohibited by the CCR regulations. The regulations at § 257.93(f) and (g) establish the allowable statistical approaches and the performance standards that must be met. There are some circumstances in which intra-well comparison can meet these requirements. Additional information about these approaches may be found in the Unified Guidance, which EPA relied upon, as well as 40 CFR 258, in crafting these regulations (see 80 FR 21402). The Unified Guidance at page 1–4 contains procedures for both the intrawell and interwell methods: ''Groundwater detection monitoring involves either a comparison between different monitoring stations (*i.e.,* downgradient compliance wells *vs.* upgradient wells) or a contrast between past and present data within a given station (*i.e.,* intrawell comparisons).'' The Unified Guidance further identifies specific circumstances in which intrawell comparison may be the *preferred* method, for example; evidence of spatial variation should drive the selection of an intrawell statistical approach if observed among wells known to be uncontaminated (*e.g.,* among a group of upgradient background locations) (page 5–6). The Unified Guidance says intrawell comparison can also be used when the groundwater flow gradient is uncertain or unstable (page 8–3). EPA has also found that unique hydrogeological conditions at some sites preclude meaningful interwell comparison—for example where the uppermost aquifer is spatially limited and is absent upgradient of the CCR unit. Therefore, simply using intrawell analysis does not mean a facility is out of compliance.

However, if a facility is using intrawell analysis in an inappropriate scenario, the facility would be out of compliance with the CCR rule. For example, see the Unified Guidance at page 5–6: ''Intrawell background measurements should be selected from the available historical samples at each compliance well and should include only those observations thought to be uncontaminated.''

EPA continues to believe that requiring facilities to document compliance with the subpart D of part 257 requirements is an important part of the demonstration. Compliance with the rule provides some guarantee that the risks at the facility are properly managed and adequately mitigated. For example, if a facility has placed or constructed groundwater monitoring wells incorrectly it is quite possible that contamination could go undetected. By contrast, if a facility is properly pursuing corrective action remedies and their wells have been properly placed and constructed, EPA expects the overall risk at the facility will be appropriately managed. Consequently, this determination provides critical support for a decision to allow continued operation of the unlined impoundment. This means that EPA must be able to affirmatively conclude that the facility meets this criterion prior to authorizing any continued operation of the unlined impoundment. It also means that EPA cannot grant facilities additional time to cure any noncompliance. However, EPA's determination will be prospective only; accordingly, EPA is only interested in the state of a facility's current compliance rather than any instances of historic non-compliance.

In response to commenters who requested that EPA provide greater specificity about what constitutes a complete submission, EPA has revised the proposal to identify specific documents that facilities must provide to demonstrate their current compliance with the requirements of part 257. These documents should already exist because they are required to have been developed under the existing regulations.

First, EPA will review a facility's current compliance with the requirements governing groundwater monitoring systems. In order to conduct this review, the Agency will need copies of the following documents: (1) Map(s) of groundwater monitoring well locations (these maps should identify the CCR units as well); (2) Well construction diagrams and drilling logs for all groundwater monitoring wells; (3) Maps that characterize the direction of groundwater flow accounting for seasonal variation; (4) Constituent concentrations, summarized in table form, at each groundwater monitoring well monitored during each sampling event; and (5) Description of site hydrogeology including stratigraphic cross-sections.

Second, EPA will also require and examine a facility's corrective action documentation, structural stability documents and other pertinent compliance information. A facility must submit the following documentation: The corrective measures assessment required at § 257.96, progress reports on remedy selection and design; the report of final remedy selection required at § 257.97(a); the most recent structural stability assessment required at § 257.73(d), and; the most recent safety factor assessment required at § 257.73(e). EPA's intention to review these items was discussed in the proposed rule when discussing the types of information to be included in the facility's compliance strategy. See FR 84 65955–56. EPA will document the results of its review and that record will be available for public comment with the rest of the alternative closure demonstration materials, consistent with the procedures applicable to this review discussed in unit V.C.5.

Therefore, based on comments, EPA has decided that the certification of compliance and the requirement to remain in compliance with the regulations are necessary in this final rule. This approach will prevent non-compliant unlined surface impoundments from operating for an extended period of time into the future. Requiring that only compliant surface impoundments can be approved for an alternative closure deadline provides additional support for EPA's conclusion that this final rule meeting the statutory standard.

In light of the requirement to submit the specific compliance documentation noted above, EPA is not including the proposed compliance narrative that was proposed as the fourth line of evidence for a demonstration, in the final rule.

The compliance certification and documentation requirements are represented in § 257.103(f)(1)(iv)(B). The requirement to remain in compliance with RCRA subpart D is represented in § 257.103(f)(1)(viii).

Workplan Criteria. EPA proposed owner or operators submit a detailed workplan explaining how alternative capacity is being developed and the amount of time required. EPA proposed to require the submission of a workplan that contains four elements: (1) A narrative discussion of the steps and process that remain necessary to complete development of alternative capacity for the wastestream(s); (2) a visual timeline depicting the remaining steps needed to obtain alternative capacity; (3) a discussion of the timeline and the processes that occur during each step; and (4) a discussion of the steps already taken to achieve alternative capacity, including what steps have been completed and what steps remain. EPA sought comment on whether the proposed elements of the workplan were sufficient or if more evidence was necessary in order for EPA to determine the correct amount of time the facility will need to obtain alternative capacity.

EPA received several comments that the proposed workplan elements should provide EPA with ample information to issue a decision on the extension request. They further stated that the information would allow EPA to determine whether the demonstration represented the shortest technically feasible amount of time required for the facility to cease receipt of the waste and to complete the development of alternative disposal capacity.

EPA agrees with the commenters that the elements proposed in the workplan provide the necessary information and are sufficient for its intended purpose. Therefore, EPA is finalizing the proposed workplan elements without revision from the proposal at § 257.103(f)(1)(iv)(A).

Workplan Documentation

As previously mentioned, EPA proposed the workplan containing four sections. Below is a detailed discussion of what EPA proposed for each section to contain.

Section One: The narrative discussion of the workplan was designed to explain precisely how alternative capacity will be developed, along with an explanation as to why that method was chosen. EPA has not required the owner or operator to choose any particular means of obtaining alternative capacity, such as building a new disposal unit, construction of a wastewater treatment facility, converting to dry handling, etc. However, EPA is requiring that the narrative describe each option that was considered, the timeframe under which each could be implemented, and why the facility selected the option that it did. The discussion must include an in-depth analysis of the site and any site-specific conditions that led to the decision to implement the selected alternative capacity. Inclusion of visuals such as a facility map, facility process flow diagram, the design of the new capacity, etc. would be beneficial to any discussion on the new capacity and of the facility as a whole. The narrative must also provide a detailed explanation and justification for the amount of time being requested and how it is the fastest feasible time to complete the development of the alternative capacity.

Section Two: The second section of the workplan is a visual timeline, such as a Gantt chart, depicting the necessary steps required to obtain the alternative capacity discussed in the narrative. The visual timeline must clearly indicate how each phase and the steps within that phase interact with or are dependent on each other and the other phases. It must also include any possible overlap of the steps and phases that can be completed concurrently. This timeline must show the total time needed to obtain the alternative capacity and how long each phase and step is expected to take. Such phases must at a minimum include: Engineering and design, contractor selection, equipment fabrication and delivery, construction, and start up and implementation. Within each phase, the time to complete each step must also be broken out. For example, if the engineering and design phase is 4 months, the following steps to complete the phase should be shown: Site selection and survey, design of the impoundment, process flow diagram edits, and piping design then the time each of those steps take should be represented on the timeline. This level of detail is expected for each phase and each step of each phase in obtaining the alternative capacity. The timeline also acts as a visual assistant to the third section of the work plan, a narrative of the timeline.

Section Three: The third section for the workplan is a detailed narrative of the schedule and the timeline discussing all the necessary phases and steps in the workplan, in addition to the overall timeframe that will be required to obtain capacity and cease receipt of waste. This section of the workplan must discuss why the length of time for each phase and step is needed, including a discussion of the tasks that occur during the specific stage of obtaining alternative capacity. It must also discuss the tasks that occur during each of the steps within the phase. For example, rather than simply stating an individual step as ''order and fabrication of impoundment liner,'' this section is required to explain what material must be ordered, where the fabrication takes place, and how long it takes to fabricate and deliver the new liner material. The workplan must explain why each phase and step shown on the chart must happen in the order it is occurring and include a justification for the overall length of the phase. Other major discussion items required on the overall time of the schedule include anticipated worker schedule, and any anticipated areas for which the schedule could slip. The anticipated areas of delays could include items outside of the facility's control, such as severe weather events or delays in fabrication of materials. For example, if the facility is commonly impacted by hurricanes or flooding, the discussion should indicate what month(s) of the schedule that is most likely to disrupt. The schedule must also indicate the time limiting factors in completing the plan, such as having to take boilers off-line or if a certain step can only happen during a specific time of year. This overall discussion of the schedule assists EPA in understanding why the time requested is accurate.

Section Four: The fourth section of the workplan contains a narrative of the steps the facility has already taken to initiate closure and develop alternative capacity for CCR and/or non-CCR wastestreams. This section must discuss all of the steps taken, starting from when the owner or operator initiated the design phase all the way up to the current steps occurring while the workplan is being drafted. In addition,

this discussion must indicate where the facility currently is on the timeline and the processes that are currently being undertaken at the facility to develop alternative capacity. This section of the workplan and the level of detail required is necessary for EPA to determine whether the submitted schedule for obtaining alternative capacity is accurate.

Comments on workplan documentation requirements. EPA received several comments from utilities stating concerns that the level of detail proposed to be included in the workplan is unnecessary and in some areas excessive. Some utilities viewed the workplan as overly burdensome and some parts as unnecessary. Some commenters found the proposed narrative discussion of the workplan invasive of the utility's decision-making process. They further commented that EPA should respect the facility's business decisions and that this information could show that the facility is taking cost into consideration. The commenters stated that the discussion should focus on how the facility selected the most appropriate technically feasible alternative capacity for the site, even though it may not be theoretically the fastest feasible to implement. They stated that the work plan should only focus on the engineering and construction elements of obtaining alternative capacity rather than being concerned with reasons for why the capacity was selected. These commenters additionally stated that this type of discussion and many of the work plan elements would contain Confidential Business Information (CBI) related to why a particular approach for developing alternative capacity was selected and therefore requested the opportunity to be able designate and withhold the CBI from the posting on their publicly accessible CCR internet site.

EPA disagrees with the comments that the workplan requirements are invasive of the utility's decision-making process and should only focus on engineering and construction. While the workplan should provide engineering and construction information to explain how long the alternative capacity will take to develop; it is equally important for EPA to understand why that method of alternative capacity was selected. EPA recognizes there are several factors that go into selecting the method for alternative capacity, and that the decision is not solely based on whether the method is theoretically the fastest feasible to implement. Many of those factors are based on what can be technically implemented based on site-specific conditions at the facility, and how the facility plans on maintaining compliance with various state and federal regulations. These are the factors the facility should focus on in their discussion. EPA understands that not every method of alternative capacity is a viable option for a given facility, but the facility will need to explain to EPA how and what site-specific factors affected the selection of the option chosen, or that led the facility to eliminate particular options from consideration. Accordingly, EPA continues to believe that these workplan elements are necessary in order to fully understand the effort to obtain alternative capacity and maintain compliance for the facility as a whole. EPA understands that some of the pieces of the workplan may be considered CBI. However, utilities must have a CBI free version of the workplan that they are able to post to their publicly accessible CCR internet site and to be put out for public comment. EPA has revised the regulations to specify that when a workplan contains some CBI, utilities must submit both the CBI-free version of the workplan and a full version of the workplan that contains the CBI. All information submitted to EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to Agency policies set forth in 40 CFR part 2, subpart B.

For the reasons described above, EPA is finalizing the requirements on the workplan as described above with minor clarifying modifications. As previously discussed, EPA is incorporating the documentation requirements for the lack of alternative capacity on or off-site and the need to continue using the CCR surface impoundment into section one of the workplan. Thus, the first section of the workplan must include the discussion on the lack of alternative capacity on or off-site for each wastestream, the technical infeasibility of alternative capacity being available prior to April 11, 2021, as well as the narrative discussed above in section one (the discussion of how the alternative capacity will be developed and the discussion of how the capacity was selected).

The other change that EPA is making from proposed to final is in section three, the narrative discussion of the timeline. EPA will not require the inclusion of anticipated areas of where the schedule could slip. EPA is not taking final action on this requirement because it is not critical information for EPA to evaluate and issue a determination on the demonstration.

The workplan documentation requirements are at § 257.103(f)(1)(iv)(A).

Maximum Time Allowed. EPA proposed that a maximum of 5 years from the *USWAG* mandate could be granted under this alternative closure provision; therefore, no extension would extend past October 15, 2023. EPA selected 5 years in the proposal since it is currently the time allowed under § 257.103(a).

EPA received comments that extensions should not be limited to October 15, 2023. Commenters stated that a maximum time is unnecessary because the facility is required to submit a workplan showing the time they need, and EPA should accept that as the time that is needed. Therefore, the commenters asserted, establishing a maximum amount of time sooner than a facility demonstrates is technically feasible requires the impossible. They claimed that the data used in the rule making record does not support limiting the extension to no later than October 15, 2023 and is two years shorter than the current deadline in §§ 257.103(a) and (b) of October 31, 2025. Commenters stated that if EPA does establish a maximum amount of time, then EPA should establish the time that is currently allowed which is October 31, 2025.

Environmental groups stated that the maximum amount of time, until October 15, 2023, is not protective of human health and the environment because it delays the closure of the CCR surface impoundments.

EPA disagrees with these commenters. EPA believes there should be a maximum amount of time for the alternative closure provision, if only to ensure that facilities understand that operation of the unit may not continue indefinitely. With one exception, EPA believes that the proposed date of October 15, 2023 is a reasonable deadline for all facilities to achieve. EPA did not receive and does not have any evidence that facilities will require until October 2025 to complete development of alternative capacity. Accordingly, EPA does not believe facilities need the same five-year deadline in § 257.103(a). Additionally, this deadline will encourage facilities to move expeditiously.

EPA received several comments from industry stakeholders stating that the eligible unlined CCR surface impoundments triggered into closure due to the *USWAG* decision could need more time than other unlined surface impoundments to develop alternative

capacity. Data submitted by several owners and operators of eligible unlined CCR surface impoundments showed that the fastest they could cease receipt of all wastes extends into 2024.

After reviewing these comments and the data submitted by utility companies, EPA agrees that it is possible that some eligible unlined CCR surface impoundments that were forced into closure unexpectedly by the *USWAG* decision could need additional time beyond October 15, 2023 to complete the development of alternative capacity. Therefore, in this final rule EPA is providing that eligible unlined CCR surface impoundments can request an alternative compliance deadline no later than October 15, 2024. This does not mean that all eligible unlined CCR surface impoundments can continue to operate until October 15, 2024; each unit must still cease receipt of waste as soon as feasible, and may only have the amount of time they can demonstrate is genuinely necessary. A facility claiming to have an eligible unlined CCR surface impoundment and requesting time beyond October 15, 2023 must demonstrate that they were not forced into closure for any reason other than the *USWAG* decision. This maximum timeframe is represented in § 257.103(f)(1)(vi).

Extensions of Alternative Compliance Deadlines. EPA proposed to allow a facility to request an extension to a deadline approved under the site-specific alternative under § 257.103(f)(1). If at any point a facility becomes aware that they cannot meet the approved alternative deadline, they would need to notify EPA or the Participating State Director as soon as possible. Depending on the nature and severity of the event, additional time may be granted provided it would not extend past October 15, 2023. EPA proposed that the facility must submit updated demonstration materials to EPA or the Participating State Director with a detailed discussion of why an extension is necessary. The owner or operator must also discuss the measures taken to limit the additional amount of time needed. An explanation of any problems that caused this delay would be further discussed in the semi-annual progress report as described in the next section.

EPA received no comments regarding this provision in the proposal. Therefore, EPA is finalizing this provision without substantive revision. EPA will not grant an extension longer than the maximum amount of time allowed either October 15, 2023 or October 15, 2024. This provision is represented in § 257.103(f)(1)(vii).

(b) Semi-Annual Progress Report

To provide transparency to the public, EPA proposed to require posting of semi-annual progress reports on the facility's publicly accessible CCR internet site. The proposed reports would contain two main sections: (1) Discussion on progress toward obtaining alternative capacity and (2) discussion of any planned operational changes at the facility. EPA believed that since these units could be operating and receiving waste for a few additional years, it would be important to keep EPA and the public aware of the facility's progress on obtaining alternative capacity and if facilities are on track to meet their new alternative compliance deadline. Currently in § 257.103(c) there is the requirement for annual progress reports for the units that have certified for alternative deadlines under § 257.103(a) and (b). EPA believed that for the site-specific alternative deadline, semi-annual rather than annual progress reports are more appropriate. The time allowed under this new alternative closure provision, will vary site to site and could be shorter than the deadline alternative granted for § 257.103(a) and (b). Therefore, EPA proposed a new semi-annual progress report requirement for the units that successfully demonstrate and are approved for the site-specific alternative to cease receipt of waste deadline.

EPA proposed for the semi-annual progress report to heavily rely on the workplan and the timeline submitted with the workplan. The first section of the report would discuss the progress the facility has made since the previous report or since approval of the alternative compliance deadline if it is the first report. It would be required to discuss the following: (1) The current stage of obtaining alternative capacity in reference to the timeline required in the workplan; (2) whether the owner or operator is on schedule for obtaining alternative capacity; (3) any problems encountered and a description of the actions taken to resolve the problems; and (4) the goals and major milestones to be achieved for the next 6 months.

EPA proposed the second section of the progress reports would discuss any planned operational changes at the facility. It is possible while the facility is working to achieve alternative capacity, a decision is made to either permanently shut down the plant or switch to an alternate fuel source such as natural gas or biomass. Any such decisions or other changes that could impact the schedule or closure would be indicated in this section of the semi-annual progress report.

EPA proposed that the semi-annual reports be completed and placed in the facility's operating record and posted on the facility's publicly accessible CCR internet site on April 1st and October 1st of each year until the alternative compliance deadline. The first report would be due on whichever posting deadline is soonest after approval of the alternative compliance deadline by EPA.

EPA sought comment regarding whether a facility that is fully on schedule or ahead of schedule with their approved timeline and had no significant problems or changes in operational status, should be afforded a relaxation of the reporting requirements in the first two subsections of the first section. This would allow a report for a facility on schedule or ahead of schedule to be significantly more condensed than the full reporting requirements.

EPA received comments from industry stating that facilities should be focusing on obtaining alternative capacity rather than completing progress reports. Furthermore, they support that if a facility is on or ahead of schedule for developing alternative capacity, they should be able to complete a condensed version of the semi-annual progress reports. Industry additionally commented that the progress reports should be annual for facilities with an alternative deadline longer than two years past the deadlines in § 257.101(a) and (b). Industry groups additionally commented that they do not oppose the semi-annual submission dates of April 1 and October 1, with the first submission being due on whichever posting deadline is soonest after approval of the alternative compliance deadline. However, they did indicate that a facility should not have to complete a report until they have a minimum of six months of progress from approval to report.

EPA agrees with the commenters that facilities should be focusing on obtaining alternative capacity. However, it is also important to update EPA or the Participating State Director on their progress for obtaining alternative capacity. EPA disagrees that the progress reports should be annual for the facilities with a longer alternative deadline. Facilities with a longer deadline have more progress to make and therefore may have a greater change of experiencing delays. Frequent progress reports are all the more useful in these circumstances. EPA further agrees that it is important that the first

report be properly timed so that the facility has progress to report.

EPA received comments from environmental groups supporting the progress reports. They commented that there should be the additional requirement of certifying the facility is in compliance with all other aspects of the CCR rule in each progress report.

EPA has decided that additional certifications of compliance would not provide any added benefit. The final rule already requires the facility to remain in compliance with all the requirements of this subpart as a condition of the extension, and expressly provides that failure to do so will result in automatic revocation of the extension. Moreover, as previously discussed, EPA is requiring a more in-depth compliance certification in the demonstration in order to obtain approval. Finally, under the existing regulations the facility is required to post several items throughout the year including the annual groundwater monitoring and corrective action report, notifications for changes in groundwater monitoring, and semiannual reports on selection of remedy. EPA considers that the combination of all these requirements is more than sufficient to ensure a facility remains in compliance without the need for a further certification.

After reviewing the public comments EPA believes it is important to maintain public transparency and for facilities to focus on completing the development of alternative disposal capacity. Therefore, EPA is finalizing the requirement for progress reports to be completed on a semi-annual basis and to allow those facilities that are on or ahead of schedule to complete a condensed progress report. As such EPA is finalizing the semi-annual progress report requirements with only the revision that facilities on or ahead of schedule may complete a condensed and more streamlined progress report.

Facilities on or ahead of schedule, in relation to their approved timeline, will need to complete only the first two subsections within the first section. Therefore, the first section of the reports will only need to contain: (1) The current stage of obtaining alternative capacity in reference to the timeline required in the workplan; (2) whether the owner or operator is on schedule for obtaining alternative capacity.

All facilities must still complete the second section of the progress reports, discussing any planned operational changes of the facility. If there is nothing for the facility to report in this section, then the facility should simply state ''No planned operational changes''.

The semi-annual progress reports are to be completed on April 30 and October 31 of each year for the duration of the approved alternative initiation of closure deadline. EPA has selected these months because they correlate to when the facility was supposed to cease receipt of waste. Therefore, the facility should have at least six months of progress to report since applying for an alternative compliance deadline. The facility then has 30 days to place the report in their operating record and to their publicly accessible CCR internet site. The requirements for the semi-annual progress reports are shown in § 257.103(f)(1)(x).

4. Requirements for Permanent Cessation of Coal-Fired Boiler(s) by a Date Certain (§ 257.103(f)(2))

In the December 2, 2019 proposal EPA proposed to adopt a comparable version of § 257.103(b). This proposed provision allows facilities permanently ceasing operation of coal-fired boiler(s) to continue to receive both CCR and/or non-CCR wastestreams, upon a showing of a continued need to use the surface impoundment due to lack of capacity. Consistent with the existing provision § 257.103(b), EPA proposed to provide that an increase in costs or the inconvenience of existing capacity would not support qualification under this section. A further requirement EPA proposed, that is not in § 257.103(b), is a risk mitigation plan, in which the owner or operator would describe how the facility planned to mitigate any potential risks from the continued operation of the CCR surface impoundment. This proposal would have allowed the unit to continue receiving CCR and/or non-CCR wastestreams, provided the facility completed closure of the unit by the dates specified: October 17, 2023 or October 17, 2028 for surface impoundments 40 acres and smaller or more than 40 acres, respectively. In contrast to the provision under § 257.103(f)(1), the owner or operator does not need to develop alternative capacity because of the impending closure of the coal-fired boiler. Since the coal-fired boiler will shortly cease power generation, it would be illogical to require these facilities to construct new capacity to manage CCR and non-CCR wastestreams. Additionally, the groundwater monitoring and corrective action requirements remain in place. EPA proposed that facilities would need to submit a demonstration to EPA or the Participating State Director for approval. The majority of the proposed demonstration requirements are generally the same as are currently required under § 257.103(b), including the annual progress report and other recordkeeping requirements. The demonstration and criteria are described below.

EPA received comments requesting clarification on whether a facility could use the provision if they are converting their boilers to natural gas or a different fuel source. EPA believes facilities that are converting their boilers to natural gas or a different fuel source (non-coal) are eligible for the provision.

(a) Criteria and Documentation

EPA proposed that in order to obtain the § 257.103(f)(2) extension, the owner or operator needs to meet and maintain all of the following criteria: (1) That no alternative disposal capacity is available on or off-site, (2) the facility must submit a risk mitigation plan to show that potential risks to human health and the environment from the continued operation of the CCR surface impoundment have been adequately mitigated, (3) the facility is in compliance with all other requirements of this subpart and, (4) closure of the impoundment will be completed within the dates specified: October 17, 2023 or October 17, 2028 for surface impoundments 40 acres or smaller or more than 40 acres, respectively. As discussed in more detail below, EPA is adopting the same criteria in the final rule without significant revision. Further discussion on each criterion is below.

No alternative capacity on or off-site. The first line of evidence EPA proposed is the same that was required in § 257.103(b) and § 257.103(f)(1). The owner or operator must demonstrate the lack of alternative capacity available on or off-site.

EPA received no substantive comments on the inclusion of this requirement. Therefore, EPA has included this provision in the final rule without revision.

Documentation requirements of no alternative capacity on or off-site. The first demonstration requirement is to show that the facility does not have any other disposal capacity available either on or off-site. Consistent with the proposal, the fact that a potential alternative result in an increase in cost or inconvenience is not sufficient to meet this requirement. This requirement is the same as the requirement as described previously for the demonstration requirements in § 257.103(f)(1). This documentation requirement is represented in § 257.103(f)(2)(v)(A).

Risk mitigation plan. The second line of evidence EPA proposed to include in

this demonstration was a risk mitigation plan. This proposed requirement was not previously required under § 257.103(b). EPA added this requirement in the proposal to address the potential risks of continued operation of the CCR surface impoundment while the facility moves towards closure of their coal-fired boiler(s), to be consistent with the court's holding in *USWAG* that RCRA requires EPA to set minimum criteria for sanitary landfills that prevent harm to either human health or the environment. 42 U.S.C. 6944(a). 901 F.3d at 430.

EPA received comments stating that the provision violates RCRA because it relies on owners and operators to submit a risk mitigation plan. They explained that this requirement violates the RCRA protectiveness standard because it acknowledges that there is risk present from the unit and RCRA is structured to prevent risk. Therefore, a risk mitigation plan admits that there is risk to human health and the environment and makes the unit an open dump.

EPA disagrees with the suggestion that reliance on the submission of a risk mitigation plan violates RCRA. Contrary to the commenter's view, section 4004(a) does not require the elimination of all risk. Rather the provision expressly contemplates the potential for there to be some risk, requiring EPA to determine there ''is no reasonable probability of adverse effects.'' 42 U.S.C. 6944(a). Or in other words, EPA must determine that the facility's solid waste management present only reasonable risks, which EPA has long interpreted to be risks ranging from 1×10^{-4} and 1×10^{-6}. Submission of the plan as part of the package for EPA approval will allow the agency to ensure that risks at the facility remain within these acceptable levels.

Some groups commented that facilities should not be required to submit a risk mitigation plan for approval in their demonstration, especially for the surface impoundments closing due to the *USWAG* decision. They believe that eligible unlined CCR surface impoundments do not pose a potential risk to human health or the environment and should not be required to prepare a plan to mitigate potential risks that do not exist. They view this requirement as an unnecessary paperwork burden.

EPA disagrees that the risk mitigation plan is unnecessary, even for units closing in response to the *USWAG* decision. Although it is true these units may not be currently leaking, that means only that they are not currently causing harm. But that does not mean that they do not pose any risk nor that continued operation of the unit necessarily meets the section 4004(a) standard. *See,* 901 F.3d at 427–430. As the court noted, ''It is inadequate under RCRA for the EPA to conclude that a major category of impoundments that the Agency's own data show are prone to leak pose 'no reasonable probability of adverse effects on health or the environment,' 42 U.S.C. 6944(a), simply because they do not already leak.'' *Id.* The risk mitigation plan will provide critical information to address the risks of continued operation of the unit, prior to the initiation of unit closure. This will provide a significant supplement to the Agency's qualitative assessment that the risks of continued operation will be outweighed by the risk mitigation from the expedited closure of the unit.

For example, for units that are not leaking the facility could begin identification of remedial technologies that would potentially be appropriate based on site data, including groundwater chemistry, groundwater elevation and flow rates, and the presence of surface water features that would influence rate and direction of contamination movement in the event of a leak. Gathering this information and beginning an assessment of technology options if a leak should occur will expedite any corrective action that subsequently becomes necessary. The plan could also address any interim measures that the facility would take to remediate contamination or to achieve source control in the event of a leak, which was one issue that the court faulted EPA for failing to adequately consider. By expediting the cleanup, EPA will also ensure that facility addresses the risk during the expedited closure.

EPA has concluded that the risk mitigation plan is a necessary requirement for this demonstration. Therefore, EPA is finalizing that facilities will be required to submit a risk mitigation plan as part of their demonstration.

Risk mitigation plan documentation. EPA proposed that the risk mitigation plan explain actions the facility may take to mitigate any potential risks to human health or the environment from the CCR surface impoundment. EPA also sought comment on whether the owner or operator should be required to submit a more in-depth site-specific risk assessment of the CCR surface impoundment as part of their plan to mitigate the risk from continued operation of the unit.

EPA received comments from industry groups that they view the information requested to be included in the plan redundant of information required in other reports and therefore find the risk mitigation plan as an unnecessary paperwork burden. They contend that all the information requested is already being compiled by the facility in other reports, so it is readily available on the publicly accessible CCR internet sites and additionally must demonstrate that the facility is in compliance with the other parts of the CCR rule. Therefore, the commenter finds this requirement redundant. These groups commented further stating that if EPA decides to finalize the risk mitigation plan, the suggested requirements for the risk mitigation plan are sufficient and a more in-depth risk analysis is not necessary.

EPA also received comments from the National Ground Water Association on what should be included in the risk mitigation plan. They provided a list of 12 items that they viewed as important to include in the plan. EPA found that all of the suggested items from the National Ground Water Association were already included in the items proposed or in other reports required by the CCR rule.

EPA disagrees that this plan is merely an unnecessary paperwork burden for the reasons discussed previously. Facilities in full compliance with all aspects of the regulations that have not initiated corrective action can still develop a plan that will expedite the implementation of corrective action, in the event it become necessary. EPA considers this to provide a substantial complement to the record supporting continued operation of the unit.

In response to the comments, requesting greater specificity about what would constitute an adequate submission, the final rule requires that the risk mitigation plan include three pieces of information. First, a discussion of any physical or chemical measures a facility can take to limit any future releases to groundwater during operation. This might include stabilization of waste prior to disposition in the impoundment or adjusting the pH of the impoundment waters to minimize solubility of contaminants. This discussion should take into account the potential impacts of these measures on Appendix IV constituents.

Second, a discussion of the surface impoundment's groundwater monitoring data and any found exceedances; the delineation of the plume (if necessary based on the groundwater monitoring data); identification of any nearby receptors

that might be exposed, to current or future groundwater contamination; and how such exposures could be promptly mitigated.

And finally, a plan to expedite and maintain the containment of any contaminant plume that is either present or identified during continued operation of the unit. The purpose of this plan is to demonstrate that a plume can be fully contained and to define how this could be accomplished in the most accelerated timeframe feasible to prevent further spread and eliminate any potential for exposures. This plan will be based on relevant site data, which may include groundwater chemistry, the variability of local hydrogeology, groundwater elevation and flow rates, and the presence of any surface water features that would influence rate and direction of contamination movement. For example, based on the rate and direction of groundwater flow and potential for diffusion of the plume, this plan could identify the design and spacing of extraction wells necessary to prevent further downgradient migration of contaminated groundwater.

If additional mitigation measures are necessary to ensure the statutory standard is met, EPA will require those as a condition of granting the extension. The risk mitigation plan documentation requirement is at § 257.103(f)(2)(v)(B).

Compliance certification and narrative. EPA proposed that the owner or operator must certify that it remains in compliance with all other requirements of this subpart including corrective action. EPA is finalizing the same compliance certification and documentation as that in § 257.103(f)(1). The compliance documentation requirement is at § 257.103(f)(2)(v)(C). The requirement to remain in compliance with subpart D is represented in § 257.103(f)(2)(vi).

Maximum time to complete closure. EPA proposed that the facility must complete closure of the CCR surface impoundment, and the coal-fired boiler must cease operation no later than October 17, 2023 for surface impoundments 40 acres or smaller and October 17, 2028 for surface impoundments larger than 40 acres. These are the same deadlines as required in § 257.103(b).

EPA received comments from environmental groups stating that since EPA does not establish a set deadline for these units to cease receipt of waste and initiate closure the provision is unlawful. Some further elaborated that this provision would delay the initiation and completion of closure of these units for several years. These commenters further stated that developing alternative disposal capacity is not as complex as the proposed rule made it seem and believe that it is possible for facilities to obtain alternative capacity in a few weeks and therefore cease receipt of waste much earlier. The commenters additionally stated that EPA did not provide rationale for why this provision is protective of human health and the environment.

Industry groups commented that this provision provides important environmental benefits by requiring closure far earlier than would be otherwise required. They agree that the expedited closure of these units addresses the *USWAG* court decision by addressing the potential risks from unlined CCR surface impoundments during closure. A few utility companies commented that the deadlines for closure should not depend on the size of the CCR surface impoundment. Rather all CCR surface impoundments should be eligible for the October 2028 deadline. They also explained that having the size distinction has no environmental benefit because it forces facilities to develop new disposal capacity. They acknowledged EPA's rationale that smaller surface impoundments are able to close faster but contended that smaller surface impoundments represent smaller risk. One utility company stated that the CCR surface impoundment may be less than 40 acres, but the site has unique characteristics that makes closure more complex and the surface impoundment is of unusual shape causing the closure time to be just as long as a larger surface impoundment. Another utility company commented that if a facility had multiple surface impoundments under 40 acres, they should be able to aggregate the acreage of the surface impoundments to qualify for the later deadline of 2028. One other utility commented that the deadlines should be delayed a few years because the original deadlines were established in 2015 for § 257.103(b), therefore there was more time to complete closure under the original provision. One other utility commented that it is possible that they may be directed to cease their coal fired boiler in 2023 or 2024 which would make the alternative closure provision unusable for them.

Several commenters misunderstood EPA's proposal and commented that this provision significantly delays closure by allowing facilities to operate their CCR surface impoundments until 2028. The proposed regulation does not authorize continued operation until 2023 or 2028; rather it requires the *completion of closure* by those dates. These represent substantially more expedited time frames to complete closure of the unit, and in order to meet those timeframes facilities will need to stop receiving waste into the unit much sooner than those dates. In order to meet these timeframes, EPA expects that many facilities closing pursuant to this provision will need to cease receiving CCR and non-CCR wastestreams sooner than they would under the maximum amount of time in the site-specific alternative closure provision in § 257.103(f)(1). Consequently, the overall risk will be lower. As a consequence, EPA decided that it was not necessary to specify a particular deadline by which facilities must cease receiving waste into the unit. As a practical matter the length of time the unit can continue to operate will necessarily be limited by the amount of time needed to ensure that all closure activities are completed by the deadline. Instead the provision provides facilities with the flexibility to determine precisely when they will need to stop operation in order to achieve expedited closure deadlines.

EPA is not modifying the proposed closure deadlines to allow the extended operation of units 40 acres and smaller. As explained in the proposed rule, EPA relied upon a risk-risk tradeoff to support this provision. Specifically, EPA acknowledged there could be greater risk in the short term because this provision allows a longer period for unlined impoundments to operate; however, over the long-term EPA estimated that the risks would be lower because the final closure of the unit will be expedited. Under the commenters' suggested approaches there is nothing against which to balance the risks from the extended operation of the unit. The commenters provided no data to support their contentions or on which EPA could rely to model the risks associated with allowing impoundments less than 40 acres to continue to operate for the amount of time they are proposing. EPA proposed multiple options for facilities to address the variety of circumstances presented by these kinds of sites. Not all of them will be appropriate for every site. This provision was designed to address a very specific set of circumstances in which a facility knows it will be closing by a date certain and as a consequence can expedite its closure of the unit. Finally, EPA disagrees that there would be no environmental benefit in the provision as structured. There is a significant environmental benefit in requiring the expedited closure of unlined surface impoundments, and in

requiring facilities to expedite corrective action. As the record from the 2015 rule and the results of the groundwater monitoring data from numerous facilities demonstrate, operation of these units presents significant risks.

The commenters did not provide a compelling argument for changing the deadlines from the proposal. Therefore, EPA is finalizing the deadlines as proposed.

Maximum Time Documentation. EPA did not receive substantive comments on the documentation necessary to demonstrate that the deadlines will be met. EPA is finalizing that in the demonstration submitted for approval the facility will need to specify and justify the date by which they intend to cease receipt of waste into the unit. If the amount of time the facility is seeking to operate the unit is disproportionate to the amount of time needed for closure of the unit, such that it appears unlikely the facility could meet the closure deadlines, EPA will deny the request. Additionally, facilities are required to amend their closure plan whenever there is a change in the operation of the CCR unit that would substantially affect the written closure plan or before or after closure actives have commenced as required by § 257.102(b)(3). As such, a facility should update their closure plan when applying for this extension. The documentation requirements for meeting the time requirements are represented § 257.103(f)(2)(iv)(D)

(b) Annual Closure Progress Reports

EPA proposed maintaining the annual progress report requirement that is currently required under § 257.103(b). EPA proposed that the owner or operator must prepare an annual progress report documenting the continued lack of alternative capacity and the progress towards the closure of the CCR surface impoundment.

EPA received no substantive comments concerning this requirement in the documentation for a site-specific alternative for cessation of coal-fired boiler(s).

EPA concluded from the lack of comments, to finalize the requirement. Therefore, owners or operators must prepare and place an annual progress report documenting the continued lack of alternative capacity and the progress towards the closure of the CCR surface impoundment. This progress report must include any delays in the anticipated cease receipt of waste date and closure completion date that was submitted in the demonstration materials. This requirement is found in § 257.103(f)(2)(x) of the regulation.

5. Procedures for Approval and Denial of Alternative Compliance Deadlines

EPA proposed to require that the demonstrations for an alternative compliance deadline under § 257.103(f)(1) (''development of alternative capacity infeasible'') or under § 257.103(f)(2) (''permanent cessation of coal-fired boiler(s) by a date certain'') be submitted to EPA or the Participating State Director for approval no later than two months prior to the facility's deadline to cease receiving waste. EPA believed that two months should normally provide sufficient time for EPA to evaluate the request and complete its review process. Although two months prior to the current deadline is the latest date to submit a request, EPA encouraged submissions at the earliest point at which the facility knows further time to complete its arrangements is needed.

EPA proposed that upon receiving the demonstration for an alternative compliance deadline, EPA or the Participating State Director would evaluate the demonstration and could ask for additional information to complete its review and/or discuss the demonstration with the facility. Submission of a complete demonstration would toll the facility's deadline to cease receipt of waste until issuance of a final decision. This ensures that a facility that has submitted a package in good faith would not be penalized by any inadvertent administrative delays. However, EPA proposed that incomplete submissions would not toll the facility's deadline.

EPA proposed that when the owner or operator submits the demonstration to EPA or the Participating State Director for approval, the owner or operator must prepare and place into the facility's operating record and on their publicly accessible CCR internet site a notification that the facility has applied for a site-specific alternative deadline to cease receipt of waste. EPA would then post a proposed decision to grant or deny the request in whole or in part on EPA's website for public notice and comment. EPA proposed that the public will have 15 days to comment on the proposed decision. If the demonstration is particularly complex, EPA would provide a longer comment period of 20 to 30 days. EPA proposed that it would evaluate the comments, amend its decision if appropriate, and post the final decision on the demonstrations on EPA's website. EPA proposed that the agency would finalize the decision on the alternative compliance deadline no later than 4 months after receiving a complete demonstration. If no substantive comments are received on a proposed decision, EPA proposed that it would become effective 5 days from the close of the comment period. Alternatively, EPA proposed that if a facility develops or identifies the necessary alternative capacity prior to approval from EPA, then the facility should notify EPA and withdraw their demonstration. Lastly, EPA proposed that the facility must post an approved or denied demonstration and the alternative compliance deadline decision on the facility's publicly accessible CCR internet site. EPA sought comment on whether a Participating State Director (*i.e.,* a state director with an approved State CCR Permit Program) should also have the authority to grant approvals.

EPA received numerous comments on the time frames in the proposed process. Some commenters stated that the proposed demonstration deadlines of May 15, 2020 for the cessation of boiler alternative and June 30, 2020 for the lack of alternative capacity are unreasonable. Specifically, these commenters were concerned that as a final rule will not be issued before May 2020 it will be impossible to comply with the May 15, 2020 deadline. They further stated that there should be an option for submitting the demonstrations for the cessation of boiler alternative later and not on a set date. A facility may not know they will be shutting down their coal fired boilers until later but will still be able to meet the compliance deadlines in the proposed provision for that alternative. They further stated that it will take facilities three months to successfully compile all the required elements for the demonstration. Therefore, the commenters believe that EPA needs to factor in this three-month timeframe prior to the deadline to submit the demonstrations to EPA (which was proposed to be two months prior to the deadline to cease receipt of waste). They additionally state that facilities should be able to switch between the two alternative deadline extensions. A facility should be able to submit an initial demonstration and receive approval for an extension under lack of capacity and then at a later date should be able to submit a demonstration and switch to a cessation of boiler extension if it is shutting down its coal-fired boilers and can achieve the deadlines. Additionally, it should be able to switch from a cessation of boiler extension to a lack of capacity demonstration if it is no longer going to be shutting down their boilers. These commenters also stated that the demonstration

submission deadlines should be flexible enough to allow facilities to transition between the extensions provided in § 257.103(f)(1) and (f)(2).

EPA also received comments on the tolling of the deadline to cease receipt of waste while the demonstration for an alternative deadline is under review. All commenters supported the proposal that tolling of the deadline only occurs after a demonstration is determined to be complete. However, some commenters requested that EPA revise the proposed regulatory text to clearly provide what will constitute a complete demonstration to avoid any misunderstandings. Several commenters raised concern that, as the proposed regulations were drafted, a facility could get a free four-month extension during the tolling of the deadline after a complete demonstration is received. According to these commenters, a facility could submit a complete demonstration despite having the ability to cease receipt of waste and continue to operate while it is being reviewed because the demonstration completion determination does not depend on showing infeasibility.

Some commenters believe that the proposed review period is overly ambitious and requested that EPA clarify that after four months and no final determination is made, that the deadline continues to toll for the facility.

EPA also received comments on issues relating to the situations in which an extension request is denied by EPA. Some commenters claimed that EPA did not discuss what would occur if a facility's request was denied. These commenters state that EPA needs to establish a uniform timeframe for those facilities whose complete demonstration request is denied by EPA to cease receipt of waste and initiate closure. They explained that as the deadline for this facility is tolling, it would be unreasonable for EPA to expect that the facility can immediately cease receipt of waste. They believe that this timeframe should not be less than six months as that was the timeframe originally established in the CCR rule.

Industry groups supported the proposal that a Participating State Director should have the authority to grant extensions in an approved state program.

Additionally, several groups commented that the public comment period on the demonstrations is too short for the public to be able to review, evaluate, and provide meaningful input on the decision. These commenters also raised concern that EPA fails to define what it considers a substantive versus non-substantive comment and makes no provision to consider comments received after this 15-day window. These commenters claimed that this short period fails to provide 30-day notice and does not give interested parties sufficient time to consider EPA's decision, or to collect and submit written data, views, or arguments, and therefore violates RCRA and the Administrative Procedure Act (APA).

EPA is adopting procedures that largely track the procedures laid out in the proposed rule.

(a) Deadline for Submissions

Demonstrations for an alternative compliance deadline under § 257.103(f)(1) (development of alternative capacity infeasible) must be submitted to EPA for approval no later than November 30, 2020. This deadline should provide EPA with sufficient time to review the submission and determine whether it is complete prior to the April 11, 2021 deadline to cease receipt of waste. Moreover, this submission deadline is more than adequate for facilities to compile the necessary documentation, even assuming the commenters are correct that it would take three months to compile all the necessary documents. Although November 30, 2020 is the latest date to submit a request, EPA encourages submissions at the earliest point at which the facility knows further time to complete its arrangements is needed. This requirement is found at § 257.103(f)(3)(i)(A).

An owner or operator that seeks an extension to an approved alternative closure deadline must submit a new demonstration to EPA within fourteen days of determining that they no longer will meet the approved cease receipt of waste deadline. This requirement is found at § 257.103(f)(3)(i)(B).

Requests for additional time to operate a CCR surface impoundment under § 257.103(f)(2) (''permanent cessation of coal-fired boiler(s) by a date certain'') must be submitted to EPA for approval no later than November 30, 2020. EPA has received numerous submissions from utilities stating that the decision to shut down a boiler is not reached quickly and can require approvals from (or at least coordination with) state regulatory officials, among others. EPA, therefore, expects that facilities know now (or will decide shortly) whether they will seek to rely upon these provisions. This requirement is found at § 257.103(f)(3)(i)(C).

EPA also received comments from Luminant Generating Company LLC (EPA–HQ–OLEM–2019–0172–0098) requesting clarification on whether an owner or operator may apply to use both § 257.103(f)(1) and (f)(2) at one site for different impoundments based on site-specific constraints. The commenter stated this would apply, for example, to a facility that has determined it will retire its coal-fired boilers by October 17, 2028, but has multiple small impoundments (40 acres or less) that would be retrofitted by October 15, 2023, under § 257.103(f)(1) and one large impoundment (larger than 40 acres) that would close by October 17, 2028, under § 257.103(f)(2). If the smaller impoundments were subject to the closure deadlines provided under § 257.103(f)(2) for cessation of coal fired boilers, the ponds would be required to close (not retrofit) by October 17, 2023. EPA agrees with the commenter and believes that this situation is possible. EPA will allow an owner or operator to apply for both alternative deadlines if they can demonstrate that it is necessary. This explanation must be incorporated into the narrative required at § 257.103(f)(1)(iv)(A). The facility should submit the application for each alternative together as one application. EPA strongly discourages a facility to submit applications for both § 257.103(f)(1) and (f)(2) if they do not intend to use both provisions.

The proposal did not clearly indicate whether a facility that had been approved under one extension provision could seek to subsequently obtain approval to operate under an alternative extension. EPA agrees that if the facility meets the criteria for either extension, there is no reason that they should be precluded from seeking to change the alternative under which they operate. The procedures for this are described in more detail below.

(b) EPA Review and Decision

Upon receiving the demonstration for an alternative compliance deadline, EPA will evaluate the demonstration to determine whether it is complete. EPA may request additional, clarifying information to complete its review and/or discuss the demonstration with the facility. Submission of a demonstration will toll the facility's deadline to cease receipt of waste until issuance of one of the decisions described below. This ensures that a facility that has submitted a package in good faith is not penalized by any inadvertent administrative delays. EPA is committed to processing submissions as expeditiously as possible.

Consistent with the proposed rule, submissions that EPA determines to be incomplete will be rejected without further process, at which point any tolling of the facility's deadline will

end. (EPA anticipates that the question of tolling for incomplete submissions should not generally arise, as the agency anticipates making these determinations before April 11, 2021.) No commenter disagreed that this was appropriate. As described in more detail below, incomplete submissions include both the situation in which the submission does not include all of the required material, and the situation in which EPA is unable to determine from the submission whether the facility or the unit meets the criteria for the extension.

EPA received several comments on its proposal that submission of a complete application would toll a facility's deadline. Some commenters raised concern that the review period is overly ambitious and requested that EPA clarify that if, after four months, no final determination has been made, the deadline would continue to be tolled for the facility. These commenters also requested that EPA revise the proposed regulatory text to clearly provide what will constitute a complete demonstration to avoid any misunderstandings. Other commenters raised concern that as a consequence of the decision to toll deadlines during the review period, and because, in their view, the proposed process would not weed out non-compliant facilities, the four-month time frame effectively creates a four-month extension for all facilities.

EPA agrees that the time frames are ambitious but continues to believe that they can be met. As discussed in more detail below, the Agency has limited the issues to be resolved during this process, and, as requested by commenters, has amended the proposed regulation to specify in detail the information needed for a submission to be considered complete. Consequently, EPA anticipates it will be able to make most decisions without further requests for information. Nevertheless, to avoid penalizing a facility that has submitted a demonstration in good faith, the final rule provides that the deadline to cease receipt of waste will be tolled until the Agency determines that the submission is incomplete or reaches a final decision on whether the facility meets the criteria for the extension, even if it takes longer than four months. EPA disagrees that this will in essence grant all submitters a de facto four-month extension. The new deadline for submission is over four months in advance of the deadline to cease receipt of waste, and EPA anticipates being able to evaluate submissions prior to this deadline.

Once the owner or operator submits the demonstration to EPA for approval, the owner or operator must place a copy into the facility's operating record and on its publicly accessible CCR internet site. EPA will also post who has submitted a demonstration on EPA's website. After reviewing the submission, EPA will either post a determination that the submission is incomplete on EPA's website or a proposed decision to grant or to deny the request in whole or in part on *www.regulations.gov* for public notice and comment.

Consistent with the proposal, the public will have at least 15 days to comment on the proposed decision. If the demonstration is particularly complex, EPA would provide a longer comment period of 20 to 30 days. EPA will evaluate the comments received and amend its decision as warranted. EPA will post all decisions on its website, in the relevant docket and notify the facility. EPA proposed that decisions would become automatically effective 5 days from the close of the comment period if EPA received no substantive comments. EPA is not finalizing this approach because it would be too difficult to implement.

EPA acknowledges that the public comment periods are short but disagrees with the suggestion that they will be too short to be meaningful. EPA is requiring facilities to post all submissions on their publicly accessible CCR internet site at the same time they submit them to EPA. The public can start their review at the same time as EPA and begin to gather information and prepare their comments. In most cases, the issues to be resolved will be limited largely to whether the deadlines proposed to complete all activities are supported by the available information, and whether the facility remains in compliance with the regulations. EPA disagrees with the proposition that a 15- to 30-day comment period violates either section 7004(b) of RCRA or the APA. This process is not a rulemaking, but an informal adjudication. Such adjudications do not typically include an opportunity for public comment and therefore the provision of a 15 to 30-day comment period meets the mandate in RCRA section 7004(b) to promote public participation. Moreover, the APA imposes neither a requirement to provide an opportunity for public comment nor any minimum time for a comment period for such procedures. Finally, EPA notes that the same commenters requesting longer comment periods have also raised concern that the process grants facilities too much additional time to continue operating. EPA is also interested in not granting undue amounts of additional time for facilities to continue operating and is expediting all aspects of this process, including the comment period.

EPA will post all final decisions on EPA's website and in the appropriate docket. The decision will specify the facility's deadline to cease receipt of waste; for example, a decision rejecting a submission as incomplete prior to April 11, 2021 will specify that the deadline remains April 11, 2021. The facility must post, along with a copy of its demonstration, the Agency's final decision on the facility's publicly accessible CCR internet site. EPA intends to reach a final decision no later than four months after receiving a complete demonstration. If at any point in this process, a facility no longer needs an extension—*e.g.,* because it has completed construction of alternative capacity prior to approval from EPA—the facility must notify EPA and withdraw its demonstration.

Some commenters raised concern that EPA had neglected to propose the procedures associated with denial of extension requests and requested that EPA elaborate on these procedures in the final rule. EPA disagrees that the procedures in the proposed rule apply exclusively to situations in which EPA grants the request. While EPA anticipates there will be several possible responses to a request for an extension, the procedures associated with each are the same procedures that were outlined in the proposal.

One possible outcome is that EPA will grant the requested extension. In this case the procedure will follow the process outlined in the proposed rule and discussed above. EPA will post a proposed decision on *www.regulations.gov* for at least a 15-day comment period and will subsequently publish its final decision on EPA's website and in the relevant docket.

Another potential outcome is that no extension is granted. Some commenters requested that if EPA denies a request, the facility be granted an additional six months in which to continue receiving waste. EPA envisions that the circumstances under which a request is entirely denied will be limited and disagrees that it would be appropriate to universally grant a further six months in these situations. The most likely situation in which an extension is not granted will be where EPA rejects the submission as incomplete or determines that one or more of the criteria for the extension have not been met. In neither situation would authorizing additional time for the facility to operate be warranted.

As explained previously, EPA will reject incomplete submissions without

further process. This could include situations in which EPA cannot determine from the submission whether the criteria have been met (*e.g.,* the submitted information does not clearly address whether the downgradient monitoring system has been installed at the waste boundary or whether alternative capacity is available). No commenter disagreed that this was appropriate, and EPA continues to believe that in the absence of any showing that all regulatory criteria have been met no additional time could—and should—be authorized.

Another possibility is that EPA will propose to deny the application on the grounds that one or more of the criteria have not been met. For example, EPA may determine that the amount of time that the facility requested to complete the construction of the alternative capacity is not supported by the record. In this case all of the procedures described previously with respect to approvals will apply. And in this circumstance the amount of time that will be granted to the facility will be determined by the factual record that has been developed through this process. Whatever additional amount of time is determined to be appropriate based on the factual record before the agency at the time—which may be none—will necessarily be more appropriate than the commenter's proposed six-month period. For example, if a facility requests two additional years of operation and EPA determines that the submission only supports one year of continued operation, a six-month timeframe would be too short. Similarly, in some situations the facts may demonstrate that six months is too long. As another example, EPA may determine alternative capacity exists and can be feasibly utilized. EPA recognizes that the mere fact that disposal capacity exists somewhere does not necessarily constitute feasibility for purposes of this analysis. Nevertheless, there may be instances where disposal capacity is available off-site and within a reasonable distance. In this circumstance, as well, a six-month period of continued operation would be equally inappropriate.

Some commenters raised the argument that because part 257 is self-implementing and because certain regulatory provisions might be viewed as ambiguous, there could be differences in opinion on what constitutes compliance. These commenters felt that differences in interpretation should be discussed during EPA's review process and corrected as warranted as part of a facility's completion of its demonstration.

EPA is establishing an expedited process to resolve requests for continued operation under § 257.103; in order to meet these time frames EPA has limited the issues to be resolved in this proceeding. Thus, under the two new alternatives in § 257.103, in many cases one of the primary issues to be resolved will be whether the facility is in compliance with the regulations. Although EPA does not agree that the regulations are ambiguous, EPA may be able to engage in a limited amount of discussion with a facility before the submission deadline. To address concerns raised by commenters that the tolling period would grant de facto extensions for all facilities, such discussions would need to occur before the deadline for final submission of the request to avoid extending the tolling period. In addition, as explained previously, documentation that a facility remains in compliance with the requirements of subpart D provides critical support for a decision to allow continued operation of the unlined impoundment. This means that EPA must be able to affirmatively conclude that the facility meets this criterion prior to authorizing any continued operation of the unlined impoundment. As a consequence, any opportunity to correct the demonstration is limited to the period before the deadline for submission. Given that the final rule has been published well in advance of the deadline to cease receipt of waste, facilities will have sufficient time to raise these issues to the Agency in advance of submitting their application.

Finally, note that any determinations made in evaluating compliance aspects of submitted demonstrations will be made solely for the purpose of determining whether an extension of the deadline to cease receipt of waste is warranted. In making these determinations the Agency generally expects to consider and rely on the information in a submission, information contained in submitted comments to a proposed decision and any other information the Agency has at the time of the determination. These determinations may not be applicable or relevant in any other context. Should the facility's compliance status be considered outside of this context in the future, the Agency may reach a contrary conclusion based, for example, on new information or information that was not considered as part of this process.

(c) Transferring Between Site-Specific Alternatives (§ 257.103(f)(1) and (f)(2))

In the December 2019 proposal, EPA proposed that a facility could not utilize both the short-term extension § 257.103(e) and the site-specific longer extensions § 257.103(f). However, in the proposal EPA did not discuss whether a facility could switch between the site-specific extensions. Several comments discussed this issue explaining the importance of being able to switch between the lack of alternative capacity extension in § 257.103(f)(1) and the cessation of coal-fired boiler(s) in § 257.103(f)(2) and vice versa.

Several of these commenters stated that it is possible for a utility to determine that they will shut down their coal-fired boiler(s) after being approved under § 257.103(f)(1) and still be able to meet the deadlines under § 257.103(f)(2). They continued on to state that were this to happen a facility should be able to subsequently make the demonstration and switch extensions. Commenters also pointed out that allowing facilities to switch from § 257.103(f)(1) to § 257.103(f)(2) would expedite the closure of the CCR surface impoundment in question and also reduce the overall risk, consistent with subtitle D protectiveness standard.

These commenters additionally stated that the opposite is also possible where a facility will learn that they are unable to retire their coal-fired boilers and will need to develop alternative capacity. As such a facility should be able to make the demonstration and switch extensions. Therefore, EPA should provide a process for owners and operators to exercise this flexibility.

EPA agrees with the commenters that a situation may arise where a facility needs to change course due to unexpected business decisions and that there should be a process for a facility to switch between the site-specific alternative closure provisions. Therefore, EPA is adding regulations at § 257.103(f)(4) to allow the transfer between site-specific alternatives. The process of obtaining approval will be the same as it would be under the initial application for approval.

6. Conforming Amendments to § 257.103(a), (b), (c) and (d)

To conform with the new provisions for CCR surface impoundments, EPA proposed a series of amendments to the § 257.103 introductory paragraph and at § 257.103(a), (b), and (c). Additionally, EPA proposed amending § 257.103(a) and (b) to only be applicable to CCR landfills.

(a) Amendments to § 257.103(a) and (b)

EPA proposed to revise the introductory paragraph to § 257.103 to add the phrase ''and/or non-CCR wastestreams'' and to add references to the proposed new paragraphs (e) and (f) to § 257.103 for the short-term alternative and the alternative compliance deadlines respectively. EPA also proposed conforming revisions to § 257.103(a) and (b) to reflect the proposed alternative closure deadlines for surface impoundments. The current § 257.103(a) and (b) apply to both CCR landfills and CCR surface impoundments undergoing closure under § 257.101 that need additional time to find alternative capacity for only CCR wastestreams. To be consistent with the proposals, EPA proposed amending § 257.103(a) and (b) to only apply to CCR landfills.

Consistent with the decisions discussed previously, EPA has decided to finalize the proposed conforming amendments to § 257.103(a) and (b) so that those provisions only apply to CCR landfills. In addition, to address the concerns that proposed revisions to the introductory paragraph could be read to authorize all units to receive non-CCR wastestreams, EPA is revising the introductory paragraph to § 257.103 to provide that the owner or operator may continue to receive the waste specified in paragraphs (a), (b) or (f). Additionally, the references to § 257.101(a) and (b)(1) are being removed from § 257.103(a) and (b), as those sections apply only to CCR surface impoundments. EPA is also revising the term ''CCR unit'' to ''CCR landfill'' to ensure clarity that § 257.103(a) and (b) apply only to CCR landfills.

(b) Amendments to § 257.103(c) and (d)

In the December 2, 2019 proposal, EPA proposed to amend § 257.103(c) to make conforming changes to the notification requirements. When EPA amended the cease receipt of waste date in the July 2018 rule in § 257.101(a) and (b)(1), EPA neglected to make the conforming changes to the notification requirements in § 257.103(c). EPA proposed to amend § 257.103(c)(1) by adding new paragraphs (i) through (iii) for CCR units closing pursuant to § 257.101(a), (b)(1), and (d), respectively. Each respective subparagraph then requires the owner or operator to prepare the notification no later than the cease receipt of waste date according to § 257.101(a), (b)(1), and (d). The current text of § 257.103(c)(1) requires the owner or operator to prepare a notification within six months of becoming subject to closure pursuant to § 257.101(a), (b)(1), or (d). In light of the *USWAG* decision and the revisions adopted in this rule, this language no longer makes sense.

EPA received very few comments related to this section. Most comments stated generic support or disagreement for amending § 257.103(a) and (b) to only apply to landfills. There were no specific comments on the proposed modifications to the regulatory text in § 257.103(c).

In the December 2, 2019 proposal EPA did not make the correct conforming changes to § 257.103(c). EPA did not need to add the new notification deadlines for the units closing pursuant to § 257.101(a) and (b)(1) because of the restructuring of § 257.103(a) and (b). As § 257.103(a) and (b) will now only apply to CCR landfills, § 257.103(c) only needs to contain the notification date associated with CCR landfills closing pursuant to § 257.101(d). Therefore, EPA will not be finalizing the proposed amendments to § 257.103(c)(1) by adding new paragraphs (i), (ii), and (iii). Rather, EPA is amending the regulatory text of § 257.103(c)(1) by removing the citations for § 257.101(a) and (b)(1). This amendment to the regulatory text clarifies the notification requirements for § 257.103(a) and (b). Additionally, EPA is replacing the term ''CCR unit'' with ''CCR landfill'' throughout § 257.103(c) to add clarity that the provision only applies to CCR landfills. This change is represented in § 257.103(c).

EPA is also replacing the term ''CCR unit'' with ''CCR landfill'' in § 257.103(d). EPA did not propose this amendment however EPA believes it adds further clarity to the regulation. This change is represented in § 257.103(d).

VI. What final action is EPA taking on the August 14, 2019 proposal?

A. Revisions to the Annual Groundwater Monitoring and Corrective Action Report Requirements

Currently, § 257.90(e) requires owners and operators of CCR units to prepare an annual groundwater monitoring and corrective action report (''annual report''). This annual report must document the status of the groundwater monitoring and corrective action program for the CCR unit, summarize key actions completed, describe any problems encountered, discuss actions to resolve the problems, and project key activities for the upcoming year. The CCR regulations also specify the minimum information that must be included in the annual report. For example, one of the current requirements is to provide all the monitoring data obtained under the groundwater monitoring and corrective action program for the year covered by the report. The CCR regulations further require the owner or operator to include a data summary in the report with information such as the number of groundwater samples that were collected for analysis for each background and downgradient well, the dates the samples were collected, and whether the samples were required by the detection monitoring or assessment monitoring programs. See, § 257.90(e)(3). Except for certain inactive CCR surface impoundments, owners and operators must prepare the initial annual report no later than January 31, 2018 and post the report to its publicly accessible CCR internet site within 30 days of preparing the report. See, §§ 257.90(e) and 257.107(d). For eligible inactive CCR surface impoundments,[40] the deadline to prepare the initial annual report is August 1, 2019. See, § 257.100(e)(5)(ii).

The Agency reviewed the annual reports available on facilities' publicly accessible CCR internet sites that were due by January 31, 2018 and January 31, 2019 and observed that some facilities did not provide groundwater monitoring data in formats that were clear and easy for the public to understand. EPA found instances where it was difficult to determine whether the analytical results corresponded to background or downgradient wells, whether the CCR unit was operating under the detection or assessment monitoring program, when the assessment monitoring program was initiated for the CCR unit, or whether the facility had initiated corrective action for the unit. In addition, several facilities only provided hundreds or thousands of pages of laboratory printouts of the data, making it difficult for the public and other stakeholders to put the results into context within the overall groundwater monitoring program.

The purpose of requiring posting of the annual reports is to allow the public, states and EPA to easily see and understand the groundwater monitoring data. To accomplish this purpose, the Agency is finalizing one revision to the annual groundwater monitoring and corrective action reporting requirements and providing more explanation of another revision included in the preamble of the August 2019 proposed rule. See 84 FR 40365–40366.

[40] For more information on eligible inactive CCR surface impoundments, see the preamble to the direct final rule published on August 5, 2016 (81 FR 51802).

First, EPA is amending § 257.90 by adding new paragraph (e)(6) requiring a summary to be included at the beginning of the annual report. EPA received many comments on this proposal, most of which were supportive of the addition of the proposed provisions at § 257.90(e)(6).

Environmental groups and most private citizens who commented supported the inclusion of an upfront summary because a summary would be helpful for the public to understand the reports. They also said the summaries should include and not misrepresent or gloss over the conclusions based on the data. Specifically Earthjustice et al. commented that proper oversight and enforcement of the CCR regulations can only happen if owners and operators include a clear summary of the status of groundwater monitoring and corrective action, each statistically significant increase (SSI) over background levels (for Appendix III constituents) or groundwater protection standards (for Appendix IV constituents). They further commented that the report should include the dates when assessment monitoring was initiated, when an assessment of corrective measures was initiated, when an assessment of corrective measures was completed, and when a remedy was selected, where applicable. Earthjustice et al. also commented that clear summaries of all groundwater monitoring data are necessary, not just the data associated with an SSI.

Multiple states commented on this issue. The Alabama Department of Environmental Management commented that the report should include whether a facility began or ended the reporting cycle in detection or assessment monitoring (as well as provide the dates for the transition), and specify if and when a facility has moved to the corrective action stage of the groundwater monitoring program. The Virginia Department of Environmental Quality also supported the minimum set of requirements included in the proposal.

Many industry stakeholder and electric utility commenters supported the inclusion of an upfront summary setting forth certain information to help readers understand the data contained in the report and to provide more specificity and transparency as to what the report contains. Some industry group commenters did not support repeating information in the annual reports that is already required by the groundwater sampling and analysis plan at § 257.93. Some industry commenters wanted clarification that these requirements would not apply retroactively to past annual reports.

In light of these comments, the Agency is finalizing the new requirements at § 257.90(e)(6). This new provision establishes a minimum set of requirements to be addressed in the summary discussion of the status of the groundwater monitoring and corrective action programs for the CCR unit at the beginning of the annual report (*e.g.,* as part of the report's executive summary). The minimum requirements for this summary include stating whether the CCR unit was operating pursuant to the detection monitoring program under § 257.94 or the assessment monitoring program under § 257.95; identifying those constituents and the corresponding wells, if any, for which the facility had determined that there is a statistically significant increase over background levels for constituents listed in Appendix III (or if operating under the assessment monitoring program, constituents in Appendix IV that were detected at statistically significant levels above the groundwater protection standard); the date when the assessment monitoring program was initiated for the CCR unit; and a description and the dates of any corrective measures initiated or completed, including the remedy, during the annual reporting period. These requirements will only apply to future annual reports, starting with the next report completed after the effective date of this final rule. EPA believes the elements finalized are sufficient to give a snapshot of the groundwater monitoring and corrective action activities in the previous year but are not repetitive with other rule requirements.

Second, the Agency solicited comment on whether to amend § 257.90 to require the groundwater monitoring analytical results and related information to be presented in a standardized format, such as multiple tables, in the annual report. Possible examples of standard formats are available for review in the docket of the August 2019 proposal.[41] The Agency also requested comment on formats that could be used.

Information about the groundwater wells was proposed to include the following data elements: Well identification number, sampling date, latitude and longitude in decimal degrees, groundwater elevation including well depth to groundwater and total depth of groundwater, and whether the groundwater well is upgradient or downgradient of the CCR unit. This information is already collected and reported in the groundwater sampling and analysis plan under § 257.93 and so the information is readily available to the facility.

Sample information was proposed to be provided in a table that contains fields including sampling date, sampling time, sampling phase (*i.e.,* background, detection monitoring, assessment monitoring, corrective action), whether the groundwater well is upgradient or downgradient of the CCR unit, and analytical methods listed separately for every method used to analyze the constituent concentrations. Data for Appendix III to part 257—Constituents for Detection Monitoring was proposed to contain concentrations in milligrams per liter (unless otherwise specified) of the following: Boron, calcium, chloride, fluoride, pH (standard units), sulfate, and total dissolved solids (TDS). Data for Appendix IV to part 257—Constituents for Assessment Monitoring was proposed to contain concentrations in milligrams per liter (unless otherwise specified) of the following: Antimony, arsenic, barium, beryllium, cadmium, chromium, cobalt, lead, lithium, mercury, molybdenum, radium 226–228 combined (pCi/L), selenium, and thallium. It was proposed that each constituent concentration identify the detection limit for the analytical method used with data qualifiers specified for non-detect samples.

EPA believed that a required standardized format would increase transparency and enable the general public, as well as Federal, state, and local officials, to more easily understand the groundwater monitoring data and thus plan for and evaluate the appropriate next steps to protect public health and the environment.

The Agency received many comments on the groundwater monitoring data standardized format. In general, environmental organizations and citizens supported the inclusion of data in a standardized format for ease of understanding and for the reasons included in the proposal. Many commenters requested the data to be presented in a machine-readable and preferably spreadsheet format. Some commenters, including Earthjustice, said EPA should require elements beyond those included in the proposal to satisfy the RCRA section 4004 protectiveness standard, and include the location of the groundwater well, groundwater elevation, and whether each well is upgradient, downgradient, sidegradient, or something else. These

[41] See EPA memorandum titled ''Annual Groundwater Monitoring Report Data Examples''; dated July 1, 2019. (EPA–HQ–OLEM–2018–0524–0013)

comments also said that access to the full data set should be included without having to wade through thousands of pages of laboratory reports to provide the public, state and Federal agencies with an opportunity to independently evaluate the data. Some commenters recommended that a summary of historical detections would also be helpful, especially if groundwater protection standards are established based on background concentrations at a given site.

While state commenters were generally supportive of requiring groundwater monitoring analytical results in a standardized format, the Agency received comment from only two states on this issue. Alabama Department of Environmental Management supported the requirement that groundwater analytical results for each sampling event be summarized, preferably in tabular format, for ease of the reader. The state found it has been extremely difficult, even for a trained individual, to review groundwater monitoring reports given the complex nature of the sites and the magnitude of data being presented. The state recommended a summary of historical detections would also be helpful, especially if groundwater protection standards are established based on background concentrations at a given site. The Virginia Department of Environmental Quality (VDEQ) generally supported the inclusion of a minimum set of requirements in a summary of the groundwater monitoring and corrective action programs. However, VDEQ stated that the standardized format and elements should only be a minimum standard so that states may require additional elements or information in state reporting without requiring separate reports to be generated.

Overall, industry commenters did not support the addition of standardized formats for groundwater monitoring data and analytical results. Industry commenters did support EPA's desire to make information decipherable to the public but believe the regulations should maintain flexibility for states and for facilities to determine how best to present the data. Some said a standardized format could be problematic in that certain facilities may not be able to display site-specific well networks sufficiently to meet the requirements of the CCR regulations. Other industry commenters said EPA should not require additional information beyond what is currently required by § 257.90(e) for the annual reports. Many industry commenters expressed concern about requiring information about groundwater wells including latitude and longitude of the wells in decimal degrees. These commenters said such information poses a security concern for the facility. They believe that providing a map of the monitoring wells is sufficient to be in compliance with the CCR regulations.

After considering the comments, EPA is not finalizing a requirement for owners and operators of CCR units to present groundwater monitoring analytical results in a standardized format. EPA is not convinced that such a requirement is necessary to serve the purposes of ensuring greater transparency. The Agency is also concerned about prescribing a standardized format which may not be consistent with existing state reporting requirements, especially given that only two states provided comments on this issue. The new requirement for a summary will ensure that the critical information is presented up front in the report, where it can be readily accessed by the public. EPA believes the current groundwater monitoring requirements of § 257.90 are sufficient as a minimum set of criteria to show the groundwater monitoring activities of the previous year. EPA also agrees with the commenters that allowing states the flexibility in requiring certain data elements and formats because of the use of certain software or what is required by the state regulations for consistency is important. Additionally, EPA is maintaining flexibility for facilities to report groundwater monitoring data in ways that are publicly accessible for all stakeholders. If, however, it becomes clear that the summaries are insufficient to ensure that the annual reports provide the public with useful information EPA will revisit this issue.

In this regard, it should be noted, however, that the annual reports should not only contain thousands of pages of groundwater monitoring data directly from the laboratory. Many commenters said this data is difficult to sift through, even for trained environmental specialists. That format is not easy to understand for the public, either. Data should be presented in a way that clearly communicates the required information to the general public in order to ensure proper oversight and enforcement of the CCR regulations by the public, states, and Federal agencies. The data could be presented in a tabular format, include historical detections, or include elements in the proposal that are not being finalized in this action.

B. Revisions to the Publicly Accessible CCR Internet Site Requirements

In the 2015 CCR rule, pursuant to RCRA section 7004(b)(2), the Agency promulgated a requirement for owners and operators of any CCR unit to establish and maintain a publicly accessible internet site, titled ''CCR Rule Compliance Data and Information.'' Section 7004(b)(3) directs EPA to provide for, encourage, and assist ''[p]ublic participation in the development, revision, implementation, and enforcement of any regulation, guideline, information, or program under this chapter.'' To achieve these ends, internet postings are required for various elements identified in the following sections of the CCR regulations: Location restrictions; design criteria; operating criteria; groundwater monitoring and corrective action; and closure and post closure care. Consistent with the statutory directive, the websites are important to make the notices and relevant information required by the regulations available to the public in a manner that will encourage and assist public participation in the implementation of the regulations. This means, for example, that the posted documents must be clearly identifiable as documents, reports, demonstrations, etc., to those attempting to access them. The internet is a widely accessible and effective means for gathering and disseminating information to the public and the states.

EPA has observed that some of the publicly accessible internet sites that owners and operators of CCR facilities have established in response to the CCR regulations, fail to make the posted documents publicly accessible. For example, a number of publicly accessible CCR internet sites require either some sort of registration whereby personal information identifying the user must be provided before members of the public are granted ''access'' to the website. Other websites require a user to submit a request for each document individually and the requested document is subsequently emailed to the user. Still other websites have been designed such that the posted documents cannot be downloaded or printed from the website. EPA does not consider these kinds of practices to be consistent with the requirement that the information be made publicly available. EPA acknowledges that the current regulation does not define the term ''publicly available,'' or contain detailed requirements that such websites must meet, nor are the practices described above explicitly prohibited. To avoid

any further confusion, EPA proposed to amend the current regulation to clearly specify that facilities must ensure that all information required to be on the websites must be made available to any member of the public, including through printing and downloading, without any requirement that the public wait to be ''approved'', or provide information in order to access the website.

States, industry and environmental groups submitted comments that agreed with this proposal. Specifically, the states of Alabama and Virginia commented that they agreed with this proposed requirement. Earthjustice, Arizona Electric Power Cooperative Incorporated, the American Public Power Association, Labadie Environmental Organization, Sierra Club and the Blue Ridge Environmental Defense Fund also submitted comments stating that they agreed with the proposed requirement to make information and documents on the publicly accessible CCR internet site immediately accessible (including downloading and printing). One commenter said that EPA should not completely prohibit registration features on CCR websites because those features can alert the companies that users are having trouble accessing the data and allows the facility to contact those individuals to assist them. The Agency believes that requiring some sort of mechanism for users to contact the facility if there are issues with accessing the information on the site is a more effective mechanism to address those types of problems. Another company commented that EPA should not view these security approaches as inappropriately limiting access to utilities' publicly available CCR sites, as they are needed to protect the security interests of the utilities. This commenter did not provide details on how or why these practices are needed to address security concerns. In the absence of any explanation of the commenter's concerns and given that the vast majority of publicly accessible CCR internet sites do not require registration or permission to access the information, EPA does not believe this is enough justification to limit or restrict access to the information. Therefore, EPA is finalizing this revision to the regulations as proposed.

Another issue EPA has noticed is that the internet addresses for many of the publicly accessible CCR internet sites have changed; for some sites, more than once. It is very difficult for the public, states, and EPA to access the information required to be posted on these websites if the URLs change without notice. In response, the Agency proposed to amend the regulations to require that facilities notify EPA within 14 days of changing their publicly accessible CCR internet site address, to allow EPA to update the Agency's website with the correct URL address. Commenters generally agreed with this requirement and one commenter suggested that facilities also notify the state director when the URL for the facility's website changes. EPA agrees with this suggestion and is finalizing the requirement that when a facility changes the URL for its publicly accessible CCR internet site, they must notify EPA and the state director within 14 days of the new website address.

Another issue EPA has noted is that when there is a question or problem with a publicly accessible CCR internet site, such as a broken link or a document that will not download, it can be difficult to reach the appropriate contact at the facility in order to gain access to the information. Therefore, the Agency requested comment on whether each publicly accessible CCR internet site should be required to have a mechanism (*e.g.,* a ''contact us'' electronic form on the CCR website) for the public to contact the facility about issues of information accessibility. Commenters generally agreed with the idea of having some way for the public to easily contact the correct person to report problems with the website. One commenter said that EPA should require owners and operators to post a contact email address rather than a contact form. Several commenters suggested that the specific mechanism for the public to bring issues of information accessibility to the facility should be left up to the facility. EPA agrees that some sort of ''contact us'' mechanism is warranted; for example this could include either a ''contact us'' form much like the one EPA uses on the EPA CCR website or an email address for a specific contact at the facility who can address issues related to the accessibility on the website. The Agency is adding this requirement to the regulations in § 257.107(a).

One commenter also mentioned that even though § 257.107(c) requires that the information posted to the website must be made available to the public for at least five years, some documents are being removed from the websites after they are posted. EPA would like to reiterate that the regulations require that posted documents remain on the websites for at least five years. Section 257.107(c). If the documents are revised or updated, the original documents must still remain on the website. The same requirement exists if a unit is closed or consolidated with another unit; the original documents that were required for that unit must remain on the website for at least five years.

VII. Rationale for 30-Day Effective Date

The effective date of this rule is 30 days after publication in the **Federal Register**. The Administrative Procedure Act (APA) provides that publication of a substantive rule shall be made not less than 30 days before its effective date and that this provision applies in the absence of a specific statutory provision establishing an effective date. See 5 U.S.C. 553(d) and 559. EPA has determined there is no specific provision of RCRA addressing the effective date of regulations that would apply here, and thus the APA's 30-day effective date applies.

EPA has previously interpreted section 4004(c) of RCRA to generally establish a six-month effective date for rules issued under subtitle D. See 80 FR 37988, 37990 (July 2, 2015). After further consideration, EPA interprets section 4004(c) to establish an effective date solely for the regulations that were required to be promulgated under subsection (a). Section 4004(c) is silent as to subsequent revisions to those regulations; EPA therefore believes section 4004(c) is ambiguous.

Section 4004(c) states that the prohibition in subsection (b) shall take effect six months after promulgation of regulations under subsection (a). Subsection (a), in turn provides that ''[n]ot later than one year after October 21, 1976 . . . [EPA] shall promulgate regulations containing criteria for determining which facilities shall be classified as sanitary landfills and which shall be classified as open dumps within the meaning of this chapter.'' As noted, section 4004(c) is silent as to revisions to those regulations.

In response to Congress's mandate in section 4004(a), EPA promulgated regulations on September 13, 1979. 44 FR 53438. EPA interprets section 4004(c) to establish an effective date applicable only to that action, and not to future regulations the Agency might issue under this section. In the absence of a specific statutory provision establishing an effective date for this rule, APA section 553(d) applies.

EPA considers that its interpretation is reasonable because there is no indication in RCRA or its legislative history that Congress intended for the agency to have less discretion under RCRA subtitle D than it would have under the APA to establish a suitable effective date for subsequent rules issued under section 4004(c). Consistent with EPA's interpretation of the express

language of section 4004, EPA interprets statements in the legislative history, explaining that section 4004(c) provides that the effective date is to be 6 months after the date of promulgation of regulations, as referring to the initial set of regulations required by Congress to be promulgated not later than 1 year after October 21, 1976. These statements do not mandate a 6 month effective date for every regulatory action that EPA takes under this section. This rule contains specific, targeted revisions to the 2015 rule and the legislative history regarding section 4004 speaks only to these initial 1976 mandated regulations.

This reading allows the Agency to establish an effective date appropriate for the nature of the regulation promulgated, which is what EPA believes Congress intended. EPA further considers that the minimum 30-day effective date under the APA is reasonable in this circumstance where none of the provisions being finalized require an extended period of time for regulated entities to comply.

VIII. State CCR Programs

A. Effect on This Final Rule on States With Approved CCR Programs

This final rule has impacts on states with an approved program. The effects depend on whether the state has received approval for the provisions that have been amended in this rule. As of this final rule, EPA has granted approvals to the states of Oklahoma and Georgia.

On June 28, 2018, EPA granted Oklahoma full program approval. However, on April 15, 2020, the U.S. District Court for the District of Columbia vacated part of that approval. *Waterkeeper Alliance Inc.* v. *Wheeler*, No. 18–02230, 2020 WL 1873564 (D.D.C. Apr. 15, 2020). Specifically, the court vacated those portions of the Oklahoma program approval that mirrored those portions of the federal program that had been vacated by the D.C. Circuit in *USWAG—i.e.,* the provisions that allowed unlined impoundments to continue to operate until they leak; the provisions that treated ''clay-lined'' units as lined units; and the provisions that excluded legacy units. As a consequence, the federal requirements that correspond to those provisions will now apply in Oklahoma. Two of these provisions have been revised in this rulemaking, and those revisions will take effect in Oklahoma because these federal requirements continue to operate. These are the revisions to 40 CFR 257.101(a) and section 257.71(a)(1)(i).

However, Oklahoma was granted approval for § 257.103, and their regulations continue to operate without change in lieu of the federal program. In essence this means that the revisions promulgated in this rule making will not take effect in Oklahoma until such time as Oklahoma revises the program to adopt them. However, Oklahoma must revise its CCR regulations within three years of any revisions to the federal regulations that are more stringent, in order to maintain their program approval. See, RCRA section 4005(d)(1)(D)(i)(II). EPA determined that parts of the amendments to § 257.103 are more stringent than the previous regulations. The modifications that allow the continued disposal of non-CCR wastestreams are arguably less stringent; however, the maximum amount of time allowed under the new provisions in § 257.103 is less than that allowed under the previous regulations and therefore these revisions are considered to be more stringent.

The same is true with respect to the amendments to the annual groundwater monitoring and corrective action report and to the publicly accessible CCR internet sites requirements in §§ 257.90 and 257.107. EPA considers these revisions to be more stringent because they impose new substantive requirements. However, because the state provisions that correspond to these federal requirements have been approved the federal revisions will not take effect unless the state adopts the revisions.

To maintain their program approval, Oklahoma will have to update its state CCR regulations and submit the modified portions for EPA approval. The process for approving Oklahoma's modifications is the same as for the initial program approval: EPA will propose to approve or deny the program modification and hold a public hearing during the comment period. EPA will then issue the final program determination within 180 days of determining that the state's submission is complete.

Similarly, Georgia did not apply for approval of four provisions in their permit program; as a consequence, the federal requirements that correspond to those four provisions continue to apply in Georgia. Two of these four provisions have been revised in this rulemaking, and those revisions will take effect in Georgia because these federal requirements continue to operate. These are the revisions to §§ 257.101(a) and 257.71(a)(1)(i). For the same reason, the state is not required to modify these parts of their program within the three years in order to maintain program approval. However, Georgia was granted approval for §§ 257.90, 257.103, 257.107, and because the state regulations operate in lieu of the federal regulations the revisions made to these provisions in this rule will not take effect in Georgia unless the state amends its regulations to adopt them.

As discussed above, because the amended provisions are more stringent than the previous regulations, Georgia will need to amend its regulations to incorporate the new timeframes within three years of the effective date of this final rule and submit a program modification to EPA for approval.

IX. Economic Impacts of This Action

A. Introduction

EPA estimated the costs and benefits of this action in a Regulatory Impact Analysis (RIA), which is available in the docket for this action. The RIA estimates the incremental costs and cost savings attributable to the provisions of this action against the baseline costs and practices in place as a result of the 2015 CCR final rule, and the 2018 CCR Phase One final rule.

EPA updated the 2015 CCR final rule baseline to account for the 2018 Phase One final rule and also to account for two developments. These are the availability of publicly accessible universe data and the effect of the 2018 court decisions. These updates increase the baseline costs estimated for the CCR program against which the RIA estimates the incremental effects of this final rulemaking action.

The RIA estimates that the net annualized impact of this final regulation will be annual cost savings of $26.1 million at 7 percent or an estimated annualized net cost savings of $16.7 million per year when discounting at 3 percent. This action is not considered an economically significant action under Executive Order 12866.

B. Affected Universe

This final rulemaking action affects coal fired electric utility plants (assigned to the utility sector North American Industry Classification System (NAICS) code 22). The rule is estimated to potentially impact 523 surface impoundments at 229 facilities.

C. Costs, Cost Savings, and Benefits of the Final Rule

The costs attributable to this final rule arise from the reporting and documentation that must be completed by regulated entities and submitted to EPA in order to qualify for some of the closure deadline extension provisions of

the rule as well as other reporting requirements related to the annual groundwater monitoring and corrective action reports, publicly accessible CCR internet sites, and the closure of CCR units. These costs are estimated to amount to an annualized $0.2 million per year when discounting at 7 percent and an annualized $0.02 million per year when discounting at 3 percent.

The cost savings attributable to this final rule include cost savings from extending the deadlines by which units must cease receiving waste and initiate closure. Cost savings also follow from the avoided cost of new unit construction for CCR units associated with qualified coal fired boilers which are closing by 2023 or 2028. Overall, the final rule is expected to result in net cost savings of an annualized $26.1 million when discounting at 7 percent or an estimated annualized net cost savings of $16.7 million per year when discounting at 3 percent.

The RIA accompanying the 2015 CCR Rule monetized 11 categories of benefits attributable to the national minimum criteria. EPA expects to retain the vast majority of these monetized benefits under the provisions of the Part A rule. Some benefit categories, such as reduced future CCR impoundment releases, are unaffected by the provisions of the Part A rule. Other benefit categories, such as reduced groundwater contamination and other human health and environmental benefits should be largely retained because EPA is requiring units that take advantage of the alternative closure provisions in § 257.103(f)(1) and § 257.103(f)(2) to certify to EPA that they are in full compliance with the 2015 CCR rule. Units unable to make this certification must instead close by the earliest possible date, which EPA identifies as April 11, 2021. A discussion of the impact to each category of monetized benefits is available in Section 3.4 of the Part A RIA.

X. Statutory and Executive Order (E.O.) 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 is a significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review because it raises novel legal or policy issues. Any changes made in response to OMB recommendations have been documented in the docket. EPA prepared an analysis of the potential costs and benefits associated with this action. This analysis is available in the docket and is summarized in section IX of this preamble.

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

This action is considered an Executive Order 13771 deregulatory action. Details on the estimated costs of this final rule can be found in EPA's analysis of the potential costs and benefits associated with this action.

C. Paperwork Reduction Act (PRA)

The information collection activities in this final rule have been submitted for approval to the Office of Management and Budget (OMB) under the PRA. The Information Collection Request (ICR) document that EPA prepared has been assigned EPA ICR number 1189.32. You can find a copy of the ICR in the docket for this rule, and it is briefly summarized here.

The information to be collected as a part of this rule includes demonstrations that must be made to EPA by owners and operators of units that seek to obtain a § 257.103(f)(1) extension. These demonstrations will show that the unit in question meets the necessary criteria to receive the extension. Units that operate under this extension will also be required to publish semi-annual progress reports on their publicly accessible CCR internet sites to keep EPA and the public appraised of their progress and any operational changes at the facility. Similarly, units that seek to obtain a § 257.103(f)(2) extension must demonstrate to EPA that they meet the necessary criteria to receive the extension. The criteria are generally the same as the criteria for § 257.103(f)(1) with the addition of a risk mitigation plan. Units that obtain an extension under § 257.103(f)(2) must publish annual progress reports on their publicly accessible CCR internet sites.

Information to be collected also include the addition of a summary at the beginning of the required annual groundwater monitoring and corrective action reports. These summaries will make the information in the reports more easily accessible to the public.

EPA is also revising the requirements for publicly accessible CCR internet sites to ensure that all information required to be on the websites be made available to any member of the public in multiple formats, in a timely way, and not requiring any information be submitted in exchange for access.

Respondents/affected entities: Coal-fired electric utility plants that will be affected by the rule.

Respondent's obligation to respond: The recordkeeping, notification, and posting are mandatory as part of the minimum national criteria being promulgated under Sections 1008, 4004, and 4005(a) of RCRA.

Estimated number of respondents: 299.

Frequency of response: The frequency of response varies.

Total estimated burden: EPA estimates the total annual burden to respondents to be an increase in burden of approximately 9,820 hours from the currently approved burden. Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $722,000 (per year), includes $0 annualized capital or operation & maintenance costs.

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 for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, EPA believes that the impact of concern is any significant adverse economic impact on small entities, and that 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. The rule is estimated to potentially impact 77 facilities that are considered small.

This action is expected to result in net cost savings of an annualized $26.1 million per year. These cost savings will accrue to all regulated entities. We have therefore concluded that this action will relieve regulatory burden for all directly regulated small entities.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action imposes 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. 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. For the ''Final Rule: Hazardous and Solid Waste Management System; Disposal of Coal Combustion Residuals from Electric Utilities'' published April 17, 2015 (80 FR 21302), EPA identified three of the 414 coal-fired electric utility plants (in operation as of 2012) as being located on tribal lands. However, this action does not impose substantial direct compliance costs or otherwise have a substantial direct effect on one or more Indian tribes, to the best of EPA's knowledge. Neither will it have substantial direct effects 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. Thus, Executive Order 13175 does not apply to this action.

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

This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because EPA does not believe the environmental health risks or safety risks addressed by this action present a disproportionate risk to children. This action's health and risk assessments are contained in the document titled ''Human and Ecological Risk Assessment of Coal Combustion Residuals,'' which is available in the docket for the final rule as docket item EPA–HQ–RCRA–2009–0640–11993.

As ordered by E.O. 13045 Section 1–101(a), for the ''Final Rule: Hazardous and Solid Waste Management System; Disposal of Coal Combustion Residuals from Electric Utilities'' published April 17, 2015 (80 FR 21302), EPA identified and assessed environmental health risks and safety risks that may disproportionately affect children in the revised risk assessment. The results of the screening assessment found that risks fell below the criteria when wetting and run-on/runoff controls required by the rule are considered. Under the full probabilistic analysis, composite liners required by the rule for new waste management units showed the ability to reduce the 90th percentile child cancer and non-cancer risks for the groundwater to drinking water pathway to well below EPA's criteria. Additionally, the groundwater monitoring and corrective action required by the rule reduced risks from current waste management units. This action does not adversely affect these requirements and EPA believes that this rule will be protective of children's health.

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

This action is not a ''significant energy action'' because it is not likely to have a significant adverse effect on the supply, distribution or use of energy. For the 2015 CCR rule, EPA analyzed the potential impact on electricity prices relative to the ''in excess of one percent'' threshold. Using the Integrated Planning Model (IPM), EPA concluded that the 2015 CCR Rule may increase the weighted average nationwide wholesale price of electricity between 0.18 percent and 0.19 percent in the years 2020 and 2030, respectively. As the proposed rule represents a cost savings rule relative to the 2015 CCR rule, this analysis concludes that any potential impact on wholesale electricity prices will be lower than the potential impact estimated of the 2015 CCR rule; therefore, this proposed rule is not expected to meet the criteria of a ''significant adverse effect'' on the electricity markets as defined by Executive Order 13211.

J. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

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

EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). The documentation for this decision is contained in EPA's Regulatory Impact Analysis (RIA) for the CCR rule which is available in the docket for the 2015 CCR final rule as docket item EPA–HQ–RCRA–2009–0640–12034.

EPA's risk assessment did not separately evaluate either minority or low-income populations. However, to evaluate the demographic characteristics of communities that may be affected by the CCR rule, the RIA for the 2015 CCR Rule compares the demographic characteristics of populations surrounding coal-fired electric utility plants with broader population data for two geographic areas: (1) One-mile radius from CCR management units (*i.e.,* landfills and impoundments) likely to be affected by groundwater releases from both landfills and impoundments; and (2) watershed catchment areas downstream of surface impoundments that receive surface water run-off and releases from CCR impoundments and are at risk of being contaminated from CCR impoundment discharges (*e.g.,* unintentional overflows, structural failures, and intentional periodic discharges).

For the population as a whole 24.8 percent belong to a minority group and 11.3 percent falls below the Federal Poverty Level. For the population living within one mile of plants with surface impoundments 16.1 percent belong to a minority group and 13.2 percent live below the Federal Poverty Level. These minority and low-income populations are not disproportionately high compared to the general population. The percentage of minority residents of the entire population living within the catchment areas downstream of surface impoundments is disproportionately high relative to the general population, *i.e.,* 28.7 percent, versus 24.8 percent for the national population. Also, the percentage of the population within the catchment areas of surface impoundments that is below the Federal Poverty Level is disproportionately high compared with the general population, *i.e.,* 18.6 percent versus 11.3 percent nationally.

L. Congressional Review Act (CRA)

This action is subject to the CRA, and 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 257

Environmental protection, Beneficial use, Coal combustion products, Coal combustion residuals, Coal combustion waste, Disposal, Hazardous waste, Landfill, Surface impoundment.

Andrew Wheeler,

Administrator.

For the reasons set out in the preamble, EPA amends title 40, chapter

I, of the Code of Federal Regulations as follows:

PART 257—CRITERIA FOR CLASSIFICATION OF SOLID WASTE DISPOSAL FACILITIES AND PRACTICES

■ 1. The authority citation for part 257 is revised to read as follows:

Authority: 42 U.S.C. 6907(a)(3), 6912(a)(1), 6944, 6945(a) and (d); 33 U.S.C. 1345(d) and (e).

■ 2. Amend § 257.53 by adding definitions in alphabetical order for ''Eligible unlined CCR surface impoundment,'' ''Technically feasible,'' and ''Technically infeasible'' to read as follows:

§ 257.53 Definitions.

* * * * *

Eligible unlined CCR surface impoundment means an existing CCR surface impoundment that meets all of the following conditions:

(1) The owner or operator has documented that the CCR unit is in compliance with the location restrictions specified under §§ 257.60 through 257.64;

(2) The owner or operator has documented that the CCR unit is in compliance with the periodic safety factor assessment requirements under § 257.73(e) and (f); and

(3) No constituent listed in Appendix IV to this part has been detected at a statistically significant level exceeding a groundwater protection standard defined under § 257.95(h).

* * * * *

Technically feasible means possible to do in a way that would likely be successful.

Technically infeasible means not possible to do in a way that would likely be successful.

* * * * *

■ 3. Amend § 257.71 by removing and reserving paragraph (a)(1)(i) and revising paragraphs (a)(3)(i) and (ii).

The revisions read as follows:

§ 257.71 Liner design criteria for existing CCR surface impoundments.

(a) * * *

(3) * * *

(i) The owner or operator of the CCR unit determines that the CCR unit is not constructed with a liner that meets the requirements of paragraph (a)(1)(ii) or (iii) of this section; or

(ii) The owner or operator of the CCR unit fails to document whether the CCR unit was constructed with a liner that meets the requirements of paragraph (a)(1)(ii) or (iii) of this section.

* * * * *

■ 4. Amend § 257.90 by adding paragraph (e)(6) to read as follows:

§ 257.90 Applicability.

* * * * *

(e) * * *

(6) A section at the beginning of the annual report that provides an overview of the current status of groundwater monitoring and corrective action programs for the CCR unit. At a minimum, the summary must specify all of the following:

(i) At the start of the current annual reporting period, whether the CCR unit was operating under the detection monitoring program in § 257.94 or the assessment monitoring program in § 257.95;

(ii) At the end of the current annual reporting period, whether the CCR unit was operating under the detection monitoring program in § 257.94 or the assessment monitoring program in § 257.95;

(iii) If it was determined that there was a statistically significant increase over background for one or more constituents listed in appendix III to this part pursuant to § 257.94(e):

(A) Identify those constituents listed in appendix III to this part and the names of the monitoring wells associated with such an increase; and

(B) Provide the date when the assessment monitoring program was initiated for the CCR unit.

(iv) If it was determined that there was a statistically significant level above the groundwater protection standard for one or more constituents listed in appendix IV to this part pursuant to § 257.95(g) include all of the following:

(A) Identify those constituents listed in appendix IV to this part and the names of the monitoring wells associated with such an increase;

(B) Provide the date when the assessment of corrective measures was initiated for the CCR unit;

(C) Provide the date when the public meeting was held for the assessment of corrective measures for the CCR unit; and

(D) Provide the date when the assessment of corrective measures was completed for the CCR unit.

(v) Whether a remedy was selected pursuant to § 257.97 during the current annual reporting period, and if so, the date of remedy selection; and

(vi) Whether remedial activities were initiated or are ongoing pursuant to § 257.98 during the current annual reporting period.

* * * * *

§ 257.91 [Amended]

■ 5. Amend § 257.91 by removing and reserving paragraph (d)(2).

■ 6. Amend § 257.95 by revising paragraph (g)(5) to read as follows:

§ 257.95 Assessment monitoring program.

* * * * *

(g) * * *

(5) The owner or operator must prepare a notification stating that an assessment of corrective measures has been initiated.

* * * * *

■ 7. Amend § 257.101 by revising paragraphs (a)(1) and (b)(1)(i) to read as follows:

§ 257.101 Closure or retrofit of CCR units.

(a) * * *

(1) Except as provided by paragraph (a)(3) of this section, as soon as technically feasible, but not later than April 11, 2021, an owner or operator of an existing unlined CCR surface impoundment must cease placing CCR and non-CCR wastestreams into such CCR surface impoundment and either retrofit or close the CCR unit in accordance with the requirements of § 257.102.

* * * * *

(b) * * *

(1)(i) *Location standard under § 257.60.* Except as provided by paragraph (b)(4) of this section, the owner or operator of an existing CCR surface impoundment that has not demonstrated compliance with the location standard specified in § 257.60(a) must cease placing CCR and non-CCR wastestreams into such CCR unit as soon as technically feasible, but no later than April 11, 2021, and close the CCR unit in accordance with the requirements of § 257.102.

* * * * *

■ 8. Revise § 257.103 to read as follows:

§ 257.103 Alternative closure requirements.

The owner or operator of a CCR landfill, CCR surface impoundment, or any lateral expansion of a CCR unit that is subject to closure pursuant to § 257.101(a), (b)(1), or (d) may nevertheless continue to receive the wastes specified in either paragraph (a), (b), (f)(1), or (f)(2) of this section in the unit provided the owner or operator meets all of the requirements contained in the respective paragraph.

(a) *CCR landfills*—(1) *No alternative CCR disposal capacity.* Notwithstanding the provisions of § 257.101(d), a CCR landfill may continue to recieve CCR if the owner or operator of the CCR landfill certifies that the CCR must

continue to be managed in that CCR landfill due to the absence of alternative disposal capacity both on and off-site of the facility. To qualify under this paragraph, the owner or operator of the CCR landfill must document that all of the following conditions have been met:

(i) No alternative disposal capacity is available on or off-site. An increase in costs or the inconvenience of existing capacity is not sufficient to support qualification under this section;

(ii) The owner or operator has made, and continues to make, efforts to obtain additional capacity. Qualification under this paragraph (a) lasts only as long as no alternative capacity is available. Once alternative capacity is identified, the owner or operator must arrange to use such capacity as soon as feasible;

(iii) The owner or operator must remain in compliance with all other requirements of this subpart, including the requirement to conduct any necessary corrective action; and

(iv) The owner or operator must prepare the annual progress report specified in paragraph (c) of this section documenting the continued lack of alternative capacity and the progress towards the development of alternative CCR disposal capacity.

(2) Once alternative capacity is available, the CCR landfill must cease receiving CCR and initiate closure following the timeframes in § 257.102(e).

(3) If no alternative capacity is identified within five years after the initial certification, the CCR landfill must cease receiving CCR and close in accordance with the timeframes in § 257.102(e) and (f).

(b) *CCR landfills*—(1) *Permanent cessation of a coal-fired boiler(s) by a date certain.* Notwithstanding the provisions of § 257.101(d), a CCR landfill may continue to receive CCR if the owner or operator certifies that the facility will cease operation of the coal-fired boilers within the timeframe specified in paragraph (b)(4) of this section, but in the interim period (prior to closure of the coal-fired boiler), the facility must continue to use the CCR landfill due to the absence of alternative disposal capacity both on and off-site of the facility. To qualify under this paragraph, the owner or operator of the CCR landfill must document that all of the following conditions have been met:

(i) No alternative disposal capacity is available on or off-site. An increase in costs or the inconvenience of existing capacity is not sufficient to support qualification under this section.

(ii) The owner or operator must remain in compliance with all other requirements of this subpart, including the requirement to conduct any necessary corrective action; and

(iii) The owner or operator must prepare the annual progress report specified in paragraph (c) of this section documenting the continued lack of alternative capacity and the progress towards the closure of the coal-fired boiler.

(2)–(3) [Reserved]

(4) For a CCR landfill, the coal-fired boiler must cease operation, and the CCR landfill must complete closure no later than April 19, 2021.

(c) *Required notices and progress reports for CCR landfills.* An owner or operator of a CCR landfill that closes in accordance with paragraph (a) or (b) of this section must complete the notices and progress reports specified in paragraphs (c)(1) through (3) of this section.

(1) Within six months of becoming subject to closure pursuant to § 257.101(d), the owner or operator must prepare and place in the facility's operating record a notification of intent to comply with the alternative closure requirements of this section. The notification must describe why the CCR landfill qualifies for the alternative closure provisions under either paragraph (a) or (b) of this section, in addition to providing the documentation and certifications required by paragraph (a) or (b) of this section.

(2) The owner or operator must prepare the periodic progress reports required by paragraph (a)(1)(iv) or (b)(1)(iii) of this section, in addition to describing any problems encountered and a description of the actions taken to resolve the problems. The annual progress reports must be completed according to the following schedule:

(i) The first annual progress report must be prepared no later than 13 months after completing the notification of intent to comply with the alternative closure requirements required by paragraph (c)(1) of this section.

(ii) The second annual progress report must be prepared no later than 12 months after completing the first annual progress report. Subsequent annual progress reports must be prepared within 12 months of completing the previous annual progress report.

(iii) The owner or operator has completed the progress reports specified in this paragraph (c)(2) when the reports are placed in the facility's operating record as required by § 257.105(i)(11).

(3) An owner or operator of a CCR landfill must also prepare the notification of intent to close a CCR landfill as required by § 257.102(g).

(d) *CCR landfill recordkeeping.* The owner or operator of the CCR landfill must comply with the recordkeeping requirements specified in § 257.105(i), the notification requirements specified in § 257.106(i), and the internet requirements specified in § 257.107(i).

(e) [Reserved]

(f) *Site-specific alternative deadlines to initiate closure of CCR surface impoundments.* Notwithstanding the provisions of § 257.101(a) and (b)(1), a CCR surface impoundment may continue to receive the waste specified in paragraph (f)(1) or (2) of this section, provided the owner or operator submits a demonstration that the criteria in either paragraph (f)(1) or (2) of this section have been met. The demonstration must be submitted to the Administrator or the Participating State Director no later than the relevant deadline in paragraph (f)(3) of this section. The Administrator or the Participating State Director will act on the submission in accordance with the procedures in paragraph (f)(3) of this section.

(1) *Development of alternative capacity is technically infeasible.* Notwithstanding the provisions of § 257.101(a) and (b)(1), a CCR surface impoundment may continue to receive the waste specified in paragraph (f)(1)(ii)(A) or (B) of this section, provided the owner or operator demonstrates the wastestream(s) must continue to be managed in that CCR surface impoundment because it was technically infeasible to complete the measures necessary to provide alternative disposal capacity on or off-site of the facility by April 11, 2021. To obtain approval under this paragraph all of the following criteria must be met:

(i) No alternative disposal capacity is available on or off-site. An increase in costs or the inconvenience of existing capacity is not sufficient to support qualification under this section;

(ii)(A) For units closing pursuant to § 257.101(a) and (b)(1)(i), CCR and/or non-CCR wastestreams must continue to be managed in that CCR surface impoundment because it was technically infeasible to complete the measures necessary to obtain alternative disposal capacity either on or off-site of the facility by April 11, 2021.

(B) For units closing pursuant to § 257.101(b)(1)(ii), CCR must continue to be managed in that CCR surface impoundment because it was technically infeasible to complete the measures necessary to obtain alternative disposal capacity either on or off-site of the facility by April 11, 2021.

(iii) The facility is in compliance with all of the requirements of this subpart.

(iv) The owner or operator of the CCR surface impoundment must submit documentation that the criteria in paragraphs (f)(1)(i) through (iii) of this section have been met by submitting to the Administrator or the Participating State Director all of the following:

(A) To demonstrate that the criteria in paragraphs (f)(1)(i) and (ii) of this section have been met the owner or operator must submit a workplan that contains all of the following elements:

(*1*) A written narrative discussing the options considered both on and off-site to obtain alternative capacity for each CCR and/or non-CCR wastestreams, the technical infeasibility of obtaining alternative capacity prior to April 11, 2021, and the option selected and justification for the alternative capacity selected. The narrative must also include all of the following:

(*i*) An in-depth analysis of the site and any site-specific conditions that led to the decision to select the alternative capacity being developed;

(*ii*) An analysis of the adverse impact to plant operations if the CCR surface impoundment in question were to no longer be available for use; and

(*iii*) A detailed explanation and justification for the amount of time being requested and how it is the fastest technically feasible time to complete the development of the alternative capacity;

(*2*) A detailed schedule of the fastest technically feasible time to complete the measures necessary for alternative capacity to be available including a visual timeline representation. The visual timeline must clearly show all of the following:

(*i*) How each phase and the steps within that phase interact with or are dependent on each other and the other phases;

(*ii*) All of the steps and phases that can be completed concurrently;

(*iii*) The total time needed to obtain the alternative capacity and how long each phase and step within each phase will take; and

(*iv*) At a minimum, the following phases: Engineering and design, contractor selection, equipment fabrication and delivery, construction, and start up and implementation.;

(*3*) A narrative discussion of the schedule and visual timeline representation, which must discuss all of the following:

(*i*) Why the length of time for each phase and step is needed and a discussion of the tasks that occur during the specific step;

(*ii*) Why each phase and step shown on the chart must happen in the order it is occurring;

(*iii*) The tasks that occur during each of the steps within the phase; and

(*iv*) Anticipated worker schedules; and

(*4*) A narrative discussion of the progress the owner or operator has made to obtain alternative capacity for the CCR and/or non-CCR wastestreams. The narrative must discuss all the steps taken, starting from when the owner or operator initiated the design phase up to the steps occurring when the demonstration is being compiled. It must discuss where the facility currently is on the timeline and the efforts that are currently being undertaken to develop alternative capacity.

(B) To demonstrate that the criteria in paragraph (f)(1)(iii) of this section have been met, the owner or operator must submit all of the following:

(*1*) A certification signed by the owner or operator that the facility is in compliance with all of the requirements of this subpart;

(*2*) Visual representation of hydrogeologic information at and around the CCR unit(s) that supports the design, construction and installation of the groundwater monitoring system. This includes all of the following:

(*i*) Map(s) of groundwater monitoring well locations in relation to the CCR unit(s);

(*ii*) Well construction diagrams and drilling logs for all groundwater monitoring wells; and

(*iii*) Maps that characterize the direction of groundwater flow accounting for seasonal variations;

(*3*) Constituent concentrations, summarized in table form, at each groundwater monitoring well monitored during each sampling event;

(*4*) A description of site hydrogeology including stratigraphic cross-sections;

(*5*) Any corrective measures assessment conducted as required at § 257.96;

(*6*) Any progress reports on corrective action remedy selection and design and the report of final remedy selection required at § 257.97(a);

(*7*) The most recent structural stability assessment required at § 257.73(d); and

(*8*) The most recent safety factor assessment required at § 257.73(e).

(v) As soon as alternative capacity for any CCR or non-CCR wastestream is available, the CCR surface impoundment must cease receiving that CCR or non-CCR wastestream. Once the CCR surface impoundment ceases receipt of all CCR and/or non-CCR wastestreams, the CCR surface impoundment must initiate closure following the timeframes in § 257.102(e) and (f).

(vi) *Maximum time frames.* All CCR surface impoundments covered by this section must cease receiving waste by the deadlines specified in paragraphs (f)(1)(vi)(A) and (B) of this section and close in accordance with the timeframes in § 257.102(e) and (f).

(A) Except as provided by paragraph (f)(1)(vi)(B) of this section, no later than October 15, 2023.

(B) An eligible unlined CCR surface impoundment must cease receiving CCR and/or non-CCR wastestreams no later than October 15, 2024. In order to continue to operate until October 15, 2024, the owner or operator must demonstrate that the unit meets the definition of an eligible unlined CCR surface impoundment.

(vii) An owner or operator may seek additional time beyond the time granted in the initial approval by making the showing in paragraphs (f)(1)(i) through (iv) of this section, provided that no facility may be granted time to operate the impoundment beyond the maximum allowable time frames provided in § 257.103(f)(1)(vi).

(viii) The owner or operator at all times bears responsibility for demonstrating qualification under this section. Failure to remain in compliance with any of the requirements of this subpart will result in the automatic loss of authorization under this section.

(ix) The owner or operator must:

(A) Upon submission of the demonstration to the Administrator or the Participating State Director, prepare and place in the facility's operating record a notification that it has submitted the demonstration, along with a copy of the demonstration. An owner or operator that claims CBI in the demonstration may post a redacted version of the demonstration to its publicly accessible CCR internet site provided that it contains sufficient detail so that the public can meaningfully comment on the demonstration.

(B) Upon receipt of a decision pursuant to paragraph (f)(3) of this section, must prepare and place in the facility's operating record a copy of the decision.

(C) If an extension of an approved deadline pursuant to paragraph (f)(1)(vii) of this section has been requested, place a copy of the request submitted to the Administrator or the Participating State Director in the facility's operating record.

(x) The owner or operator must prepare semi-annual progress reports. The semi-annual progress reports must contain all of the following elements:

(A) Discussion of the progress made to date in obtaining alternative capacity, including:

(*1*) Discussion of the current stage of obtaining the capacity in reference to the timeline required under paragraph (f)(1)(iv)(A) of this section;

(*2*) Discussion of whether the owner or operator is on schedule for obtaining alternative capacity;

(*3*) If the owner or operator is not on or ahead of schedule for obtaining alternative capacity, the following must be included:

(*i*) Discussion of any problems encountered, and a description of the actions taken or planned to resolve the problems and get back on schedule; and

(*ii*) Discussion of the goals for the next six months and major milestones to be achieved for obtaining alternative capacity; and

(B) Discussion of any planned operational changes at the facility.

(xi) The progress reports must be completed according to the following schedule:

(A) The semi-annual progress reports must be prepared no later than April 30 and October 31 of each year for the duration of the alternative cease receipt of waste deadline.

(B) The first semi-annual progress report must be prepared by whichever date, April 30 or October 31, is soonest after receiving approval from the Administrator or the Participating State Director; and

(C) The owner or operator has completed the progress reports specified in paragraph (f)(1)(x) of this section when the reports have been placed in the facility's operating record as required by § 257.105(i)(17).

(xii) The owner or operator must prepare the notification of intent to close a CCR surface impoundment as required by § 257.102(g).

(xiii) The owner or operator must comply with the recordkeeping requirements specified in § 257.105(i), the notification requirements specified in § 257.106(i), and the internet posting requirements in § 257.107(i).

(2) *Permanent cessation of a coal-fired boiler(s) by a date certain.* Notwithstanding the provisions of § 257.101(a), and (b)(1), a CCR surface impoundment may continue to receive CCR and/or non-CCR wastestreams if the facility will cease operation of the coal-fired boiler(s) and complete closure of the impoundment within the timeframes specified in paragraph (f)(2)(iv) of this section, but in the interim period (prior to closure of the coal-fired boiler), the facility must continue to use the CCR surface impoundment due to the absence of alternative disposal capacity both on and off-site of the facility. To qualify under this paragraph all of the following criteria must be met:

(i) No alternative disposal capacity is available on or off-site. An increase in costs or the inconvenience of existing capacity is not sufficient to support qualification under this section.

(ii) Potential risks to human health and the environment from the continued operation of the CCR surface impoundment have been adequately mitigated;

(iii) The facility is in compliance with all other requirements of this subpart, including the requirement to conduct any necessary corrective action; and

(iv) The coal-fired boilers must cease operation and closure of the impoundment must be completed within the following timeframes:

(A) For a CCR surface impoundment that is 40 acres or smaller, the coal-fired boiler(s) must cease operation and the CCR surface impoundment must complete closure no later than October 17, 2023.

(B) For a CCR surface impoundment that is larger than 40 acres, the coal-fired boiler(s) must cease operation, and the CCR surface impoundment must complete closure no later than October 17, 2028.

(v) The owner or operator of the CCR surface impoundment must submit the following documentation that the criteria in paragraphs (f)(2)(i) through (iv) of this section have been met as specified in paragraphs (f)(2)(v)(A) through (D) of this section.

(A) To demonstrate that the criteria in paragraph (f)(2)(i) of this section have been met the owner or operator must submit a narrative that explains the options considered to obtain alternative capacity for CCR and/or non-CCR wastestreams both on and off-site.

(B) To demonstrate that the criteria in paragraph (f)(2)(ii) of this section have been met the owner or operator must submit a risk mitigation plan describing the measures that will be taken to expedite any required corrective action, and that contains all of the following elements:

(*1*) A discussion of any physical or chemical measures a facility can take to limit any future releases to groundwater during operation.

(*2*) A discussion of the surface impoundment's groundwater monitoring data and any found exceedances; the delineation of the plume (if necessary based on the groundwater monitoring data); identification of any nearby receptors that might be exposed to current or future groundwater contamination; and how such exposures could be promptly mitigated.

(*3*) A plan to expedite and maintain the containment of any contaminant plume that is either present or identified during continued operation of the unit.

(C) To demonstrate that the criteria in paragraph (f)(2)(iii) of this section have been met, the owner or operator must submit all of the following:

(*1*) A certification signed by the owner or operator that the facility is in compliance with all of the requirements of this subpart;

(*2*) Visual representation of hydrogeologic information at and around the CCR unit(s) that supports the design, construction and installation of the groundwater monitoring system. This includes all of the following:

(*i*) Map(s) of groundwater monitoring well locations in relation to the CCR unit;

(*ii*) Well construction diagrams and drilling logs for all groundwater monitoring wells; and

(*iii*) Maps that characterize the direction of groundwater flow accounting for seasonal variations;

(*3*) Constituent concentrations, summarized in table form, at each groundwater monitoring well monitored during each sampling event;

(*4*) Description of site hydrogeology including stratigraphic cross-sections;

(*5*) Any corrective measures assessment required at § 257.96;

(*6*) Any progress reports on remedy selection and design and the report of final remedy selection required at § 257.97(a);

(*7*) The most recent structural stability assessment required at § 257.73(d); and

(*8*) The most recent safety factor assessment required at § 257.73(e).

(D) To demonstrate that the criteria in paragraph (f)(2)(iv) of this section have been met, the owner or operator must submit the closure plan required by § 257.102(b) and a narrative that specifies and justifies the date by which they intend to cease receipt of waste into the unit in order to meet the closure deadlines.

(vi) The owner or operator at all times bears responsibility for demonstrating qualification for authorization under this section. Failure to remain in compliance with any of the requirements of this subpart will result in the automatic loss of authorization under this section.

(vii) The owner or operator must comply with the recordkeeping requirements specified in § 257.105(i), the notification requirements specified in § 257.106(i), and the internet posting requirements in § 257.107(i).

(viii) Upon submission of the demonstration to the Administrator or

the Participating State Director the owner or operator must prepare and place in the facility's operating record and on its publicly accessible CCR internet site a notification that is has submitted a demonstration along with a copy of the demonstration.

(ix) Upon receipt of a decision pursuant to paragraph (f)(3) of this section, the owner or operator must place a copy of the decision in the facility's operating record and on the facility's publicly accessible CCR internet site.

(x) The owner or operator must prepare an annual progress report documenting the continued lack of alternative capacity and the progress towards the closure of the CCR surface impoundment. The owner or operator has completed the progress report when the report has been placed in the facility's operating record as required by § 257.105(i)(20).

(3) *Process to Obtain Authorization.* (i) *Deadlines for Submission.* (A) The owner or operator must submit the demonstration required under paragraph (f)(1)(iv) of this section, for an alternative cease receipt of waste deadline for a CCR surface impoundment pursuant to paragraph (f)(1) of this section, to the Administrator or the Participating State Director for approval no later than November 30, 2020.

(B) An owner or operator may seek additional time beyond the time granted in the initial approval, in accordance with paragraph (f)(1)(vii) of this section, by submitting a new demonstration, as required under paragraph (f)(1)(iv) of this section, to the Administrator or the Participating State Director for approval, no later than fourteen days from determining that the cease receipt of waste deadline will not be met.

(C) The owner or operator must submit the demonstration required under paragraph (f)(2)(v) of this section to the Administrator for approval no later than November 30, 2020.

(ii) EPA will evaluate the demonstration and may request additional information to complete its review. Submission of a complete demonstration will toll the facility's deadline to cease receipt of waste until issuance of a decision under paragraph (f)(3)(iv) of this section. Incomplete submissions will not toll the facility's deadline and will be rejected without further process. All decisions issued under this paragraph or paragraph (f)(3)(iv) of this section will contain the facility's deadline to cease receipt of waste.

(iii) EPA will publish its proposed decision on a complete demonstration in a docket on *www.regulations.gov* for a 15-day comment period. If the demonstration is particularly complex, EPA will provide a comment period of 20 to 30 days.

(iv) After consideration of the comments, EPA will issue its decision on the alternative compliance deadline within four months of receiving a complete demonstration.

(4) *Transferring between site-specific alternatives.* An owner or operator authorized to continue operating a CCR surface impoundment under this section may at any time request authorization to continue operating the impoundment pursuant to another paragraph of subsection (f), by submitting the information in paragraph (f)(4)(i) or (ii) of this section.

(i) *Transfer from § 257.103(f)(1) to § 257.103(f)(2).* The owner or operator of a surface impoundment authorized to operate pursuant to paragraph (f)(1) of this section may request authorization to instead operate the surface impoundment in accordance with the requirements of paragraph (f)(2) of this section, by submitting a new demonstration that meets the requirements of paragraph (f)(2)(v) of this section to the Administrator or the Participating State Director. EPA will approve the request only upon determining that the criteria at paragraphs (f)(2)(i) through (iv) have been met.

(ii) *Transfer from § 257.103(f)(2) to § 257.103(f)(1).* The owner or operator of a surface impoundment authorized to operate pursuant to paragraph (f)(2) of this section may request authorization to instead operate the surface impoundment in accordance with the requirements of paragraph (f)(1) of this section, by submitting a new demonstration that meets the requirements of paragraph (f)(1)(iv) of this section to the Administrator or the Participating State Director. EPA will approve the request only upon determining that the criteria at paragraphs (f)(1)(i) through (iii) and (vi) of this section have been met.

(iii) The procedures in paragraph (f)(3) of this section will apply to all requests for transfer under this paragraph.

■ 9. Amend § 257.105 by adding paragraphs (i)(14) through (20) to read as follows:

§ 257.105 Recordkeeping requirements.

* * * * *

(i) * * *

(14) The notification of intent to comply with the site-specific alternative to initiation of closure due to development of alternative capacity infeasible as required by § 257.103(f)(1)(ix)(A).

(15) The approved or denied demonstration for the site-specific alternative to initiation of closure due to development of alternative capacity infeasible as required by § 257.103(f)(1)(ix)(B).

(16) The notification for requesting additional time to the alternative cease receipt of waste deadline as required by § 257.103(f)(1)(ix)(C).

(17) The semi-annual progress reports for the site-specific alternative to initiation of closure due to development of alternative capacity infeasible as required by § 257.103(f)(1)(xi).

(18) The notification of intent to comply with the site-specific alternative to initiation of closure due to permanent cessation of a coal-fired boiler(s) by a date certain as required by § 257.103(f)(2)(viii).

(19) The approved or denied demonstration for the site-specific alternative to initiation of closure due to permanent cessation of a coal-fired boiler(s) by a date certain as required by § 257.103(f)(2)(ix).

(20) The annual progress report for the site-specific alternative to initiation of closure due to permanent cessation of a coal-fired boiler(s) by a date certain as required by § 257.103(f)(2)(x).

* * * * *

■ 10. Amend § 257.106 by adding paragraphs (i)(14) through (20).

§ 257.106 Notification requirements.

* * * * *

(i) * * *

(14) Provide the notification of intent to comply with the site-specific alternative to initiation of closure due to development of alternative capacity infeasible as specified under § 257.105(i)(14).

(15) Provide the approved or denied demonstration for the site-specific alternative to initiation of closure due to development of alternative capacity infeasible as required by as specified under § 257.105(i)(15).

(16) Provide the notification for requesting additional time to the alternative cease receipt of waste deadline as required by § 257.105(i)(16).

(17) The semi-annual progress reports for the site-specific alternative to initiation of closure due to development of alternative capacity infeasible as specified under § 257.105(i)(17).

(18) Provide the notification of intent to comply with the site-specific alternative to initiation of closure due to permanent cessation of a coal-fired boiler(s) by a date certain as specified under § 257.105(i)(18).

(19) Provide the approved or denied demonstration for the site-specific alternative to initiation of closure due to permanent cessation of a coal-fired boiler(s) by a date certain as required by § 257.105(i)(19).

(20) The annual progress report for the site-specific alternative to initiation of closure due to permanent cessation of a coal-fired boiler(s) by a date certain as required by § 257.105(i)(20).

* * * * *

■ 11. Amend § 257.107 by revising paragraph (a) and adding paragraphs (i)(14) through (20) to read as follows:

§ 257.107 Publicly accessible internet site requirements.

(a) Each owner or operator of a CCR unit subject to the requirements of this subpart must maintain a publicly accessible internet site (CCR website) containing the information specified in this section. The owner or operator's website must be titled ''CCR Rule Compliance Data and Information.'' The website must ensure that all information required to be posted is immediately available to anyone visiting the site, without requiring any prerequisite, such as registration or a requirement to submit a document request. All required information must be clearly identifiable and must be able to be immediately printed and downloaded by anyone accessing the site. If the owner/operator changes the web address (*i.e.,* Uniform Resource Locator (URL)) at any point, they must notify EPA via the ''contact us'' form on EPA's CCR website and the state director within 14 days of making the change. The facility's CCR website must also have a ''contact us'' form or a specific email address posted on the website for the public to use to submit questions and issues relating to the availability of information on the website.

* * * * *

(i) * * *

(14) The notification of intent to comply with the site-specific alternative to initiation of closure due to development of alternative capacity infeasible as specified under § 257.105(i)(14).

(15) The approved or denied demonstration for the site-specific alternative to initiation of closure due to development of alternative capacity infeasible as required by as specified under § 257.105(i)(15).

(16) The notification for requesting additional time to the alternative cease receipt of waste deadline as required by § 257.105(i)(16).

(17) The semi-annual progress reports for the site-specific alternative to initiation of closure due to development of alternative capacity infeasible as specified under § 257.105(i)(17).

(18) The notification of intent to comply with the site-specific alternative to initiation of closure due to permanent cessation of a coal-fired boiler(s) by a date certain as specified under § 257.105(i)(18).

(19) The approved or denied demonstration for the site-specific alternative to initiation of closure due to permanent cessation of a coal-fired boiler(s) by a date certain as required by § 257.105(i)(19).

(20) The annual progress report for the site-specific alternative to initiation of closure due to permanent cessation of a coal-fired boiler(s) by a date certain as required by § 257.105(i)(20).

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Part V

Bureau of Consumer Financial Protection

12 CFR Part 1026
Qualified Mortgage Definition Under the Truth in Lending Act (Regulation Z): Seasoned QM Loan Definition; Proposed Rule

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1026

[Docket No. CFPB–2020–0028]

RIN 3170–AA98

Qualified Mortgage Definition Under the Truth in Lending Act (Regulation Z): Seasoned QM Loan Definition

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Proposed rule with request for public comment.

SUMMARY: With certain exceptions, Regulation Z requires creditors to make a reasonable, good faith determination of a consumer's ability to repay any residential mortgage loan, and loans that meet Regulation Z's requirements for ''qualified mortgages'' (QMs) obtain certain protections from liability. Regulation Z contains several categories of QMs, including the General QM category and a temporary category (Temporary GSE QM loans) of loans that are eligible for purchase or guarantee by government-sponsored enterprises (GSEs) while they are operating under the conservatorship or receivership of the Federal Housing Finance Agency (FHFA). The Bureau of Consumer Financial Protection (Bureau) is issuing this proposal to create a new category of QMs (Seasoned QMs) for first-lien, fixed-rate covered transactions that have met certain performance requirements over a 36-month seasoning period, are held in portfolio until the end of the seasoning period, comply with general restrictions on product features and points and fees, and meet certain underwriting requirements. The Bureau's primary objective with this proposal is to ensure access to responsible, affordable mortgage credit by adding a Seasoned QM definition to the existing QM definitions.

DATES: Comments must be received on or before September 28, 2020.

ADDRESSES: You may submit comments, identified by Docket No. CFPB–2020–0028 or RIN 3170–AA98, by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: 2020-NPRM-SeasonedQM@cfpb.gov.* Include Docket No. CFPB–2020–0028 or RIN 3170–AA98 in the subject line of the message.
- *Mail/Hand Delivery/Courier:* Comment Intake—Seasoned QM, Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, DC 20552. Please note that due to circumstances associated with the COVID–19 pandemic, the Bureau discourages the submission of comments by mail, hand delivery, or courier.

Instructions: The Bureau encourages the early submission of comments. All submissions should include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. Because paper mail in the Washington, DC area and at the Bureau is subject to delay, and in light of difficulties associated with mail and hand deliveries during the COVID–19 pandemic, commenters are encouraged to submit comments electronically. In general, all comments received will be posted without change to *https://www.regulations.gov.* In addition, once the Bureau's headquarters reopens, comments will be available for public inspection and copying at 1700 G Street NW, Washington, DC 20552, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. At that time, you can make an appointment to inspect the documents by telephoning 202–435–9169.

All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Proprietary information or sensitive personal information, such as account numbers or Social Security numbers, or names of other individuals, should not be included. Comments will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: Eliott C. Ponte or Ruth Van Veldhuizen, Counsels, or Joan Kayagil, Amanda Quester, Jane Raso, or Steve Wrone, Senior Counsels, Office of Regulations, at 202–435–7700. If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION:

I. Summary of the Proposed Rule

The Ability-to-Repay/Qualified Mortgage Rule (ATR/QM Rule or Rule) requires a creditor to make a reasonable, good faith determination of a consumer's ability to repay a residential mortgage loan according to its terms. Loans that meet the Rule's requirements for qualified mortgages (QMs) obtain certain protections from liability. The Bureau is issuing this proposal to create a new category of QMs (Seasoned QMs) for first-lien, fixed-rate covered transactions that have met certain performance requirements over a 36-month seasoning period, are held in portfolio until the end of the seasoning period, comply with general restrictions on product features and points and fees, and meet certain underwriting requirements.

The Bureau believes that a Seasoned QM definition could complement existing QM definitions and help ensure access to responsible, affordable mortgage credit upon the expiration of one of the existing QM definitions. One QM category defined in the Rule is the General QM loan category. General QM loans must comply with the Rule's prohibitions on certain loan features, its points-and-fees limits, and its underwriting requirements. Under the definition for General QM loans currently in effect, the ratio of the consumer's total monthly debt to total monthly income (DTI) ratio must not exceed 43 percent. A second, temporary category of QM loans defined in the Rule consists of mortgages that (1) comply with the same loan-feature restrictions and points-and-fees limits as General QM loans and (2) are eligible to be purchased or guaranteed by the GSEs while under the conservatorship of the FHFA (Temporary GSE QM loans). Under the Rule, the Temporary GSE QM loan definition expires with respect to each GSE when that GSE exits conservatorship or on January 10, 2021, whichever comes first.

In a separate proposal (Extension Proposal) released in June 2020,[1] the Bureau proposed to extend the Temporary GSE QM loan definition to expire upon the effective date of final amendments to the General QM loan definition or when the GSEs exit conservatorship, whichever comes first. In another proposal (General QM Proposal)[2] released simultaneously with the Extension Proposal, the Bureau proposed the amendments to the General QM loan definition that are referenced in the Extension Proposal.

The Bureau is issuing this proposal to create a new category of QMs because it seeks to encourage safe and responsible innovation in the mortgage origination market, including for certain loans that are not QMs or are only rebuttable presumption QMs under the existing QM categories. The Bureau preliminarily concludes that it is appropriate to presume compliance with the ability-to-repay (ATR) requirements when such loans season in the manner set forth in the proposal. Under the proposal, a covered transaction would receive a safe harbor from ATR liability at the end of a 36-month seasoning period as a Seasoned QM if it satisfies certain product

[1] 85 FR 41448 (July 10, 2020).

[2] 85 FR 41716 (July 10, 2020).

restrictions, points-and-fees limits, and underwriting requirements, and it meets performance and portfolio requirements during the seasoning period. Specifically, a covered transaction would have to meet the following product restrictions to be eligible to become a Seasoned QM:

1. The loan is secured by a first lien;

2. The loan has a fixed rate, with fully amortizing payments and no balloon payment;

3. The loan term does not exceed 30 years; and

4. The total points and fees do not exceed specified limits.

For a loan to be eligible to become a Seasoned QM, the proposal would require that the creditor consider the consumer's DTI ratio or residual income and verify the consumer's debt obligations and income. Similar to provisions in the Rule that create a QM category for certain portfolio loans originated by certain small creditors (Small Creditor QM definition), the proposal would not specify a DTI limit, nor would it require the creditor to use appendix Q to Regulation Z in calculating and verifying debt and income.

Under the proposal, a loan generally would only be eligible to season if the creditor holds it in portfolio until the end of the seasoning period. The proposed portfolio requirements are similar to those that apply to Small Creditor QMs under the Rule.

In order to become Seasoned QMs, loans would have to meet certain performance requirements at the end of the seasoning period. Specifically, seasoning would be available only for covered transactions that have no more than two delinquencies of 30 or more days and no delinquencies of 60 or more days at the end of the seasoning period. Funds taken from escrow in connection with the covered transaction and funds paid on behalf of the consumer by the creditor, servicer, or assignee of the covered transaction (or any other person acting on their behalf) would not be considered in assessing whether a periodic payment has been made or is delinquent for purposes of the proposal. Creditors could, however, generally accept deficient payments within a payment tolerance of $50 on up to three occasions during the seasoning period without triggering a delinquency for purposes of the proposal.

The proposal generally defines the seasoning period as a period of 36 months beginning on the date on which the first periodic payment is due after consummation.[3] Failure to make full contractual payments would not disqualify a loan from eligibility to become a Seasoned QM if the consumer is in a temporary payment accommodation extended in connection with a disaster or pandemic-related national emergency, as long as certain conditions are met. However, time spent in such a temporary accommodation would not count towards the 36-month seasoning period, and the seasoning period could only resume after the temporary accommodation if any delinquency is cured either pursuant to the loan's original terms or through a qualifying change as defined in the proposal.[4]

The Bureau proposes that a final rule relating to this proposal would take effect on the same date as a final rule amending the General QM definition. In the General QM Proposal, the Bureau proposed that the effective date of a final rule relating to the General QM Proposal would be six months after publication in the **Federal Register**. The revised regulations would apply to covered transactions for which creditors receive an application on or after the effective date, which aligns with the approach the Bureau proposed to take in the General QM Proposal. The Bureau requests comment on this proposed effective date for a final rule relating to this proposal.

Comments on the General QM Proposal should be filed on the docket for that proposal, which closes on September 8, 2020, including comments on the specific subject of whether anything in this proposal affects how the Bureau should finalize the General QM Proposal. Comments on that specific subject may also be submitted to this docket, but any other comments concerning the General QM Proposal will be considered outside of the scope of and will not be considered in this rulemaking.

II. Background

A. Dodd-Frank Act Amendments to the Truth in Lending Act

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act)[5] amended the Truth in Lending Act (TILA)[6] to establish, among other things, ATR requirements in connection with the origination of most residential mortgage loans.[7] The amendments were intended ''to assure that consumers are offered and receive residential mortgage loans on terms that reasonably reflect their ability to repay the loans and that are understandable and not unfair, deceptive or abusive.''[8] As amended, TILA prohibits a creditor from making a residential mortgage loan unless the creditor makes a reasonable and good faith determination based on verified and documented information that the consumer has a reasonable ability to repay the loan.[9]

TILA identifies the factors a creditor must consider in making a reasonable and good faith assessment of a consumer's ability to repay. These factors are the consumer's credit history, current and expected income, current obligations, DTI ratio or residual income after paying non-mortgage debt and mortgage-related obligations, employment status, and other financial resources other than equity in the dwelling or real property that secures repayment of the loan.[10] A creditor, however, may not be certain whether its ATR determination is reasonable in a particular case, and it risks liability if a court or an agency, including the Bureau, later concludes that the ATR determination was not reasonable.[11]

TILA addresses this uncertainty by defining a category of loans—called QMs—for which a creditor ''may presume that the loan has met'' the ATR requirements.[12] The statute generally

[3] However, if there is a delinquency of 30 days or more at the end of the final month of the seasoning period, the seasoning period would be extended until there is no delinquency.

[4] The proposal defines a qualifying change as an agreement entered into during or after a temporary payment accommodation extended in connection with a disaster or pandemic-related national emergency that ends any preexisting delinquency and meets certain other conditions to ensure the loan remains affordable.

[5] Public Law 111–203, 124 Stat. 1376 (2010).

[6] 15 U.S.C. 1601 *et seq.*

[7] Dodd-Frank Act sections 1411–12, 1414, 124 Stat. 2142–49; 15 U.S.C. 1639c.

[8] 15 U.S.C. 1639b(a)(2).

[9] 15 U.S.C. 1639c(a)(1). TILA section 103 defines ''residential mortgage loan'' to mean, with some exceptions including open-end credit plans, ''any consumer credit transaction that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling or on residential real property that includes a dwelling.'' 15 U.S.C. 1602(dd)(5). TILA section 129C also exempts certain residential mortgage loans from the ATR requirements. *See, e.g.,* 15 U.S.C. 1639c(a)(8) (exempting reverse mortgages and temporary or bridge loans with a term of 12 months or less).

[10] 15 U.S.C. 1639c(a)(3).

[11] A creditor that violates this ATR requirement may be subject to government enforcement and private actions. Generally, the statute of limitations for a private action for damages for a violation of the ATR requirement is three years from the date of the occurrence of the violation. 15 U.S.C. 1640(e). TILA also provides that if a creditor, an assignee, other holder or their agent initiates a foreclosure action, a consumer may assert a violation by the creditor of the ATR requirement as a matter of defense by recoupment or set off without regard for the time limit on a private action for damages. 15 U.S.C. 1640(k).

[12] 15 U.S.C. 1639c(b)(1).

defines a QM to mean any residential mortgage loan for which:

- There is no negative amortization, interest-only payments, or balloon payments;
- The loan term does not exceed 30 years;
- The total points and fees generally do not exceed 3 percent of the loan amount;
- The income and assets relied upon for repayment are verified and documented;
- The underwriting uses a monthly payment based on the maximum rate during the first five years, uses a payment schedule that fully amortizes the loan over the loan term, and takes into account all mortgage-related obligations; and
- The loan complies with any guidelines or regulations established by the Bureau relating to the ratio of total monthly debt to monthly income or alternative measures of ability to pay regular expenses after payment of total monthly debt.[13]

B. The Ability-to-Repay/Qualified Mortgage Rule

In January 2013, the Bureau issued the ATR/QM Rule, which amended Regulation Z to implement TILA's ATR requirements (January 2013 Final Rule).[14] The Rule became effective on January 10, 2014, and the Bureau amended it several times through 2016.[15] The ATR/QM Rule implements the statutory ATR provisions discussed above and defines several categories of QM loans.[16]

1. General QM Loans

One category of QM loans defined by the Rule consists of ''General QM loans.'' A loan is a General QM loan if:

- The loan does not have negative-amortization, interest-only, or balloon-payment features, a term that exceeds 30 years, or points and fees that exceed specified limits; [17]
- The creditor underwrites the loan based on a fully amortizing schedule using the maximum rate permitted during the first five years; [18]
- The creditor considers and verifies the consumer's income and debt obligations in accordance with appendix Q; [19] and
- The consumer's DTI ratio is no more than 43 percent, determined in accordance with appendix Q.[20]

Appendix Q contains standards for calculating and verifying debt and income for purposes of determining whether a mortgage satisfies the 43 percent DTI limit for General QM loans. Appendix Q addresses how to determine a consumer's employment-related income (*e.g.,* income from wages, commissions, and retirement plans); non-employment-related income (*e.g.,* income from alimony and child support payments, investments, and property rentals); and liabilities, including recurring and contingent liabilities and projected obligations.[21]

On June 22, 2020, the Bureau proposed amendments to the General QM definition, which would, among other things, replace the General QM loan definition's 43 percent DTI limit with a price-based threshold and remove appendix Q.[22] In addition to soliciting comment on the Bureau's proposed price-based approach, the Bureau requested comment on certain alternative approaches that would retain a DTI limit but would raise it above the current limit of 43 percent and provide a more flexible set of standards for verifying debt and income in place of appendix Q.

2. Temporary GSE QM Loans

A second, temporary category of QM loans defined by the Rule, Temporary GSE QM loans, consists of mortgages that (1) comply with the Rule's prohibitions on certain loan features and its limitations on points and fees; [23] and (2) are eligible to be purchased or guaranteed by either GSE while under the conservatorship of the FHFA.[24] Unlike for General QM loans, Regulation Z does not prescribe a DTI limit for Temporary GSE QM loans. Thus, a loan can qualify as a Temporary GSE QM loan even if the DTI ratio exceeds 43 percent, as long as the DTI ratio meets the applicable GSE's DTI requirements and other underwriting criteria. In addition, income and debt for such loans, and DTI ratios, generally are verified and calculated using GSE standards, rather than appendix Q. The Temporary GSE QM loan category—also known as the GSE Patch—is scheduled to expire with respect to each GSE when that GSE exits conservatorship or on January 10, 2021, whichever comes first.[25] On June 22, 2020, the Bureau proposed to extend the Temporary GSE QM category to expire upon the effective date of final amendments to the General QM definition or when the GSEs exit conservatorship or receivership, whichever comes first.[26]

3. Small Creditor QM Loans

In a May 2013 final rule, the Bureau amended the ATR/QM Rule to add, among other things, a new QM category—the Small Creditor QM—for covered transactions that are originated by creditors that meet certain size criteria and that satisfy certain other requirements.[27] Those requirements include many that apply to General QM loans, with some exceptions. Specifically, the threshold for determining whether Small Creditor QM loans are higher-priced covered transactions, and thus qualify for the QM safe harbor or rebuttable presumption, is higher than the threshold for General QM loans.[28] Small Creditor QM loans also are not subject to the General QM definition's 43 percent DTI limit, and the creditor is not required to use appendix Q to calculate debt and income.[29] In addition, Small Creditor QM loans must be held in portfolio for three years (a requirement that does not apply to apply to General QM loans).[30] The Bureau made several amendments to the Small Creditor QM

[13] 15 U.S.C. 1639c(b)(2)(A).

[14] 78 FR 6408 (Jan. 30, 2013).

[15] *See* 78 FR 35429 (June 12, 2013); 78 FR 44686 (July 24, 2013); 78 FR 60382 (Oct. 1, 2013); 79 FR 65300 (Nov. 3, 2014); 80 FR 59944 (Oct. 2, 2015); 81 FR 16074 (Mar. 25, 2016).

[16] 12 CFR 1026.43(c), (e).

[17] 12 CFR 1026.43(e)(2)(i) through (iii).

[18] 12 CFR 1026.43(e)(2)(iv).

[19] 12 CFR 1026.43(e)(2)(v).

[20] 12 CFR 1026.43(e)(2)(vi).

[21] 12 CFR 1026, appendix Q.

[22] 85 FR 41716 (July 10, 2020).

[23] 12 CFR 1026.43(e)(2)(i) through (iii).

[24] 12 CFR 1026.43(e)(4).

[25] 12 CFR 1026.43(e)(4)(iii)(B). The ATR/QM Rule created several additional categories of QM loans. The first additional category consisted of mortgages eligible to be insured or guaranteed (as applicable) by the U.S. Department of Housing and Urban Development, the U.S. Department of Veterans Affairs, the U.S. Department of Agriculture, and the Rural Housing Service. 12 CFR 1026.43(e)(4)(ii)(B) through (E). This temporary category of QM loans no longer exists because the relevant Federal agencies have since issued their own QM rules. *See, e.g.,* 24 CFR 203.19. Other categories of QM loans provide more flexible standards for certain loans originated by certain small creditors. 12 CFR 1026.43(e)(5), (f); *cf.* 12 CFR 1026.43(e)(6) (applicable only to covered transactions for which the application was received before April 1, 2016).

[26] 85 FR 41448 (July 10, 2020).

[27] 78 FR 35430 (June 12, 2013).

[28] QMs are generally considered to be higher priced if they have an annual percentage rate (APR) that exceeds the applicable average prime offer rate (APOR) by at least 1.5 percentage points for first-lien loans and at least 3.5 percentage points for subordinate-lien loans. In contrast, Small Creditor QM loans are only considered higher priced if the APR exceeds APOR by at least 3.5 percentage points for either a first- or subordinate-lien loan. 12 CFR 1026.43(b)(4). The same is true for another QM definition that permits certain creditors operating in rural or underserved areas to originate QMs with a balloon payment provided that the loans meet certain other criteria (Balloon Payment QM loans). QMs that are higher priced enjoy only a rebuttable presumption of compliance with the ATR requirements, whereas QMs that are not higher priced enjoy a safe harbor.

[29] 12 CFR 1026.43(e)(5)(i)(A).

[30] 12 CFR 1026.43(e)(5)(ii), (f)(2).

provisions in 2015.[31] These included: Amending the small creditor definition to increase the number of loans a small creditor can originate each year to 2,000; exempting from the 2,000-loan limit any loans held in the creditor's portfolio; and revising the small creditor definition's asset threshold to include the assets of any of the creditor's affiliates.[32]

The Bureau created the Small Creditor QM category based on its determination that the characteristics of a small creditor—its small size, community-based focus, and commitment to relationship lending—and the inherent incentives associated with portfolio lending together justify extending QM status to loans that do not meet all of the ordinary QM criteria.[33] With respect to the role of portfolio lending, the Bureau stated that the discipline imposed when small creditors make loans that they will hold in portfolio is important to protect consumers' interests and to prevent evasion.[34] The Bureau noted that by retaining mortgage loans in portfolio, creditors retain the risk of delinquency or default on those loans, and as such the presence of portfolio lending within the small creditor market is an important influence on such creditors' underwriting practices.[35]

C. Economic Growth, Regulatory Relief, and Consumer Protection Act

The Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA) was signed into law on May 24, 2018.[36] Section 101 of the EGRRCPA amended TILA to provide protection from liability for insured depository institutions and insured credit unions with assets below $10 billion with respect to certain ATR requirements regarding residential mortgage loans.[37] Specifically, the protection from liability is available if a loan: (1) Is originated by and retained in portfolio by the institution,[38] (2) complies with requirements regarding prepayment penalties and points and fees, and (3) does not have any negative amortization or interest-only features. Further, for the protection from liability to apply, the institution must consider and document the debt, income, and financial resources of the consumer. Section 101 of the EGRRCPA also provides that the safe harbor is not available in the event of legal transfer except for transfers (1) to another person by reason of bankruptcy or failure of a covered institution; (2) to a covered institution that retains the loan in portfolio; (3) in the event of a merger or acquisition as long as the loan is still retained in portfolio by the person to whom the loan is sold, assigned or transferred; or (4) to a wholly owned subsidiary of a covered institution, provided that, after the sale, assignment, or transfer, the loan is considered to be an asset of the covered institution for regulatory accounting purposes.

D. General QM Proposal

On June 22, 2020, the Bureau proposed to amend the General QM loan definition because it was concerned that retaining the existing General QM loan definition with the 43 percent DTI limit after the Temporary GSE QM loan definition expired would significantly reduce the size of the QM market and could significantly reduce access to responsible, affordable credit.[39] Readers should refer to that proposed rule for a full discussion of the proposed amendments and the Bureau's rationale for them. In summary, in that proposed rule, the Bureau proposed a price-based General QM loan definition to replace the DTI-based approach because it preliminarily concluded that a loan's price, as measured by comparing a loan's annual percentage rate (APR) to the average prime offer rate (APOR) for a comparable transaction, is a strong indicator of a consumer's ability to repay and is a more holistic and flexible measure of a consumer's ability to repay than DTI alone.

Under the General QM Proposal, a loan would meet the General QM loan definition in § 1026.43(e)(2) only if the APR exceeds APOR for a comparable transaction by less than 2 percentage points as of the date the interest rate is set. The proposal would provide higher thresholds for loans with smaller loan amounts and for subordinate-lien transactions. The proposal would retain the existing product-feature and underwriting requirements and limits on points and fees. Although the General QM Proposal would remove the 43 percent DTI limit from the General QM loan definition, the proposal would require that the creditor consider and verify the consumer's income or assets, debt obligations, alimony, child support, and monthly DTI ratio or residual income. The proposal would remove appendix Q. To mitigate the uncertainty that may result from appendix Q's removal, the proposal would clarify the requirements to consider and verify a consumer's income, assets, debt obligations, alimony, and child support. The proposal would preserve the current threshold separating safe harbor from rebuttable presumption QMs, under which a loan is a safe harbor QM if its APR exceeds APOR for a comparable transaction by less than 1.5 percentage points as of the date the interest rate is set (or by less than 3.5 percentage points for subordinate-lien transactions).

The Bureau proposed a price-based approach to replace the specific DTI limit because it was concerned that imposing a DTI limit as a condition for QM status under the General QM loan definition may be overly burdensome and complex in practice and may unduly restrict access to credit because it provides an incomplete picture of the consumer's financial capacity. In particular, the Bureau was concerned that conditioning QM status on a specific DTI limit may impair access to responsible, affordable credit for some consumers for whom it might be appropriate to presume ability to repay their loans at consummation. For the reasons set forth in the General QM Proposal, the Bureau preliminarily concluded that a price-based General QM loan definition is appropriate because a loan's price, as measured by comparing a loan's APR to APOR for a comparable transaction, is a strong indicator of a consumer's ability to repay and is a more holistic and flexible measure of a consumer's ability to repay than DTI alone.

In addition, the Bureau requested comment on certain alternative approaches that would retain a DTI limit but would raise it above the current limit of 43 percent and provide a more flexible set of standards for verifying debt and income in place of appendix Q.

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[31] 80 FR 59944 (Oct. 2, 2015).

[32] As with Small Creditor QM loans, Balloon Payment QM loans must be held in portfolio for three years. In addition, Balloon Payment QM loans may not have negative-amortization or interest-only features and must comply with the points and fees limits that apply to other QM loans. Also, Balloon Payment QM loans must carry a fixed interest rate, payments other than the balloon must fully amortize the loan over 30 years or less, and the loan term must be at least five years. The creditor must also determine the consumer's ability to make periodic payments other than the balloon and verify income and assets. *See* 12 CFR 1026.43(f).

[33] 78 FR 35430, 35485 (June 12, 2013) (''The Bureau believes that § 1026.43(e)(5) will preserve consumers' access to credit and, because of the characteristics of small creditors and portfolio lending described above, the credit provided generally will be responsible and affordable.'').

[34] *Id.* at 35486.

[35] *Id.* at 35430.

[36] Public Law 115–174, 132 Stat. 1296 (2018).

[37] EGRRCPA section 101 (15 U.S.C. 1639c(b)(2)(F)).

[38] EGRRCPA's legislative history contains the following testimony from Senator Pat Toomey with respect to the portfolio requirement: ''[I]f the bank is keeping the loan on its own books, then it should be obvious to everyone that the bank has every incentive to make sure the loan is made to someone who can repay it.'' 164 Cong. Rec. S1719–20 (daily ed. Mar. 14, 2018).

[39] 85 FR 41716 (July 10, 2020).

E. Presumption of Compliance for Existing Categories of QM Loans Under the Rule

In the January 2013 Final Rule, the Bureau considered whether QM loans should receive a conclusive presumption (*i.e.,* a safe harbor) or a rebuttable presumption of compliance with the ATR requirements.[40] The statute does not specify whether the presumption of compliance means that the creditor receives a conclusive presumption or a rebuttable presumption of compliance with the ATR provisions. The Bureau noted that its analysis of the statutory construction and policy implications demonstrates that there are sound reasons for adopting either interpretation.[41] The Bureau concluded that the statutory language is ambiguous and does not mandate either interpretation and that the presumptions should be tailored to promote the policy goals of the statute.[42] The Bureau interpreted the statute to provide for a rebuttable presumption of compliance with the ATR requirements but used its adjustment authority to establish a conclusive presumption of compliance for loans that are not ''higher priced.''[43]

Under the Rule, a creditor that makes a QM loan is protected from liability presumptively or conclusively, depending on whether the loan is ''higher priced.'' The Rule generally defines a ''higher-priced'' loan to mean a first-lien mortgage with an APR that exceeded APOR for a comparable transaction as of the date the interest rate was set by 1.5 or more percentage points; or a subordinate-lien mortgage with an APR that exceeded APOR for a comparable transaction as of the date the interest rate was set by 3.5 or more percentage points.[44] A creditor that makes a QM loan that is not ''higher priced'' is entitled to a conclusive presumption that it has complied with the Rule—*i.e.,* the creditor receives a safe harbor from liability.[45] A creditor that makes a loan that meets the standards for a QM loan but is ''higher priced'' is entitled to a rebuttable presumption that it has complied with the Rule.[46]

F. The Bureau's Assessment of the Ability-to-Repay/Qualified Mortgage Rule

Section 1022(d) of the Dodd-Frank Act requires the Bureau to assess each of its significant rules and orders and to publish a report of each assessment within five years of the effective date of the rule or order.[47] In June 2017, the Bureau published a request for information in connection with its assessment of the ATR/QM Rule (Assessment RFI).[48] These comments are summarized in general terms in part III below.

In January 2019, the Bureau published its ATR/QM Rule Assessment Report (Assessment Report).[49] The Assessment Report included findings about the effects of the ATR/QM Rule on the mortgage market generally, as well as specific findings about Temporary GSE QM loan originations.

The Assessment Report found that the Rule did not eliminate access to credit for high-DTI consumers—*i.e.,* consumers with DTI ratios above 43 percent—who qualify for loans eligible for purchase or guarantee by either of the GSEs, that is, Temporary GSE QM loans.[50] On the other hand, based on application-level data obtained from nine large creditors, the Assessment Report found that the Rule eliminated between 63 and 70 percent of high-DTI home purchase loans that were not Temporary GSE QM loans.[51]

One main finding about Temporary GSE QM loans was that such loans continued to represent a ''large and persistent'' share of originations in the conforming segment of the mortgage market.[52] As discussed, the GSEs' share of the conventional, conforming purchase-mortgage market was large before the ATR/QM Rule, and the Assessment Report found a small increase in that share since the Rule's effective date, reaching 71 percent in 2017.[53] The Assessment Report noted that, at least for loans intended for sale in the secondary market, creditors generally offer a Temporary GSE QM loan even when a General QM loan could be originated.[54]

The continued prevalence of Temporary GSE QM loan originations is contrary to the Bureau's expectation at the time it issued the ATR/QM Rule in 2013.[55] The Assessment Report discussed several possible reasons for the continued prevalence of Temporary GSE QM loan originations. The Assessment Report first highlighted commenters' concerns with the perceived lack of clarity in appendix Q and found that such concerns ''may have contributed to investors'—and at least derivatively, creditors'—preference'' for Temporary GSE QM loans instead of originating loans under the General QM loan definition.[56] In addition, the Bureau has not revised appendix Q since 2013, while other standards for calculating and verifying debt and income have been updated more frequently.[57] ANPR commenters also expressed concern with appendix Q and stated that the Temporary GSE QM loan definition has benefited creditors and consumers by enabling creditors to originate QMs without having to use appendix Q.

The Assessment Report noted that a second possible reason for the continued prevalence of Temporary GSE QM loans is that the GSEs were able to accommodate the demand for mortgages above the General QM loan definition's DTI limit of 43 percent as the DTI ratio distribution in the market shifted upward.[58] According to the Assessment Report, in the years since the ATR/QM Rule took effect, house prices have increased and consumers hold more mortgage and other debt (including student loan debt), all of which have caused the DTI ratio distribution to shift upward.[59] The Assessment Report noted that the share of GSE home purchase loans with DTI ratios above 43 percent has increased since the ATR/QM Rule took effect in 2014.[60] The available data suggest that such high-DTI lending has declined in the non-GSE market relative to the GSE market.[61] The non-GSE market has constricted even with respect to highly qualified consumers; those with higher incomes and higher credit scores are representing a greater share of denials.[62]

[40] 78 FR 6408, 6511 (Jan. 30, 2013).

[41] *Id.* at 6507.

[42] *Id.* at 6511.

[43] *Id.* at 6514.

[44] 12 CFR 1026.43(b)(4).

[45] 12 CFR 1026.43(e)(1)(i).

[46] 12 CFR 1026.43(e)(1)(ii).

[47] 12 U.S.C. 5512(d).

[48] 82 FR 25246 (June 1, 2017).

[49] Bureau of Consumer Fin. Prot., *Ability to Repay and Qualified Mortgage Assessment Report* (Jan. 2019) (Assessment Report), *https://files.consumerfinance.gov/f/documents/cfpb_ability-to-repay-qualified-mortgage_assessment-report.pdf.*

[50] *See, e.g., id.* at 10, 194–96.

[51] *See, e.g., id.* at 10–11, 117, 131–47.

[52] *Id.* at 188. Because the Temporary GSE QM loan definition generally affects only loans that conform to the GSEs' guidelines, the Assessment Report's discussion of the Temporary GSE QM loan definition focused on the conforming segment of the market, not on non-conforming (*e.g.,* jumbo) loans.

[53] *Id.* at 191.

[54] *Id.* at 192.

[55] *Id.* at 13, 190, 238.

[56] *Id.* at 193.

[57] *Id.* at 193–94.

[58] *Id.* at 194.

[59] *Id.*

[60] *Id.* at 194–95.

[61] *Id.* at 119–20.

[62] *Id.* at 153.

The Assessment Report found that a third possible reason for the persistence of Temporary GSE QM loans is the structure of the secondary market.[63] If creditors adhere to the GSEs' guidelines, they gain access to a robust, highly liquid secondary market.[64] In contrast, while private market securitizations have grown somewhat in recent years, their volume is still a fraction of their pre-crisis levels.[65] There were less than $20 billion in new origination private-label securities (PLS) issuances in 2017, compared with $1 trillion in 2005,[66] and only 21 percent of new origination PLS issuances in 2017 were non-QM issuances.[67] To the extent that private securitizations have occurred since the ATR/QM Rule took effect in 2014, the majority of new origination PLS issuances have consisted of prime jumbo loans made to consumers with strong credit characteristics, and these securities have a low share of non-QM loans.[68] The Assessment Report noted that the Temporary GSE QM loan definition may itself be inhibiting the growth of the non-QM market.[69] However, the Assessment Report also noted that it is possible that this market might not exist even with a narrower Temporary GSE QM loan definition, if consumers were unwilling to pay the premium charged to cover the potential litigation risk associated with non-QMs, which do not have a presumption of compliance with the ATR requirements, or if creditors were unwilling or lack the funding to make the loans.[70]

The Bureau expects that each of these features of the mortgage market that concentrate lending within the Temporary GSE QM loan definition will largely persist through the current January 10, 2021 sunset date.

G. Effects of the COVID–19 Pandemic on Access to Mortgage Credit

The COVID–19 pandemic has had a significant effect on the U.S. economy. Economic activity has contracted, some businesses have partially or completely closed, and millions of workers have become unemployed. The pandemic has also affected mortgage markets and has resulted in a contraction of mortgage credit availability for many consumers, including those that would be dependent on the non-QM market for financing. While nearly all major non-QM creditors ceased making loans in March and April, beginning in May, issuers of non-agency MBS began to test the market with deals collateralized by non-QM loans largely originated prior to the crisis. Moreover, several non-QM creditors—which largely depend on the ability to sell loans in the secondary market to fund new loans—have begun to resume originations, albeit with a tighter credit box.[71] For further discussion of the effect of the COVID–19 pandemic on mortgage origination markets, see part II.D of the General QM Proposal.[72]

III. The Rulemaking Process

The Bureau has solicited and received substantial public and stakeholder input on issues related to the ATR/QM Rule generally and seasoning of loans specifically in connection with that rule. In addition to the Bureau's discussions with and communications from industry stakeholders, consumer advocates, other Federal agencies,[73] and members of Congress, the Bureau issued requests for information (RFIs) in 2017 and 2018 and in July 2019 issued an advance notice of proposed rulemaking regarding the ATR/QM Rule (ANPR).[74] The input from these RFIs and from the ANPR is briefly summarized in the General QM Proposal and Extension Proposal and below.

A. The Requests for Information (RFIs)

In June 2017, the Bureau published an RFI in connection with the Assessment Report (Assessment RFI).[75] In response to the Assessment RFI, the Bureau received approximately 480 comments from creditors, industry groups, consumer advocacy groups, and individuals.[76] The comments addressed a variety of topics, including the General QM loan definition and the 43 percent DTI limit; perceived problems with, and potential changes and alternatives to, appendix Q; and how the Bureau should address the expiration of the Temporary GSE QM loan definition. The comments expressed a range of ideas for addressing the expiration of the Temporary GSE QM loan definition, from making the definition permanent, to applying the definition to other mortgage products, to extending it for various periods of time, or some combination of those suggestions. Other comments stated that the Temporary GSE QM loan definition should be eliminated or permitted to expire.

Beginning in January 2018, the Bureau issued a general call for evidence seeking comment on its enforcement, supervision, rulemaking, market monitoring, and financial education activities.[77] As part of the call for evidence, the Bureau published RFIs relating to, among other things, the Bureau's rulemaking process,[78] the Bureau's adopted regulations and new rulemaking authorities,[79] and the Bureau's inherited regulations and inherited rulemaking authorities.[80] In response to the call for evidence, the Bureau received comments on the ATR/QM Rule from stakeholders, including consumer advocacy groups and industry groups. The comments addressed a variety of topics, including the General QM loan definition, appendix Q, and the Temporary GSE QM loan definition. The comments also raised concerns about, among other things, the risks of allowing the Temporary GSE QM loan definition to expire without any changes to the General QM loan definition or appendix Q. The concerns raised in these comments were similar to those raised in response to the Assessment RFI.

B. The Advance Notice of Proposed Rulemaking

As noted above, on July 25, 2019, the Bureau issued an ANPR. The ANPR stated the Bureau's tentative plans to allow the Temporary GSE QM loan definition to expire in January 2021 or after a short extension, if necessary, to facilitate a smooth and orderly transition away from the Temporary GSE QM loan definition. The Bureau also stated that it was considering whether to propose revisions to the General QM loan definition in light of the potential expiration of the Temporary GSE QM loan definition and requested comments on several topics related to the General QM loan definition. These topics included: (1) Whether and how the Bureau should

[63] *Id.* at 196.
[64] *Id.*
[65] *Id.*
[66] *Id.*
[67] *Id.* at 197.
[68] *Id.* at 196.
[69] *Id.* at 205.
[70] *Id.*

[71] Brandon Ivey, *Citadel, Verus Resume Originating Non-QMs* (Aug. 7, 2020), *https://www.insidemortgagefinance.com/articles/218819-citadel-verus-resume-originating-non-qms* (on file).

[72] 85 FR 41716, 41721–23 (July 10, 2020).

[73] The Bureau has consulted with agencies including the FHFA, the Board of Governors of the Federal Reserve System, the Federal Housing Administration, the Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of the Currency (OCC), the Federal Trade Commission, the National Credit Union Administration, and the U.S. Department of the Treasury.

[74] 84 FR 37155 (July 31, 2019).

[75] 82 FR 25246 (June 1, 2017).

[76] *See* Assessment Report, *supra* note 49, appendix B (summarizing comments received in response to the Assessment RFI).

[77] *See* Bureau of Consumer Fin. Prot., *Call for Evidence, https://www.consumerfinance.gov/policy-compliance/notice-opportunities-comment/archive-closed/call-for-evidence* (last updated Apr. 17, 2018).

[78] 83 FR 10437 (Mar. 9, 2018).

[79] 83 FR 12286 (Mar. 21, 2018).

[80] 83 FR 12881 (Mar. 26, 2018).

revise the DTI limit in the General QM loan definition; (2) whether the Bureau should supplement or replace the DTI limit with another method for directly measuring a consumer's personal finances; (3) whether the Bureau should revise appendix Q or replace it with other standards for calculating and verifying a consumer's debt and income; and (4) whether, instead of a DTI limit, the Bureau should adopt standards that do not directly measure a consumer's personal finances.[81] Of relevance to this proposal, the ANPR noted that some stakeholders had suggested that the Bureau amend the ATR/QM Rule so that a performing loan, whether or not it qualified as a QM at consummation, would convert to, or season into, a QM if it performed for some period of time. The Bureau also requested comment on how much time industry would need to change its practices in response to any changes the Bureau makes to the General QM loan definition.

The Bureau received 85 comments on the ANPR from businesses in the mortgage industry (including creditors and their trade associations), consumer advocacy groups, elected officials, individuals, and research centers. The General QM Proposal contains an overview of these comments.[82] Of the 85 comments received, approximately 20 comments discussed whether the Bureau should permit a mortgage that was not a QM at consummation to season into a QM on the ground that a loan's performance over an extended period should be considered sufficient or conclusive evidence that the creditor adequately assessed a consumer's ability to repay at consummation. The discussion below provides a more detailed overview of comment letters that supported a seasoning approach to QM status and those that opposed such an approach.

1. Comments Supporting Seasoning

As discussed in the General QM Proposal, commenters from the mortgage industry and its trade associations, as well as several research centers, recommended that a mortgage that is originated as a non-QM or rebuttable presumption QM should be eligible to season into a QM safe harbor loan if a consumer makes timely payments for a predetermined length of time. According to these commenters, when a loan defaults after performing for some period of time, such as three or five years, it is reasonable to conclude that the default was not caused by the creditor's failure to reasonably determine the consumer had the ability to repay at the time of origination. Rather, these commenters maintained that defaults in those cases are more likely to be caused by unexpected life events or other factors, such as general economic trends, rather than a creditor's poor underwriting or failure to make an ATR determination at consummation.

A few commenters pointed to the GSEs' representation and warranty framework,[83] which after a loan meets certain payment requirements provides the creditor relief from the enforcement of representations and warranties it must make to a GSE regarding its underwriting, as precedent for seasoning. These commenters indicated that a creditor's legal exposure to the ATR requirements should sunset in a similar way. In addition, several commenters noted that the 2019 U.S. Department of the Treasury Housing Reform Plan report also suggested consideration of a seasoning approach to QM safe harbor loan status.[84] A few commenters asserted that allowing mortgages to season into QM loans is consistent with comment 43(c)(1)–1.ii.A.*1* in the current ATR/QM Rule.[85] A comment letter jointly submitted by two research centers suggested that a seasoning approach to portfolio-held mortgages build on the EGRRCPA's portfolio loan QM category.

Further, a number of commenters stated their belief that a seasoning approach to QM status would benefit the mortgage market. Among other things, they stated that it could reduce compliance burden. Additionally, commenters in support of seasoning suggested that seasoning could improve investor confidence by addressing the issue of assignee liability and litigation risk with non-QMs and rebuttable presumption QMs. These commenters stated that this, in turn, could enhance capital liquidity in the market, which could expand access to credit. Several commenters suggested that a seasoning rule should apply to loans even if they were originated before the adoption of the rule.

Commenters supporting a seasoning approach offered differing views on the appropriate length of the seasoning period, varying from as brief as 12 months following consummation to as long as five years following consummation. Some opposed any restrictions on loan features, while others supported some restrictions, such as limiting the seasoning approach to mortgages that follow the statutory QM product prohibitions or to fixed-rate mortgage products. Several commenters supporting a seasoning approach also supported or did not oppose a requirement for creditors to hold loans in portfolio until the conclusion of the seasoning period. For example, some research center commenters noted that keeping loans in portfolio demonstrates creditors' acceptance of the default risk associated with the loan.

Some research center commenters suggested graduated or step approaches. Under one such approach, for example, a non-QM loan would first have to season into a rebuttable presumption QM loan and then either stay in that category or be allowed to season into a QM safe harbor loan if it meets certain conditions. Commenters supporting seasoning generally acknowledged that delinquencies during the seasoning period should disqualify a loan from seasoning into a QM, but most did not offer specific suggestions regarding what it means for a loan to be performing. A comment letter from a research center suggested the Bureau use the Mortgage Bankers Association's method for determining timely payments.

Several commenters supporting a seasoning approach also addressed the possibility of creditors engaging in gaming to minimize defaults during the seasoning period. Two commenters asserted that the Bureau could require consumers to use their own funds to make monthly payments but did not provide any suggestions on how to determine what constitutes such funds. A research center commenter suggested that a competitive guarantor market such as the one the U.S. Department of the Treasury envisions in the long term would serve as a check on gaming by creditors. The same commenter also argued that it would be hard for creditors to game a seasoning approach because they would not be able to easily time harmful mortgages to go delinquent only after a given period following consummation.

2. Comments Opposing Seasoning

Two coalitions of consumer advocacy groups submitted separate comment

[81] 84 FR 37155, 37155, 37160–62 (July 31, 2019).

[82] 85 FR 41716 (July 10, 2020).

[83] The GSEs' representation and warranty framework is discussed in greater detail in part V below.

[84] U.S. Department of the Treasury, *Housing Reform Plan* 38 (Sept. 2019), *https://home.treasury.gov/system/files/136/Treasury-Housing-Finance-Reform-Plan.pdf?mod=article_inline.*

[85] Comment 43(c)(1)–1.ii.A (''The following may be evidence that a creditor's ability-to-repay determination was reasonable and in good faith: *1.* The consumer demonstrated actual ability to repay the loan by making timely payments, without modification or accommodation, for a significant period of time after consummation or, for an adjustable-rate, interest-only, or negative-amortization mortgage, for a significant period of time after recast . . . .'').

letters opposing a seasoning approach to QM status. The General QM Proposal described some of their concerns, including the following: (1) A period of successful repayment is insufficient to presume conclusively that the creditor reasonably determined ability to repay at consummation; (2) creditors would engage in gaming to minimize defaults during the seasoning period; and (3) seasoning would inappropriately prevent consumers from raising lack of ability to repay as a defense to foreclosure. In addition, the consumer advocacy groups asserted that, depending on the length of the seasoning period, seasoning could inappropriately prevent consumers from bringing affirmative claims against creditors for allegedly violating the ATR requirements. One coalition of consumer advocacy groups stated that in providing a three-year statute of limitations for consumers to bring such claims, Congress had indicated that the seasoning period could not be less than three years for rebuttable presumption or non-QM loans. Another coalition of consumer advocacy groups stated that the three-year statute of limitations may be extended if equitable tolling applies and, as such, consumers may pursue affirmative claims for alleged violations of the ATR requirements beyond the three-year period. Both coalitions of consumer advocacy groups stated that non-QMs and QMs that only receive a rebuttable presumption of compliance with the ATR requirements at consummation should not be allowed to season into QM safe harbor loans because the right a consumer has to raise the lack of ability to repay as a defense to foreclosure is not subject to the three-year statute of limitations.

The consumer advocacy groups also stated that certain types of mortgages should never be allowed to season into QMs, including adjustable-rate mortgages and mortgages with product features that disqualify them from being a QM loan currently (*e.g.,* interest-only and negative-amortization mortgages). With respect to adjustable-rate mortgages, the consumer advocacy groups expressed concern that the fact that a consumer can remain current during an initial teaser-rate period or during a low-interest rate environment does not mean that the consumer has the ability to repay the loan when the interest rate rises. One coalition of consumer advocacy groups noted that consumers may not have the ability to repay interest-only or negative-amortization mortgages after the teaser rate payment period ends and stated that payment shock from higher future payments is inherent in the structure of these mortgage products.

In contrast to industry commenters who argued that allowing loans to season into QMs would promote access to credit and improve market liquidity, consumer advocacy groups suggested that providing a QM seasoning definition would not benefit market liquidity and could hurt underserved communities. They asserted that a seasoning rule would prevent creditors from originating loans with certainty about who ultimately bears the credit and liquidity risk and what their litigation risk will eventually be. They further asserted that the uncertainty created by such risks has a greater, negative impact on independent mortgage bankers without large balance sheets that are an important source of credit for underserved communities. One coalition of consumer advocacy groups also asserted that a heightened risk of material put-backs with mortgages not originated as QMs would create significant liquidity and credit risks for creditors, particularly non-depository creditors important to fully serving the market.

Lastly, the consumer advocacy groups challenged the Bureau's authority to amend the definition of QM to provide seasoning as a pathway to QM status, asserting that seasoning would facilitate, not prevent, circumvention or evasion of the statute's ATR requirements. They stated that consumers can resort to extraordinary measures to stay current on mortgage payments to stay in their homes, such as foregoing spending on necessities; drawing down retirement accounts; borrowing money from family and friends; going without food, medicine, or utilities; or taking on other types of debt (such as credit card debt). These commenters stated that, as a result, even mortgages that were not affordable at consummation can perform for a long period of time. The consumer advocacy groups further cited examples to show that mortgages can default due to unforeseen events. One coalition of consumer advocacy groups noted that the timing of default often reflects broader economic conditions, given the procyclical nature of the mortgage market.

C. June 2020 Proposals

On June 22, 2020, the Bureau issued the Extension Proposal, which would extend the Temporary GSE QM loan definition to expire upon the effective date of final amendments to the General QM loan definition or when the GSEs exit conservatorship, whichever comes first.[86] On the same date, the Bureau also separately proposed amendments to the General QM loan definition in the General QM Proposal.[87] Those proposed amendments are discussed in part II.D above.

IV. Legal Authority

The Bureau is proposing to amend Regulation Z pursuant to its authority under TILA and the Dodd-Frank Act. Section 1061 of the Dodd-Frank Act transferred to the Bureau the ''consumer financial protection functions'' previously vested in certain other Federal agencies, including the Board of Governors of the Federal Reserve System (Board). The Dodd-Frank Act defines the term ''consumer financial protection function'' to include ''all authority to prescribe rules or issue orders or guidelines pursuant to any Federal consumer financial law, including performing appropriate functions to promulgate and review such rules, orders, and guidelines.'' [88] Title X of the Dodd-Frank Act (including section 1061), along with TILA and certain subtitles and provisions of title XIV of the Dodd-Frank Act, are Federal consumer financial laws.[89]

A. TILA

TILA section 105(a). Section 105(a) of TILA directs the Bureau to prescribe regulations to carry out the purposes of TILA and states that such regulations may contain such additional requirements, classifications, differentiations, or other provisions and may further provide for such adjustments and exceptions for all or any class of transactions that the Bureau judges are necessary or proper to effectuate the purposes of TILA, to prevent circumvention or evasion thereof, or to facilitate compliance therewith.[90] A purpose of TILA is ''to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit.'' [91] Additionally, a purpose of TILA sections 129B and 129C is to assure that consumers are offered and receive residential mortgage loans on terms that

[86] 85 FR 41448 (July 10, 2020).

[87] 85 FR 41716 (July 10, 2020).

[88] 12 U.S.C. 5581(a)(1)(A).

[89] Dodd-Frank Act section 1002(14), 12 U.S.C. 5481(14) (defining ''Federal consumer financial law'' to include the ''enumerated consumer laws'' and the provisions of title X of the Dodd-Frank Act), Dodd-Frank Act section 1002(12)(O), 12 U.S.C. 5481(12)(O) (defining ''enumerated consumer laws'' to include TILA).

[90] 15 U.S.C. 1604(a).

[91] 15 U.S.C. 1601(a).

reasonably reflect their ability to repay the loans and that are understandable and not unfair, deceptive, or abusive.[92] As discussed in the section-by-section analysis below, the Bureau is proposing to issue certain provisions of this proposed rule pursuant to its rulemaking, adjustment, and exception authority under TILA section 105(a).

TILA section 129C(b)(2)(A)(vi). TILA section 129C(b)(2)(A)(vi) provides the Bureau with authority to establish guidelines or regulations relating to ratios of total monthly debt to monthly income or alternative measures of ability to pay regular expenses after payment of total monthly debt, taking into account the income levels of the borrower and such other factors as the Bureau may determine relevant and consistent with the purposes described in TILA section 129C(b)(3)(B)(i).[93] As discussed in the section-by-section analysis below, the Bureau is proposing to issue certain provisions of this proposed rule pursuant to its authority under TILA section 129C(b)(2)(A)(vi).

TILA section 129C(b)(3)(A) and (B)(i). TILA section 129C(b)(3)(B)(i) authorizes the Bureau to prescribe regulations that revise, add to, or subtract from the criteria that define a QM upon a finding that such regulations are necessary or proper to ensure that responsible, affordable mortgage credit remains available to consumers in a manner consistent with the purposes of TILA section 129C; or are necessary and appropriate to effectuate the purposes of TILA sections 129B and 129C, to prevent circumvention or evasion thereof, or to facilitate compliance with such sections.[94] In addition, TILA section 129C(b)(3)(A) directs the Bureau to prescribe regulations to carry out the purposes of TILA section 129C(b).[95] As discussed in the section-by-section analysis below, the Bureau is proposing to issue certain provisions of this proposed rule pursuant to its authority under TILA section 129C(b)(3)(B)(i).

B. Dodd-Frank Act

Dodd-Frank Act section 1022(b). Section 1022(b)(1) of the Dodd-Frank Act authorizes the Bureau to prescribe rules to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws, and to prevent evasions thereof.[96] TILA and title X of the Dodd-Frank Act are Federal consumer financial laws. Accordingly, the Bureau is proposing to exercise its authority under Dodd-Frank Act section 1022(b) to prescribe rules that carry out the purposes and objectives of TILA and title X and prevent evasion of those laws.

V. Why the Bureau Is Issuing This Proposal

The Bureau is issuing this proposal to introduce an alternative pathway to a QM safe harbor because it seeks to encourage safe and responsible innovation in the mortgage origination market, including for loans that may be originated as non-QM loans but meet certain underwriting conditions, product restrictions, and performance requirements. The Bureau is proposing this alternative definition because it preliminarily concludes that many loans made to creditworthy consumers that do not fall within the existing safe harbor QM loan definitions at consummation may be able to demonstrate through sustained loan performance compliance with the ATR requirements.

Under this proposal, certain transactions could become Seasoned QMs and obtain safe harbor status if, among other criteria, they meet certain performance requirements over a 36-month seasoning period. Providing creditors with this proposed alternative pathway to a QM safe harbor for these types of loans seems likely to improve access to responsible and affordable mortgage credit by increasing creditors' willingness to make loans that are considered as non-QM at consummation, but for which consumers have demonstrated an ability to repay. Additionally, if a loan has performed for a long enough period of time and meets certain underwriting conditions and product restrictions, it appears warranted to conclusively presume that the creditor's determination of a consumer's ability to repay at consummation was reasonable and to designate the loan as a safe harbor QM, even if the loan did not necessarily meet the criteria of one of the other QM definitions at the time of consummation. As discussed in part VI, the Bureau tentatively determines that the proposed 36-month seasoning period may provide a sufficient length of time to demonstrate that a creditor reasonably determined a consumer's ability to repay at the time of consummation, while incentivizing creditors to make certain loans that may not otherwise have been made in the absence of potentially greater ATR compliance certainty.

A. Considerations Related to Access to Responsible, Affordable Credit

A primary objective of the proposed alternative pathway to a QM safe harbor is to ensure the availability of responsible and affordable credit by incentivizing the origination of non-QM loans that otherwise may not be made (or may be made at a significantly higher price) due to perceived litigation or other risks, even where a creditor has confidence that the consumer would repay the loan. The Bureau is concerned that, as discussed in the Assessment Report analyzing the impact of the January 2013 Final Rule on access to credit, the perceived risks associated with non-QM status at consummation may inhibit creditors' willingness to make such loans and thus could limit access to responsible, affordable credit for certain creditworthy consumers.[97] Indeed, an analysis of rejected applications in the Assessment Report suggested that the January 2013 Final Rule's impact on access to credit among particular categories of consumers did not correlate with traditional indicators of creditworthiness, such as credit score, income, and down payment amount. Moreover, the Assessment Report also found that there was significant variation in the extent to which creditors have tightened credit for non-GSE eligible high DTI loans following the publication of the January 2013 Final Rule. This variation and its persistence in the years following the Rule's publication suggest that creditors have not developed a common approach to measuring and predicting risk of noncompliance with the Rule, as they have accomplished for other types of risks, such as prepayment and default.[98] For instance, cross-creditor differences in both the level and the change in approval rates of high DTI applications are much larger than, for example, differences in approval rates by FICO category.[99] The lack of uniformity is likely due in part to the difficulties associated with measuring and quantifying the litigation and compliance risk associated with originating non-QM loans. Thus, the Assessment Report concluded that some of the observed effect of the Rule on access to credit was likely driven by creditors' interest in avoiding litigation or other risks associated with non-QM status, rather than by rejections of consumers who were unlikely to repay

[92] 15 U.S.C. 1639b(a)(2).

[93] 15 U.S.C. 1639c(b)(2)(A).

[94] 15 U.S.C. 1639c(b)(3)(B)(i).

[95] 15 U.S.C. 1639c(b)(3)(A).

[96] 12 U.S.C. 5512(b)(1).

[97] *See* Assessment Report, *supra* note 49, at 11, 118, 150.

[98] *Id.* at 118, 147, 150.

[99] *Id.* at 147.

the loan based on traditional indicators of creditworthiness.[100]

Although the Assessment Report analyzed the impact of the January 2013 Final Rule and its 43 percent DTI limit on access to credit, the specific findings related to the uncertainty of compliance and litigation risk for non-QM loans—and the resulting impact on consumers' access to credit—remain relevant regardless of whether and how the Bureau may amend the General QM loan definition.[101] Indeed, while the Bureau anticipates that its General QM Proposal to replace the current 43 percent DTI limit with a price-based approach would increase access to responsible and affordable mortgage credit among high-DTI consumers, compliance uncertainty and litigation risk would still persist for the remaining population of loans originated as non-QMs at consummation. Furthermore, the composition of the non-QM market has continued to grow and evolve since the period covered by the Assessment Report. In recent years, the share of non-QM securitizations comprised of loans with a DTI in excess of 43 percent has fallen, while alternative income documentation has grown to become the largest non-QM subsector, comprising approximately 50 percent of securitized pools in the first half of 2019.[102] As a result, the Bureau preliminarily concludes that providing a QM safe harbor to non-QM loans that have demonstrated sustained and timely mortgage payment histories could have a meaningful impact on improving access to credit for creditworthy consumers whose loans fall outside the other QM definitions.

The Bureau is proposing to adopt a Seasoned QM definition primarily to encourage creditors to originate more responsible, affordable loans that are not QMs at consummation, and to ensure that responsible, affordable credit is not lost because of legal uncertainty in non-QM status. The Bureau also believes that a Seasoned QM definition may provide incentives for making additional rebuttable presumption loans. While the GSEs purchase rebuttable presumption QM loans, and nearly half of manufactured housing originations are rebuttable presumption QMs, large banks tend to originate only safe harbor QM loans that are held in portfolio. A Seasoned QM definition may provide an additional incentive for large banks to originate rebuttable presumption loans that may not be eligible for sale to the GSEs and therefore may not otherwise have been made.

In addition, the Bureau preliminarily concludes that, along with a possible increase in non-QM originations, the proposal may also encourage meaningful innovation and lending to broader groups of creditworthy consumers, especially those with less traditional credit profiles. The Bureau anticipates that innovations in technology and diversification of the overall economy will lead to changes in the composition of the job market and labor force, and it intends for the Rule to remain sufficiently flexible to accommodate and encourage developments in mortgage underwriting to reflect these changes. For example, new technology allows creditors to assess financial information that may not be readily apparent through a traditional credit report, such as a consumer's ability to consistently make on-time rent payments. The use of new tools could broaden homeownership to consumers who may have lacked credit histories with major credit reporting bureaus and so may have been less likely to obtain mortgages at an affordable price or obtain a mortgage at all. Additionally, technology platforms have led to rapid growth in the ''gig economy,'' through which workers earn income by providing services such as ride-sharing and home delivery and through the ability to earn income on assets such as a home. Some workers participate in the gig economy for their sole source of income, while others may do so to supplement their income from more traditional employment. Creditors' methods of assessing consumers' income and their ability to repay mortgages evolve to accommodate these changes, but creditors may be left with some uncertainty as to whether these methods constitute, or can be part of, a reasonable determination of a consumer's ability to repay under the ATR/QM Rule. Accordingly, the Bureau preliminarily concludes that allowing an alternative pathway to a QM safe harbor may encourage creditors to lend to consumers with less traditional credit profiles and income sources at an affordable price based on an individualized determination of a consumer's ability to repay.

Further, the Bureau preliminarily concludes that another benefit of this proposal would be to provide additional legal certainty for loans that are made in accordance with other QM definitions. The Bureau recognizes that creditors may be uncertain about whether certain loans fall within the existing QM definitions for different reasons. For example, the U.S. Department of Housing and Urban Development (HUD), the U.S. Department of Veterans Affairs, and the U.S. Department of Agriculture (USDA) have each promulgated QM definitions pursuant to their authority under TILA section 129C(b)(3)(B)(ii), and they have largely set their QM criteria based on eligibility criteria they apply in their respective mortgage insurance or guarantee programs. A creditor may have uncertainty about whether a State court would interpret and apply those criteria to a particular loan in a consumer's TILA section 130(k) foreclosure defense, if the loan's QM status were ever challenged, in the same way the agency would in administering its mortgage insurance or guarantee program.

As discussed in part III.B above, research centers and industry commenters that commented on the ANPR expressed concern about litigation risk and potential liability and suggested that a seasoning approach could limit liability and provide legal certainty. Several research institutions suggested that a rule allowing performing loans to season into QM status would provide creditors with clarity and certainty by ensuring that creditors would not have to litigate their ATR compliance long after consummation when an extensive record of on-time payments demonstrates that compliance and the default is more likely due to a change in consumer circumstances. A secondary market trade association commented that a rule allowing performing loans to season into QM status could clarify a creditor's litigation risk and suggested this could also help to bring certainty to secondary market participants that might otherwise be unable or unwilling to accept the litigation risk associated with assignee liability under both rebuttable presumption QM and non-QM loans. To the extent that there is ambiguity as to whether a given loan is eligible for a QM safe harbor through other QM definitions, a Seasoned QM definition would provide additional legal certainty by providing an alternative basis for a conclusive presumption of ATR compliance after the required seasoning period. It would also extend a

[100] *Id.* at 118, 150.

[101] *See* 85 FR 41716 (July 10, 2020).

[102] S&P Global Ratings, *Non-QM's Meteoric Rise is Leading the Private-Label RMBS Comeback* (Sept. 20, 2019), *https://www.spglobal.com/ratings/en/research/articles/190920-non-qm-s-meteoric-rise-is-leading-the-private-label-rmbs-comeback-11159125.* Alternative income documentation includes alternate sources of income verification (*e.g.,* bank statements), which vary from traditional income underwriting forms/documents such as W–2s, paystubs and tax returns. The variation is due to the use of non-traditional sources of documentation, such as for self-employed consumers.

conclusive presumption of compliance to the subset of the higher-priced covered transactions that are afforded only a rebuttable presumption of ATR compliance at consummation through other QM definitions.

To the extent that additional legal certainty provided by this proposal makes creditors more comfortable extending these types of loans in the future, such an effect would not only promote continued access to responsible and affordable credit, but could result in increased access to such credit. While this proposal is focused on the non-agency and non-QM markets, the agency (*i.e.,* GSE and government-insured) mortgage markets in the wake of the 2008 recession can serve as a useful illustration of the chilling effect legal risk and compliance uncertainty can have on origination markets. Access to responsible mortgage credit remained tight for years after the crisis, even in the agency mortgage market where creditors typically do not bear the credit risk of default.[103] While there is no doubt that the size and scale of the 2008 crisis impacted creditors' willingness to take on credit risk, creditors also imposed additional, more stringent borrowing requirements due to their concerns that they could be forced to repurchase loans as a result of subsequent assertions of non-compliance. This occurred even though creditors believed the loans complied with Federal Housing Administration (FHA) requirements for mortgage insurance and GSE standards for sale into the secondary markets without the more stringent borrowing requirements. Following GSE and FHA reforms, access to responsible mortgage credit for GSE and government-insured loans has begun to rebound, with some of the biggest banks considering a return to FHA lending.[104] Similarly, the Bureau anticipates that creditors may originate loans they believe to be QMs at origination, but to the extent any lingering ambiguity remains, the added compliance certainty provided by an additional Seasoned QM definition could further incentivize creditors to originate these loans at scale.

The Bureau anticipates that the extent to which the proposal may increase access to credit would be a function of the size of the eligible loan population that could benefit from the seasoning proposal: the more loans that would be eligible to become Seasoned QMs, the more loans might be made that would not otherwise be made. In determining the length of time that is the appropriate seasoning period, the Bureau has therefore also considered the rate at which loans terminate, either through prepayment or foreclosure, to assess the potential population of loans that would be eligible to benefit from this proposal and thus potentially affect access to credit. Figure 1 in part VII below illustrates the percentage of loans that remain active 36 months after consummation, the length of the proposed seasoning period. Based on the data and analysis presented in part VII, the Bureau preliminarily concludes that the majority of eligible non-QM and rebuttable presumption mortgage loans would remain active and thus be eligible to benefit from the proposed seasoning period, across the economic cycle.

B. Considerations Related to Ability To Repay

The Bureau is also proposing to introduce an alternative pathway to a QM safe harbor for a new category of Seasoned QMs because it preliminarily concludes that, when coupled with certain other factors, successful loan performance over a number of years appears to indicate with sufficient certainty creditor compliance with the ATR requirements at consummation.

First, the current ATR/QM Rule explains that loan performance can be a factor in evaluating a creditor's ATR determination. Comment 43(c)(1)–1.ii.A.*1* provides that evidence that a creditor's ATR determination was reasonable and in good faith may include the fact that the consumer demonstrated actual ability to repay the loan by making timely payments, without modification or accommodation, for a significant period of time after consummation. The comment explains further that the longer a consumer successfully makes timely payments after consummation or recast, the less likely it is that the creditor's determination of ability to repay was unreasonable or not in good faith. The current ATR/QM Rule also distinguishes between a failure to repay that can be evidence that a consumer lacked the ability to repay at loan consummation, versus a failure to repay due to a subsequent change in the consumer's circumstances. Comment 43(c)(1)–2 states that a change in the consumer's circumstances after consummation (for example, a significant reduction in income due to a job loss or a significant obligation arising from a major medical expense) that cannot be reasonably anticipated from the consumer's application or the records used to determine repayment ability is not relevant to determining a creditor's compliance with the ATR/QM Rule. Thus, the existing regulatory framework supports the relevance of loan performance, particularly during the initial period following consummation, in evaluating a creditor's ATR determination at consummation.

Second, an approach that takes loan performance into consideration in evaluating ATR compliance is consistent with the Bureau's prior analyses of repayment ability. Because the affordability of a given mortgage will vary from consumer to consumer based upon a range of factors, there is no single recognized metric, or set of metrics, that can directly measure whether the terms of mortgage loans are within consumers' ability to repay.[105] The Bureau's Assessment Report concluded that early borrower distress was an appropriate proxy for the lack of the consumer's ability to repay at consummation across a wide pool of loans. Likewise, in its June 2020 General QM Proposal, the Bureau focused on an analysis of delinquency rates in the first few years to evaluate whether a loan's price, as measured by the spread of APR over APOR (herein referred to as the loan's rate spread), may be an appropriate measure of whether a loan should be presumed to comply with the ATR provisions. The incorporation of loan performance requirements in this proposal in turn reflects the Bureau's view that across a wide pool of loans early distress is an appropriate proxy for the lack of the consumer's ability to repay at consummation.

In general, the earlier a delinquency occurs, the more likely it is due to a lack of ability to repay at consummation than a change in circumstance after consummation. However, there is neither an exact period of time after which all delinquencies can be attributed to a lack of ability to repay at consummation, nor an exact period after which no delinquencies can be attributed to a lack of ability to repay at consummation. The Bureau reached its proposed seasoning period of 36 months

[103] Jim Parrot & Mark Zandi, *Opening the Credit Box,* Moody's Analytics and the Urban Inst. (Sept. 30, 2013), *https://www.urban.org/sites/default/files/publication/24001/412910-Opening-the-Credit-Box.PDF.* As an illustration of the tight credit box, in 2013, the average credit score in the agency market was over 750. This is 50 points higher than the average credit score across all loans at the time, and 50 points higher than the average score among those who purchased homes a decade prior, implying that mortgage origination markets may have over-corrected relative to the economic fundamentals at the time.

[104] *JPMorgan mulls return to FHA-backed mortgages after era of fines,* Am. Banker (Feb. 5, 2020), *https://www.americanbanker.com/articles/jpmorgan-mulls-return-to-fha-backed-mortgages-after-era-of-fines.*

[105] Assessment Report, *supra* note 49, at 83.

based on a range of policy considerations, rather than any singular measure of delinquency, as discussed in the section-by-section analysis of § 1026.43(e)(7)(iv)(C).[106] The Bureau has preliminarily concluded that granting a safe harbor to these loans is appropriate because three years of loan performance combined with the product restrictions and underwriting requirements as defined in this proposal appear to indicate with sufficient certainty creditor compliance with the ATR requirements at origination. The Bureau acknowledges that some meaningful percentage of non-QM loans may end up delinquent in later years. But, given the increasing likelihood that intervening events meaningfully contributed to such delinquencies, the Bureau does not view delinquency at that point in the lifecycle of a loan product as undermining the presumption of creditor compliance with the ATR requirements at consummation.

As mentioned in the prior section, the current practices of market participants with respect to remedies for deficiencies in underwriting practices also support the Bureau's proposed adoption of a seasoning period to evaluate a creditor's ATR determination. Each GSE generally provides creditors relief from its enforcement with respect to representations and warranties a creditor must make to the GSE regarding its underwriting of a loan. The GSEs generally provide creditors that relief after the first 36 monthly payments if the consumer had no more than two 30-day delinquencies.[107] Similarly, the master policies of mortgage insurers generally provide that the mortgage insurer will not issue a rescission with respect to certain representations and warranties made by the originating lender if the consumer had no more than two 30-day delinquencies in the 36 months following the consumer's first payment, among other requirements.[108] These practices, which extend to a significant portion of covered transactions, suggest that the GSEs and mortgage insurers have concluded based on their experience that after 36 months of loan performance, a default should fairly be attributed to a change in the consumer's circumstances or other cause besides that of the underwriting.

Based on these considerations, and as discussed in more detail in parts VI and VII, the Bureau preliminarily concludes that a consumer's timely payments for 36 months, in combination with provisions to assure the consumer's own ability to make the payments due and the loan's compliance with other proposed provisions, indicate that the consumer had the ability to repay the loan at consummation, such that granting of safe harbor QM status to the loan is warranted subject to certain limitations. In making this preliminary determination, the Bureau focused on loans that would be eligible to be Seasoned QMs based on the proposal as described in part VI. Of these loans, the Bureau focused on loans with an interest rate spread in excess of 150 basis points, and therefore outside the proposed safe harbor threshold in the General QM proposal. These non-QMs and rebuttable presumption QMs are the population whose ATR compliance presumption status would be affected by becoming Seasoned QMs. As illustrated in Figure 2 of part VII, nearly two-thirds (66 percent) of loans that experience a disqualifying event as explained in part VI (*i.e.,* an event that would prevent a loan from becoming a Seasoned QM under the proposed criteria described in the section-by-section analyses of § 1026.43(e)(7)) do so within 36 months, and the rate at which loans disqualify diminishes beyond 36 months. This may suggest that a failure to repay that occurs more than three years after consummation can generally be attributable to causes other than the consumer's ability to repay at loan consummation, such as a subsequent job loss or other change in the consumer's circumstances that could not reasonably be anticipated from the records used to determine repayment ability. Furthermore, although it is possible that a consumer could continue making on-time payments for some period of time despite lacking the ability to repay, such as by forgoing payments on other obligations, the Bureau believes it is unlikely that a consumer could continue doing so for more than three years following consummation, especially in the absence of circumstances that would be disqualifying under this proposal, as explained below in part VI.

Notwithstanding this evidence and these considerations, the Bureau recognizes a consumer might lack an ability to repay at loan consummation and yet still make timely payments for three years. For example, a consumer could at consummation lack the ability to make a fully amortizing mortgage payment but manage to make interest-only payments in the first three years. The Bureau expects the prospect that at consummation a consumer may lack an ability to repay a loan yet still make timely payments for three years, as well as the potential benefits that a Seasoned QM definition might offer in terms of fostering access to responsible, affordable mortgage credit, would tend to vary depending on the loan characteristics. As discussed in part VI, the Bureau is therefore proposing to limit the Seasoned QM definition to first-lien, fixed-rate covered transactions that are held in the originating creditor's portfolio, satisfy the existing product-feature requirements and limits on points and fees under the General QM definition, and meet the underwriting requirements applicable to Small Creditor QMs.

VI. Section-by-Section Analysis

1026.43 Minimum Standards for Transactions Secured by a Dwelling

43(e) Qualified Mortgages

43(e)(1) Safe Harbor and Presumption of Compliance

Section 1026.43(e)(1) provides that a creditor that makes a QM loan receives either a conclusive or rebuttable presumption of compliance with the repayment ability requirements of § 1026.43(c), depending on whether the loan is a higher-priced covered transaction. Higher-priced covered transaction is defined in § 1026.43(b)(4) to mean a first-lien mortgage with an APR that exceeds APOR for a comparable transaction as of the date the interest rate is set by a specified

[106] The proposal, like the Assessment Report and the June 2020 General QM Proposal, reflects a shared underlying rationale that early payment difficulties indicate higher likelihood that the consumer may have lacked ability to repay at origination, and that delinquencies occurring soon after consummation are more likely indicative of a consumer's lack of ability to repay than later-in-time delinquencies. The Assessment Report and the June 2020 General QM Proposal measure early distress as whether a consumer was ever 60 days or more past due within the first two years after origination. The proposed performance requirements for Seasoned QM loans reflect the Bureau's consideration of this measure of early distress, but also its preliminary view of what requirements strike the appropriate balance between facilitating responsible access to the credit in question while assuring protection of the consumer interests covered by ATR requirements. Similarly, the Bureau recognizes that the definition of delinquency and performance requirements in proposed § 1026.43(e)(7) differ in some respects from the measure of early distress used in the Assessment Report, but preliminarily concludes that the proposed definition and performance requirements are appropriate for the specific purposes of this proposal for the reasons explained in the section-by-section analyses of proposed § 1026.43(e)(7)(ii) and (v)(A) below.

[107] Fed. Hous. Fin. Agency, *Representation and Warranty Framework, https://www.fhfa.gov/PolicyProgramsResearch/Policy/Pages/Representation-and-Warranty-Framework.aspx.* (last visited Aug. 14, 2020).

[108] Fannie Mae, *Amended and Restated GSE Rescission Relief Principles for Implementation of Master Policy Requirement #28 (Rescission Relief/Incontestability)* (Sept. 10, 2018), *https://singlefamily.fanniemae.com/media/16331/display.*

number of percentage points.[109] The ATR/QM Rule provides in § 1026.43(e)(1)(i) that a creditor that makes a QM loan that is not a higher-priced covered transaction is entitled to a safe harbor from liability under the ATR provisions. Under § 1026.43(e)(1)(ii), a creditor that makes a QM loan that is a higher-priced covered transaction is entitled to a rebuttable presumption that the creditor has complied with the ATR provisions.

As discussed above, the Bureau is proposing to allow first-lien covered transactions that meet certain conditions to become QMs that receive a conclusive presumption of compliance after meeting established performance standards for a specified length of time. In other words, such transactions would become QM safe harbor loans. The Bureau is proposing to revise § 1026.43(e)(1)(i) to add § 1026.43(e)(1)(i)(B), identifying such seasoned loans as a separate category of QMs for which creditors receive a conclusive presumption of compliance with ATR requirements, regardless of whether the loan is a higher-priced covered transaction. Under this proposal, current § 1026.43(e)(1)(i) would be redesignated as § 1026.43(e)(1)(i)(A) and would continue to provide a conclusive presumption of compliance with ATR requirements for QM loans that are not higher-priced covered transactions. To conform with these changes, the Bureau is proposing to revise comment 43(e)(1)–1 to add a reference to proposed § 1026.43(e)(7). The Bureau also proposes to make a technical correction to comment 43(e)(1)–1 to add references to § 1026.43(e)(5) and (6). The Bureau further proposes to remove the first sentence of comment 43(e)(1)(i)–1, which would be duplicative of regulatory text, and to redesignate that comment as comment 43(e)(1)(i)(A)–1.

TILA section 129C(b) provides that loans that meet certain requirements are ''qualified mortgages'' and that creditors making QMs ''may presume'' that such loans have met the ATR requirements. As discussed above, the statute does not specify whether the presumption of compliance means that the creditor receives a conclusive presumption or a rebuttable presumption of compliance with the ATR provisions. The Bureau concluded in the January 2013 Final Rule that the statutory language is ambiguous and does not mandate either interpretation and that the presumptions should be tailored to promote the policy goals of the statute.[110] In the January 2013 Final Rule, the Bureau interpreted the statute to provide for a rebuttable presumption of compliance with the ATR provisions but used its adjustment and exception authority to establish a conclusive presumption of compliance for loans that are not ''higher-priced covered transactions.'' [111]

In the January 2013 Final Rule, the Bureau identified several reasons relating to the performance of QM loans that are not higher-priced loans for why such loans could be suggestive of the consumer's ability to repay and should receive a safe harbor.[112] The Bureau noted that the QM requirements will ensure that the loans do not contain certain risky product features and are underwritten with careful attention to consumers' DTI ratios.[113] The Bureau also noted that a safe harbor provides greater legal certainty for creditors and secondary market participants and may promote enhanced competition and expand access to credit.[114] The Bureau noted that it is not possible to define by a bright-line rule a class of mortgages for which each consumer will have the ability to repay.[115]

The Bureau preliminarily concludes that, in conjunction with the QM statutory and other requirements in proposed § 1026.43(e)(7), a loan's satisfaction of portfolio and seasoning requirements provides sufficient grounds for supporting a conclusive presumption that the creditor made a reasonable determination that the consumer had the ability to repay, in compliance with the ATR requirements. As discussed above, the Bureau preliminarily concludes that meeting these criteria—in particular, the fact that a consumer has made timely payments for the duration of the seasoning period—indicates that the consumer was offered and received a loan on terms that the creditor reasonably determined reflected the consumer's ability to repay the loan. As discussed below in the section-by-section analyses of proposed § 1026.43(e)(7), creditors would be required to comply with statutory requirements applicable to QMs and minimum underwriting requirements. The proposed requirements would ensure that the loans do not contain risky product features identified in TILA section 129C(b)(2) and that they are underwritten with appropriate attention to consumers' resources and obligations. In addition, the conclusive presumption proposed to be added in § 1026.43(e)(1)(i)(B) would be available to creditors only after the loans have performed for a substantial period of time.

Providing creditors with an alternative pathway to greater ATR compliance certainty for loans that satisfy the criteria set forth in proposed § 1026.43(e)(7) also may result in greater access to responsible, affordable mortgage credit. For example, creditors may be more willing to maintain or expand access to credit to consumers with non-traditional income or a limited credit history, or to employ innovative methods of assessing financial information, as these loans could convert to safe harbor QMs with satisfactory performance. Further, similar to the Small Creditor QM definition and the pathway to QM status provided in EGRRCPA section 101, the Seasoned QM definition would not be subject to any DTI limits or the limitations on pricing in the General QM Proposal but would instead include a requirement for the creditor to hold the loan in portfolio. As discussed in greater detail below, the Bureau preliminarily concludes that, in combination with the other Seasoned QM requirements in proposed § 1026.43(e)(7), the proposed portfolio requirement would provide an added layer of assurance that the Seasoned QM definition would encourage responsible non-QM lending and unaffordable loans would not be made.

As it did in the January 2013 Final Rule, the Bureau proposes to use its adjustment authority under TILA section 105(a) to establish a conclusive presumption of compliance for loans that meet the criteria in proposed § 1026.43(e)(7). The Bureau preliminarily concludes that providing a safe harbor for seasoned loans is necessary and proper to facilitate compliance with and to effectuate the purposes of section 129C and TILA, including to assure that consumers are offered and receive residential mortgage loans on terms that reasonably reflect their ability to repay the loans. The Bureau also preliminarily concludes that providing such a safe harbor is consistent with the Bureau's authority under TILA section 129C(b)(3)(B)(i) to prescribe regulations that revise, add to, or subtract from the criteria that define a QM upon a finding that such

[109] For purposes of General QM loans under § 1026.43(e)(2), a first-lien covered transaction generally is ''higher priced'' if its APR exceeds APOR by 1.5 or more percentage points. Section 1026.43(b)(4) also provides that a first-lien covered transaction that is a QM under § 1026.43(e)(5), (e)(6), or (f) is ''higher priced'' if its APR is 3.5 percentage points or more above APOR.

[110] 78 FR 6408, 6511 (Jan. 30, 2013).

[111] *Id.* at 6514.

[112] *Id.* at 6511.

[113] *Id.*

[114] *Id.*

[115] *Id.*

regulations are necessary or proper to ensure that responsible, affordable mortgage credit remains available to consumers in a manner consistent with the purposes of this section, necessary and appropriate to effectuate the purposes of TILA sections 129B and 129C, to prevent circumvention or evasion thereof, or to facilitate compliance with such sections.

The Bureau requests comment on all aspects of the proposed rule that would be applicable to determining whether, by meeting the requirements of § 1026.43(e)(7) for a particular loan, a creditor has demonstrated that the consumer had a reasonable ability to repay the loan according to its terms and the loan should be accorded safe harbor QM status. The Bureau also requests comment on whether there are other approaches to providing QM status to seasoned loans that would accomplish the Bureau's objectives, such as providing a rebuttable presumption to non-QM loans that meet the requirements after a seasoning period, perhaps with a further seasoning period to gain safe harbor status.

43(e)(2) Qualified Mortgage Defined—General

Section 1026.43(e)(2) sets out the general criteria for meeting the definition of a QM and provides exceptions for QMs covered by requirements set out in other specific paragraphs in § 1026.43(e). The Bureau is proposing a conforming amendment to § 1026.43(e)(2) to include a reference to § 1026.43(e)(7), which would set out the requirements applicable to Seasoned QMs.

43(e)(7) Qualified Mortgage Defined—Seasoned Loans

43(e)(7)(i) General

Proposed § 1026.43(e)(7) would define a new category of QMs for covered transactions that meet certain criteria. As discussed above, under proposed § 1026.43(e)(7)(i) only first-lien covered transactions could qualify as Seasoned QMs. Similar to Small Creditor QMs, Seasoned QMs would include certain loans held in portfolio by creditors for a prescribed period of time, but unlike Small Creditor QMs, Seasoned QMs would not be limited to small creditors. Additional criteria proposed for Seasoned QMs are set out generally in § 1026.43(7)(i)(A) through (D). The additional criteria for Seasoned QMs include restrictions on product features and points and fees, as well as certain underwriting and performance requirements.

Providing creditors with an alternative path to a QM safe harbor for these types of loans may increase creditors' willingness to make these loans despite their ineligibility for a QM safe harbor at consummation. The Bureau recognizes that there is some risk that a consumer lacked an ability to repay at loan consummation yet managed to make timely payments for the seasoning period defined in proposed § 1026.43(e)(7)(iv)(C). The Bureau tentatively concludes that such risk, as well as the potential benefits that a Seasoned QM might offer in terms of fostering access to responsible, affordable mortgage credit, would tend to vary depending on the loan characteristics. The Bureau is therefore proposing to limit Seasoned QMs to first-lien covered transactions that satisfy the other requirements in proposed § 1026.43(e)(7).

The Bureau preliminarily concludes that tailoring Seasoned QMs to only first-lien covered transactions, as well as establishing the other requirements for Seasoned QMs in § 1026.43(e)(7) discussed below, is consistent with Bureau's authority under TILA section 129C(b)(3)(B)(i) to prescribe regulations that revise, add to, or subtract from the criteria that define a qualified mortgage upon a finding that such regulations are necessary or proper to ensure that responsible, affordable mortgage credit remains available to consumers in a manner consistent with the purposes of TILA section 129C(b), necessary and appropriate to effectuate the purposes of TILA sections 129B and 129C, to prevent circumvention or evasion thereof, or to facilitate compliance with such sections.

In addition, TILA section 129C(b)(3)(A) provides the Bureau with authority to prescribe regulations to carry out the purposes of the qualified mortgage provisions—to ensure that responsible, affordable mortgage credit remains available to consumers in a manner consistent with the purposes of TILA section 129C. TILA section 105(a) also provides authority to the Bureau to prescribe regulations to carry out the purposes of TILA, including the purposes of the qualified mortgage provisions, and states that such regulations may contain such additional requirements, classifications, differentiations, or other provisions and may further provide for such adjustments and exceptions for all or any class of transactions that the Bureau judges are necessary or proper to effectuate the purposes of TILA, to prevent circumvention or evasion thereof, or to facilitate compliance therewith. TILA section 129C(b)(2)(A)(vi) provides authority to the Bureau specifically to establish guidelines or regulations relating to ratios of total monthly debt to monthly income or alternative measures of ability to pay regular expenses after payment of total monthly debt, taking into account the income levels of the borrower and such other factors as the Bureau may determine are relevant and consistent with the purposes described in TILA section 129C(b)(3)(B)(i). Accordingly, the Bureau is proposing to exercise its authority under TILA sections 105(a), 129C(b)(2)(A)(vi), (3)(A), and (3)(B)(i) to adopt proposed § 1026.43(e)(7) for the reasons summarized below and discussed in more detail above.

The Bureau notes that loans that satisfy another QM definition at consummation also could be Seasoned QM loans, as long as the requirements of proposed § 1026.43(e)(7) are met. For example, a Seasoned QM might also have been eligible as a QM at consummation under the General QM, Small Creditor QM, or EGRRCPA QM definitions. Although the various QM categories may overlap, each QM category is based on a particular set of factors that support a presumption that the creditor at consummation complied with the ATR requirements. Each QM category imposes requirements of varying degrees of restrictiveness relative to others. Section 101 of the EGRRCPA, for example, provides a presumption of compliance starting at consummation, and is available only to insured depository institutions and insured credit unions with assets below $10 billion who hold those loans in portfolio, except that transfer of the loans is permitted in certain limited circumstances. QM status under EGRRCPA section 101 is available to both fixed and variable rate mortgages, as well as subordinate-lien loans, and section 101 also does not impose any requirements on post-consummation loan performance. The proposed Seasoned QM category, by contrast, would not be limited by creditor size, and would be available only for fixed-rate, first-lien loans held in portfolio, and only after a seasoning period during which the loans must meet performance requirements. The Bureau tentatively concludes that the proposed Seasoned QM category and the EGRRCPA QM category, therefore, identify unique and discrete factors that, for different reasons, would support a presumption of creditor compliance with the ATR requirements. The Bureau preliminarily concludes that, similarly, because each QM category is based on a distinct set

of factors that support a presumption of compliance with ATR requirements, it is possible for some transactions to fall within the scope of multiple QM categories. Accordingly, the Bureau tentatively determines that it is appropriate to exercise its authorities under TILA sections 105(a), 129C(b)(2)(A)(vi), (3)(A), and (3)(B)(i) to make the proposed Seasoned QM definition available to any first-lien covered transaction that meets the requirements in proposed § 1026.43(e)(7), including transactions that might be eligible at consummation for the General QM definition, the Small Creditor QM definition, or the EGRRCPA QM definition. The Bureau further notes that some consumer advocacy groups responding to the ANPR commented that the Bureau could not define a QM in a manner that would permit a non-QM loan at consummation to later season into a QM loan because TILA section 130(k) [116] provides a right of recoupment permitting a consumer to bring at any time an ATR claim as a defense against foreclosure. These commenters suggested this right of recoupment indicates that Congress contemplated that consumers would default later than the ability-to-repay three-year statute of limitations period, and intended for consumers who defaulted at any point to be able to raise the creditor's failure to reasonably determine ability to repay as a defense against foreclosure. The Bureau disagrees with this understanding of TILA section 130(k) and its implications regarding the scope of the Bureau's authority to define QM.

TILA section 130(k) authorizes a consumer to assert a violation of the ATR requirements in section 129C(a) as a defense in the event of judicial or nonjudicial foreclosure, without regard for the time limit on a private action for damages for such a violation. TILA section 129C(b)(1) provides that a creditor may presume a loan has met the ATR requirements in section 129C(a) if a residential mortgage loan is a QM. As described above, TILA section 129C(b)(2) and (3) grants the Bureau authority to determine the precise contours of the QM definition. Since the effective date of the ATR/QM Rule, creditors properly originating QMs have been able to rely on the loan's QM status in responding to a defense against foreclosure under TILA section 130(k). The proposed Seasoned QM definition is consistent with the structure of that statutory regime. The Bureau thus preliminarily concludes that proposing a new category of QMs for seasoned loans that meet the statutory QM requirements and other appropriate criteria is consistent with the Bureau's authority under and the purposes of TILA sections 129B and 129C.

Proposed § 1026.43(e)(7) would not apply to loans in existence prior to the effective date. Instead, as stated in part I above, the revised regulations would apply to covered transactions for which creditors receive an application on or after the effective date. This would align with the proposed application of the General QM Proposal because the Bureau also proposed that the regulations revised by the General QM Proposal would apply to covered transactions for which creditors receive an application on or after the effective date.[117] This proposed approach would ensure that the proposed rule applies only to transactions begun after the proposed rule takes effect.

The Bureau does not believe that there is any reason to conclude that the inference to be drawn as to ability to repay is any different depending on whether the three-year successful payment history occurs before or after the effective date. The Bureau believes that parties to existing loans at the time of the effective date may have significant reliance interests related to the QM status of those loans. In light of these possible reliance interests, the Bureau has opted not to apply the proposal to loans in existence prior to the effective date.[118] The Bureau requests data on the nature and extent of any such reliance interests. The Bureau also requests data on the number of loans that would be in existence as of the proposed effective date and would meet the specifications of the proposal but for the effective date, as well as comment on any legal or policy considerations that the Bureau should take into account relating to those loans.

The Bureau requests comment on whether the proposed Seasoned QM definition should exclude other subsets of covered transactions that might pose heightened consumer protection risks, or should be extended beyond first-lien mortgages in a manner that improves access to credit without introducing undue complexity in application. The Bureau also requests comment on whether and to what extent it should allow covered transactions that qualify as QMs under existing QM categories, including the EGRRCPA QM loan definition, to qualify for QM status under the proposed Seasoned QM category.

43(e)(7)(i)(A)

Proposed § 1026.43(e)(7)(i)(A) would limit the Seasoned QM definition to fixed-rate mortgages with fully amortizing payments. Proposed § 1026.43(e)(7)(i)(A) would apply the definition of fixed-rate mortgage set out in § 1026.18(s)(7)(iii). Section 1026.18(s)(7)(iii) defines fixed-rate mortgage as a transaction secured by real property or a dwelling that is not an adjustable-rate mortgage or a step-rate mortgage.[119]

Proposed § 1026.43(e)(7)(i)(A) would apply the definition of fully amortizing payments set out in § 1026.43(b)(2). Section 1026.43(b)(2) defines fully amortizing payments as a periodic payment of principal and interest that will fully repay the loan amount over the loan term. Therefore, under proposed § 1026.43(e)(7)(i)(A), only loans for which the scheduled periodic payments do not require a balloon payment to fully amortize the loan within the loan term could become Seasoned QMs.

As stated above, the Bureau proposes limiting Seasoned QMs to fixed-rate mortgages, excluding ARMs. ARMs typically have an introductory interest rate that is applicable for several years. The introductory interest rate would be in place for some or all of the proposed seasoning period and could extend beyond the seasoning period. After the introductory interest rate expires, the rate adjusts periodically and can increase through the life of the loan. Consequently, the performance of an ARM during the proposed seasoning period would not be reliable as an indicator that a consumer, at consummation, had the ability to repay the loan. Similarly, the Bureau also recognizes that the ability of a consumer to stay current on mortgage payments during the seasoning period would not be reliable as an indicator that at

[116] 15 U.S.C. 1640(k).

[117] 85 FR 41716, 41717 July 10, 2020).

[118] The Bureau also recognizes that there could be legal issues related to the application of rules governing mortgage origination to loans existing prior to the effective date. *See, e.g., Landgraf* v. *USI Film Prods.,* 511 U.S. 244, 269 (1994) (holding that a rule is impermissibly retroactive when it ''takes away or impairs vested rights acquired under existing laws, or creates a new obligation, imposes a new duty, or attaches a new disability, in respect to transactions or considerations already past'') (citation omitted); *Bowen* v. *Georgetown Univ. Hosp.,* 488 U.S. 204, 208 (1988) (holding that an agency cannot ''promulgate retroactive rules unless that power is conveyed by Congress in express terms'').

[119] As applicable to the definition of fixed-rate mortgage, § 1026.18(s)(7)(i) defines adjustable-rate mortgage as a transaction for which the APR may increase after consummation, and § 1026.18(s)(7)(ii) defines step-rate mortgage as a transaction for which the interest rate will change after consummation, and the rates that will apply and the periods for which they will apply are known at consummation.

consummation a consumer had the ability to meet balloon payment obligations beyond the seasoning period.

Proposed comment 43(e)(7)(i)(A)–1 would clarify that covered transactions that are adjustable-rate or step-rate mortgages would not be eligible to become Seasoned QMs. Proposed comment 43(e)(7)(i)(A)–2 would clarify that loans that require balloon payments would not be eligible to become Seasoned QMs. Proposed comment 43(e)(7)(i)(A)–2 would also clarify, however, that proposed § 1026.43(e)(7)(i)(A) does not prohibit a qualifying change, as defined in proposed § 1026.43(e)(7)(iv)(B), that is entered into during or after a temporary payment accommodation in connection with a disaster or pandemic-related national emergency. Qualifying changes are discussed more fully below in the section-by-section analysis of proposed § 1026.43(e)(7)(iv).

The Bureau invites comment on whether allowing other types of loans and payment schedules would facilitate appropriate access to credit while assuring protection of consumers' interests covered by ATR requirements. Commenters who recommend alternative approaches are encouraged to submit data and analyses to support their recommendations.

43(e)(7)(i)(B)

Proposed § 1026.43(e)(7)(i)(B) would require that Seasoned QMs comply with general restrictions on product features and points and fees and meet certain underwriting requirements. The requirements proposed for Seasoned QMs would be similar in several respects to the requirements established for Small Creditor QMs in § 1026.43(e)(5). Proposed § 1026.43(e)(7)(i)(B) makes this clear by incorporating directly the QM requirements set out for Small Creditor QMs in § 1026.43(e)(5)(i)(A) and (B).[120]

Currently, and as applicable to the proposed Seasoned QM definition, § 1026.43(e)(5)(i)(A) and (B) provide generally that a covered transaction can qualify as a Small Creditor QM only if:

1. The covered transaction provides for regular periodic payments that are substantially equal;

2. There is no negative amortization and no interest-only or balloon payments;

3. The loan term does not exceed 30 years;

4. The total points and fees generally do not exceed 3 percent of the loan amount;

5. The underwriting uses a payment schedule that fully amortizes the loan over the loan term and takes into account mortgage-related obligations; and

6. The loan complies with certain requirements relating to consideration and verification of the consumer's monthly income and debt.[121]

The Seasoned QM proposal, by incorporating the requirements of § 1026.43(e)(5)(1)(A) and (B), would implement the QM definition requirements in TILA section 129C(b)(2)(A)(iii) and (iv). TILA section 129C(b)(2)(A)(iii) includes a requirement for verifying and documenting the income and financial resources relied upon to qualify the obligors on the loan. For a fixed-rate QM, TILA section 129C(b)(2)(A)(iv) requires in part that the underwriting process take into account all applicable taxes, insurance, and assessments.

Notably, Small Creditor QMs are not subject to any specific QM DTI ratio or alternative pricing, or similar, threshold for QMs that is currently in the General QM definition in § 1026.43(e)(2)(vi). Small Creditor QMs also are not currently required to use appendix Q to calculate the consumer's debt and income. The Bureau's recent proposal to revise the General QM definition, including by revising § 1026.43(e)(2)(vi), did not propose to introduce requirements for Small Creditor QMs for specific DTI or pricing thresholds or the use of appendix Q. Similarly, the Bureau is not proposing to require loans to meet specific DTI ratios or pricing thresholds, or to use appendix Q, to be eligible to obtain Seasoned QM safe harbor status. For a loan to be eligible to become a Seasoned QM, however, the proposal would require that the creditor consider the consumer's DTI ratio or residual income and verify the debt obligations and income in the same way as is required under the Small Creditor QM provisions in § 1026.43(e)(5)(i)(A) and (B).

The Bureau notes that TILA's QM definition does not require that QM loans meet specific DTI ratios or pricing thresholds. Rather, the statute authorizes, but does not require, the Bureau to establish additional criteria relating to monthly DTI ratios or alternative measures of ability to repay. In its recent proposal to revise the General QM definition, the Bureau explained that it is concerned that conditioning General QM loan status on a specific DTI limit may be overly burdensome and complex in practice and may unduly restrict access to credit because it provides an incomplete picture of a consumer's financial capacity.[122] In particular, the Bureau explained that it is concerned that a specific DTI limit may impair access to responsible, affordable credit for some consumers for whom it might be appropriate to presume ability to repay their loans at consummation.[123] While the Bureau's recent proposal would replace a specific DTI threshold with certain pricing thresholds, the Bureau preliminarily concludes that the proposed product restrictions, performance requirements, and requirements to consider DTI ratio or residual income and verify income and debts suffice to presume ATR compliance for Seasoned QMs. Unlike other QM definitions that confer QM status upon consummation, the proposed Seasoned QM definition would confer safe harbor QM status only after the consumer makes on-time payments, with limited exceptions, for 36 months. The proposal also includes additional provisions intended to assure that a consumer's record of sustained, on-time payments during a seasoning period in fact evidences the consumer's own ability to make the payments due both during and after the seasoning period. These additional provisions include requirements intended to eliminate creditor attempts to evade the seasoning period requirement and a further requirement that loans season in a creditor's portfolio until the end of the seasoning period.

The Bureau preliminarily concludes that a consumer's record of sustained, on-time payments that meet the proposed requirements, taken together with the loan's compliance with other proposed provisions, indicates that the creditor made a reasonable determination at consummation of the consumer's ability to repay the loan. The Bureau's primary objective in providing the proposed new Seasoned QM definition is to increase access to responsible and affordable credit by incentivizing the origination of non-QM loans for which creditworthy consumers have an ability to repay, but that may not otherwise be eligible for QM status for various reasons. The Bureau

[120] The Bureau proposed certain conforming changes to § 1026.43(e)(5)(i)(A) and (B) in the General QM Proposal, which would be incorporated by reference into § 1026.43(e)(7)(i)(B) if both this proposal and the General QM Proposal are finalized as proposed. 85 FR 41716, 41773, 41766 (July 10, 2020). However, the proposed conforming changes to § 1026.43(e)(5)(i)(A) and (B) in the General QM Proposal would not change the substantive requirements in § 1026.43(e)(5)(i)(A) and (B).

[121] *See* § 1026.43(e)(5) (incorporating in part § 1026.43(e)(2)).

[122] *See, e.g.,* 85 FR 41716, 41717 (July 10, 2020).

[123] *Id.*

preliminarily concludes that it is unnecessary, and would be inconsistent with the purposes of the proposal, to impose specific DTI ratios, pricing thresholds, or similar criteria in addition to the other conditions for Seasoned QM status.

The Bureau also preliminarily concludes that, in the absence of proposed requirements that would establish specific DTI ratios, pricing thresholds, or similar criteria, it is not necessary to propose a precise methodology for calculating or verifying their components. As such, for the Seasoned QM definition, the Bureau is proposing to include consider and verify requirements that allow some latitude in application. In its recent General QM Proposal, the Bureau acknowledged the difficulties in using the rigid definitions in appendix Q, and, therefore, the Bureau has proposed that creditors be able to use a more flexible approach than appendix Q for the General QM definition. The Bureau preliminarily concludes here for similar reasons that the purposes of the Seasoned QM proposal would be better met by allowing more flexibility in how creditors consider and verify information relating to the consumer's ability to repay. As discussed above, the Bureau anticipates that innovations in technology and diversification of the economy will facilitate and encourage creditors to assess consumers' financial information and repayment ability in new ways.

Further, the Bureau preliminarily concludes that the consider and verify requirements included in the Small Creditor QM definition are suitable for purposes of the Seasoned QM definition. The Small Creditor QM requirements are more flexible than the General QM requirements because they allow additional latitude in calculating the payment on the covered transaction. The Bureau proposes to adopt for the Seasoning QM definition the same consider and verify requirements as are set out in the Small Creditor QM definition but notes that the General QM Proposal includes minor proposed conforming changes to the Small Creditor QM consider and verify requirements. The Bureau also proposes to provide in proposed comment 43(e)(7)(i)(B)–1 that a loan that complies with the consider and verify requirements of any other QM definition will also comply with the consider and verify requirements in the Seasoned QM definition, so that creditors will be required to comply with only one applicable set of consider and verify requirements to achieve Seasoned QM status. The Bureau requests comment on whether the final rule, in addition to or instead of this approach, should cross-reference the consider and verify requirements for General QMs, such as those in any final rule stemming from the General QM Proposal.

The Bureau preliminarily concludes that the requirements to consider the consumer's DTI ratio or residual income and verify the debt obligations and income remain important to making a reasonable and good faith determination that the consumer will have a reasonable ability to repay the loan according to its terms. Although the proposed Seasoned QM definition would not require loans to meet a specific DTI ratio or pricing threshold, the Bureau tentatively concludes that the consider and verify requirements are sufficiently consumer-protective especially when coupled with the proposed performance and portfolio requirements. As discussed in greater detail below, the proposed performance and portfolio requirements would provide an added incentive for creditors to originate affordable loans and practice responsible lending.

The Bureau preliminarily concludes that defining Seasoned QMs to include the same requirements as those established in § 1026.43(e)(5)(i)(A) and (B) for Small Creditor QMs would be consistent with Bureau's authority under TILA sections 129C(b)(2)(A)(vi), (3)(A), and (3)(B)(i) and TILA section 105(a), as discussed above. The Bureau's objective with this proposal is to ensure continued and improved access to responsible, affordable mortgage credit, including through innovation in the mortgage origination market. The Bureau preliminarily concludes that compliance with the general requirements proposed to be adopted for Seasoned QMs based on the statutory QM definition, in combination with the proposed performance and portfolio requirements discussed below, indicates with sufficient certainty that a creditor complied with the ATR requirements at origination. The Bureau tentatively finds that these provisions would be necessary and proper to ensure that responsible, affordable mortgage credit remains available to consumers in a manner that is consistent with the purposes of TILA section 129C and are necessary and appropriate to effectuate the purposes of TILA section 129C, which includes assuring that consumers are offered and receive residential mortgage loans on terms that reasonably reflect their ability to repay the loan.

In addition to requesting comment on the general requirements that would be established for Seasoned QMs under this proposal, the Bureau requests commenters to suggest any areas in which commentary may further clarify the proposed general requirements.

43(e)(7)(i)(C)

Proposed § 1026.43(e)(7)(i)(C) would require that Seasoned QMs meet certain performance requirements. These proposed performance requirements are discussed more fully in the section-by-section analysis of proposed § 1026.43(e)(7)(ii) below.

43(e)(7)(i)(D)

Proposed § 1026.43(e)(7)(i)(D) would require that Seasoned QMs meet certain portfolio requirements. These proposed portfolio requirements are discussed more fully in the section-by-section analysis of proposed § 1026.43(e)(7)(iii) below.

43(e)(7)(ii) Performance Requirements

As discussed in the section-by-section analysis of proposed § 1026.43(e)(7)(i) above, a covered transaction must meet, among other things, the conditions set forth in proposed § 1026.43(e)(7)(ii) to be a QM under proposed § 1026.43(e)(7). Proposed § 1026.43(e)(7)(ii), which would be based on the legal authorities discussed in the section-by-section analysis of proposed § 1026.43(e)(7)(i) above, establishes performance requirements relating to the number and duration of delinquencies that a covered transaction may have at the end of the seasoning period. Specifically, it provides that to be a QM under proposed § 1026.43(e)(7), the covered transaction must have no more than two delinquencies of 30 or more days and no delinquencies of 60 or more days at the end of the seasoning period.

Several ANPR commenters identified the GSEs' framework for representations and warranties as well as mortgage insurers' rescission relief principles as possible models that the Bureau might consider in establishing performance standards for a seasoning approach to QM status for non-QMs and rebuttable presumption QMs. One noted, for example, that the structure used by the GSEs has been tested and proven to demonstrate that loans with the type of payment history specified by the GSEs demonstrate the ability to repay that the ATR/QM Rule requires a creditor to determine at consummation.

Consistent with these comments, the Bureau considered the existing practices of the GSEs and mortgage insurers in developing the time period for successful payment history to include in this proposal. As described in part V, each GSE generally provides creditors relief from its enforcement with respect to certain representations and

warranties a creditor must make to the GSE regarding its underwriting of a loan. The GSEs generally provide creditors that relief after the first 36 monthly payments if the borrower had no more than two 30-day delinquencies and no delinquencies of 60 days or more. Similarly, the master policies of mortgage insurers generally provide that the mortgage insurer will not issue a rescission with respect to certain representations and warranties made by the originating lender if the borrower had no more than two 30-day delinquencies in the 36 months following the borrower's first payment, among other requirements.[124]

The Bureau recognizes that the payment history conditions laid out in the GSEs' frameworks and the mortgage insurers' master policies reflect market experience. Consistent with the GSEs' representation and warranty framework and the master policies of mortgage insurers, the Bureau is proposing that more than two delinquencies of 30 days or more during the seasoning period or any delinquency of 60 days or more would disqualify a covered transaction from being a QM under proposed § 1026.43(e)(7).[125] The Bureau tentatively concludes that the proposed standard for the number and duration of delinquencies would strike the appropriate balance of allowing flexibility for issues unrelated to a consumer's repayment ability (*e.g.,* a missed payment due to vacation or to a mix-up over automatic withdrawals) while treating payment histories that more clearly signal potential issues with ability to repay as disqualifying.[126] The Bureau requests comment on whether no more than two 30-day delinquencies and no 60-day delinquency is the appropriate standard for the number and duration of delinquencies that a covered transaction may have at the end of the seasoning period for purposes of proposed § 1026.43(e)(7).

43(e)(7)(iii) Portfolio Requirements

As discussed above, the Bureau preliminarily concludes that if a loan performs for a certain period of time and meets certain other requirements, it may be reasonable to presume conclusively that the creditor made a reasonable and good faith ATR determination at consummation, and that a future default may be attributed to factors that the creditor could not have reasonably anticipated at consummation. The Bureau anticipates that many borrowers who have the ability to repay, such as those with non-traditional credit profiles or income sources, may fall outside existing QM definitions. With a Seasoned QM definition, the Bureau seeks to encourage innovation and the growth of a responsible and affordable non-QM market. However, additional protections may be helpful to ensure that creditors who seek to use the flexibility that would be provided under this proposal have an additional incentive to engage in responsible lending and make affordable loans. Accordingly, for reasons discussed below, proposed § 1026.43(e)(7)(iii) would impose certain portfolio requirements for a covered transaction to be a Seasoned QM. Proposed § 1026.43(e)(7)(iii) would be based on the legal authorities that are discussed in the section-by-section analysis of proposed § 1026.43(e)(7)(i) above.

To be a QM under proposed § 1026.43(e)(7), the covered transaction must satisfy the following requirements. First, at consummation, the covered transaction must not be subject to a commitment to be acquired by another person. Second, legal title to the covered transaction cannot be sold, assigned, or otherwise transferred to another person before the end of the seasoning period, except in circumstances specified in proposed § 1026.43(e)(7)(iii)(B)(*1*) and (*2*). Proposed § 1026.43(e)(7)(iii)(B)(*1*) states that the covered transaction may be sold, assigned, or otherwise transferred to another person pursuant to a capital restoration plan or other action under 12 U.S.C. 1831o, actions or instructions of any person acting as conservator, receiver, or bankruptcy trustee, an order of a State or Federal government agency with jurisdiction to examine the creditor pursuant to State or Federal law, or an agreement between the creditor and such an agency. Proposed § 1026.43(e)(7)(iii)(B)(*2*) provides that the covered transaction may be sold, assigned, or otherwise transferred pursuant to a merger of the creditor with another person or acquisition of the creditor by another person or of another person by the creditor.

The Bureau is proposing a portfolio requirement that would last until the end of the seasoning period for the following reasons. As discussed in greater detail in the section-by-section analysis of § 1026.43(e)(7)(i) above, the proposal would not impose a DTI limit or a pricing limit on loans that would be eligible to become Seasoned QMs. In this respect, the proposed Seasoned QM definition is similar to some other QM definitions such as the Small Creditor QM definition.[127] While covered transactions would be subject to certain product restrictions, limitations on points and fees, and underwriting requirements, in the absence of a specific DTI or pricing limit applicable at consummation, the Bureau believes it may be appropriate to impose a portfolio requirement to help ensure the creditor makes a reasonable determination that the loan is within the consumer's ability to repay, as the Small Creditor QM definition does. As discussed above, it is conceivable that under certain circumstances, the record of a consumer's payments could make it appear that the consumer had the ability to repay at consummation even when that is not in fact the case. Other provisions of this proposal would attempt to reduce that possibility (such as by providing that payments made by a servicer or from a consumer's escrowed funds would not be considered as on-time payments), but the Bureau preliminarily concludes that it may be appropriate to provide further assurance that the creditor's ATR determination at consummation was a diligent and reasonable one by including a portfolio requirement. The Bureau believes that requiring creditors who seek to use the Seasoned QM definition to hold their loans in portfolio would give such creditors a greater incentive to make responsible and affordable loans at consummation. By ensuring that such creditors bear the risk if the loan defaults while the loan is in portfolio, the proposed requirement would align the creditor's interest with the statutory goal of ensuring the affordability of the loan.

The Bureau is concerned that, in the absence of a portfolio requirement, creditors may have a reduced incentive to make diligent ATR determinations, thereby increasing the likelihood that some loans will lack ATR, and that some of the loans lacking ATR would

[124] Fannie Mae, *Amended and Restated GSE Rescission Relief Principles for Implementation of Master Policy Requirement #28 (Rescission Relief/ Incontestability)* (Sept. 10, 2018), *https://singlefamily.fanniemae.com/media/16331/display*.

[125] As discussed in greater detail in part VII below, the Bureau considered alternative seasoning periods to the proposal and alternative performance requirements of allowable 30-day delinquencies. Each of the alternatives permits no 60-day delinquencies. The analysis of alternatives found that varying the number of allowable 30-day delinquencies could have some impact on foreclosure risk, even though the Bureau also found that varying the length of the seasoning period may have a greater impact.

[126] As noted above in part V, the current ATR/QM Rule already demonstrates that the Bureau recognizes that a consumer making timely payments, without modification or accommodation, for a significant period of time may be evidence that a creditor's ATR determination was reasonable and in good faith. *See* comment 43(c)(1)–1.ii.A.*1*.

[127] The proposed Seasoned QM definition is also similar to the Balloon Payment QM definition in this respect. *See* 12 CFR 1026.43(f).

nonetheless result in records of on-time payment that would otherwise appear to meet the criteria of a Seasoned QM definition. This is because, once a loan is sold in the secondary markets, the creditor does not have the same financial stake in the cost of subsequent default. As such, a creditor that plans to sell a loan may lack some of the incentives that a portfolio lender would have to make loans that perform for a significant amount of time.

The Dodd-Frank Act sought to address these deficiencies in the mortgage origination markets by requiring the Bureau to promulgate the ATR/QM Rule and requiring six financial regulators to promulgate a credit risk retention rule that would require securitizers of asset-backed securities (ABS) to retain not less than 5 percent of the credit risk of the assets collateralizing the ABS to address the originate-to-distribute models that contributed to the deterioration in underwriting quality during the housing bubble.[128] A ''Qualified Residential Mortgage'' (QRM) is exempt from the credit risk retention requirement. The Bureau recognizes that the risk retention requirements that were finalized in 2014 provide creditors with an indirect incentive to originate responsible and affordable loans for sale and securitization in the secondary markets, and criteria defining QRMs also help increase the likelihood that loans will reflect a consumer's ability to repay at consummation. Nonetheless, the Bureau preliminarily concludes that it may be important for the Seasoned QM definition to be limited to loans that are held in a creditor's portfolio. This would ensure that creditors that seek to use the Seasoned QM definition have greater incentives to ensure that the loans they make are responsible and affordable, which the Bureau preliminarily believes is appropriate for the reasons stated above and below.

The Bureau is proposing that the portfolio requirement would remain in place until the end of the seasoning period. As discussed elsewhere in this proposal, in general, the earlier a delinquency occurs, the more likely it is due to a lack of ability to repay at consummation than a change in circumstance after consummation. As illustrated in Figure 2 in part VII, nearly two-thirds of loans that experience delinquencies that would prevent a loan from becoming a Seasoned QM under the proposal do so within 36 months, and the rate at which loans disqualify diminishes beyond 36 months. To encourage creditors that seek to use the Seasoned QM definition to exercise discipline in considering consumers' ability to repay at origination, the Bureau believes that it may be appropriate for such creditors to bear the risk of the consequences of their ATR decision-making by requiring them to hold the loan in portfolio until the end of the seasoning period. Doing so ensures that they are incentivized to minimize deficient ATR determinations, whereas a shorter portfolio requirement could shield them from the consequences of some deficient ATR determinations and therefore weaken the intended incentive. The Bureau is not proposing to require creditors that seek to use the Seasoned QM definition to continue to hold loans in portfolio after the seasoning period ends because, as explained in part V above, it appears more likely that a failure to repay that occurs more than three years after consummation would be attributable to causes other than the consumer's ability to repay at loan consummation, such as a subsequent job loss. Moreover, a loan that seasons from non-QM to safe harbor QM status may increase in value and may be easier or more profitable to sell, thereby potentially encouraging the origination of new loans that would not have otherwise been made. The Bureau notes that the proposed length of the portfolio requirement under § 1026.43(e)(7)(iii) aligns with the duration of the portfolio requirement in the Small Creditor QM, which is also designed to ensure that lenders retain litigation risk.[129]

Therefore, for all the reasons discussed above, the Bureau proposes that to the extent creditors would like to use the flexibility afforded by the seasoning approach to achieve safe harbor QM status for the loans they originate, the loans must be held in portfolio until the end of the seasoning period except in specific circumstances. As noted, the portfolio requirement for the Seasoned QM definition is similar to the portfolio requirements in the current ATR/QM Rule for Small Creditor QMs, and the Bureau has modeled proposed § 1026.43(e)(7)(iii) on those provisions.[130]

The Bureau requests comment on whether it is appropriate to impose a portfolio requirement on creditors in light of the other proposed consumer protections in the proposal and the existing risk retention requirements for asset-backed securities. As discussed above, the Bureau's reason for proposing a portfolio requirement is to provide creditors an additional incentive to originate loans that are affordable for consumers and provide consumers with an additional layer of protection. But the Bureau requests comment on whether the proposed requirements regarding consideration of the consumer's DTI ratio or residual income and verification of the consumer's debt obligations and income would be sufficient to ensure a similar outcome. The Bureau is interested in specific reasons for and against imposing a portfolio requirement and how a portfolio requirement would affect the magnitude of the expansion of QM safe harbor loans associated with the Seasoned QM definition. The Bureau is especially interested in the potential impact of a portfolio requirement on access to credit, specifically whether the potential requirement would augment or diminish the potential of a Seasoned QM definition to expand access to credit by encouraging creditors to make affordable non-QMs in a responsible manner, which is a fundamental goal behind the proposal. The Bureau additionally seeks comment on the duration of the portfolio requirement and arguments for and against the proposed requirement that creditors

[128] The QM definition is related to the definition of Qualified Residential Mortgage (QRM). Section 15G of the Securities Exchange Act of 1934, added by section 941(b) of the Dodd-Frank Act, generally requires the securitizer of ABS to retain not less than 5 percent of the credit risk of the assets collateralizing the ABS. 15 U.S.C. 78o–11. Six Federal agencies (not including the Bureau) are tasked with implementing this requirement. Those agencies are the Board, the OCC, the FDIC, the Securities and Exchange Commission, the FHFA, and HUD (collectively, the QRM agencies). Section 15G of the Securities Exchange Act of 1934 provides that the credit risk retention requirements shall not apply to an issuance of ABS if all of the assets that collateralize the ABS are QRMs. *See* 15 U.S.C. 78o–11(c)(1)(C)(iii), (4)(A) and (B). Section 15G requires the QRM agencies to jointly define what constitutes a QRM, taking into consideration underwriting and product features that historical loan performance data indicate result in a lower risk of default. *See* 15 U.S.C. 78o–11(e)(4). Section 15G also provides that the definition of a QRM shall be ''no broader than'' the definition of a ''qualified mortgage,'' as the term is defined under TILA section 129C(b)(2), as amended by the Dodd-Frank Act, and regulations adopted thereunder. 15 U.S.C. 78o–11(e)(4)(C). In 2014, the QRM agencies issued a final rule adopting the risk retention requirements. 79 FR 77601 (Dec. 24, 2014). The final rule aligns the QRM definition with the QM definition defined by the Bureau in the ATR/QM Rule, effectively exempting securities comprised of loans that meet the QM definition from the risk retention requirement. The final rule also requires the agencies to review the definition of QRM no later than four years after the effective date of the final risk retention rules. In 2019, the QRM agencies initiated a review of certain provisions of the risk retention rule, including the QRM definition, and have extended the review period until June 20, 2021. 84 FR 70073 (Dec. 20, 2019). Among other things, the review allows the QRM agencies to consider the QRM definition in light of any changes to the QM definition adopted by the Bureau.

[129] The proposed Seasoned QM definition is also similar to the Balloon Payment QM definition in this respect. *See* 12 CFR 1026.43(f).

[130] *See* 12 CFR 1026.43(e)(5) and (f).

hold loans in portfolio until the end of the seasoning period in order for such loans to be eligible to become Seasoned QMs.

The Bureau also proposes to add comments 43(e)(7)(iii)–1 through –3 to clarify the proposed portfolio requirement. Proposed comment 43(e)(7)(iii)–1 would explain that a covered transaction is not eligible to season into a qualified mortgage under proposed § 1026.43(e)(7) if legal title to the debt obligation is sold, assigned, or otherwise transferred to another person before the end of the seasoning period, unless one of the exceptions in proposed § 1026.43(e)(7)(iii)(B) applies. Proposed comment 43(e)(7)(iii)–2 would clarify the application of proposed § 1026.43(e)(7)(iii) to subsequent transferees. Proposed comment 43(e)(7)(iii)–3 would explain the impact of supervisory sales. Similar commentary exists for the Small Creditor QM regulatory provisions to facilitate compliance, and the Bureau preliminarily determines that proposed comments 43(e)(7)(iii)–1 through –3 would facilitate compliance with proposed § 1026.43(e)(7)(iii).

43(e)(7)(iv) Definitions

Section 1026.43(e)(7)(iv) provides several definitions for purposes of proposed § 1026.43(e)(7). These proposed definitions are discussed below. The Bureau solicits comment on all of the definitions it proposes in § 1026.43(e)(7)(iv).

Paragraph 43(e)(7)(iv)(A)

Under proposed § 1026.43(e)(7)(i)(C) and (ii), status as a Seasoned QM would depend on the extent to which a covered transaction has a delinquency. Only covered transactions that have no more than two delinquencies of 30 or more days and no delinquencies of 60 or more days at the end of the seasoning period could become Seasoned QMs. The Bureau proposes to define delinquency in § 1026.43(e)(7)(iv)(A) as the failure to make a periodic payment (in one full payment or in two or more partial payments) sufficient to cover principal, interest, and, if applicable, escrow by the date the periodic payment is due under the terms of the legal obligation. The proposed definition in § 1026.43(e)(7)(iv)(A) would exclude other amounts, such as late fees, from the definition. Proposed § 1026.43(e)(7)(iv)(A)(*1*) through (*5*) would address additional, specific aspects of the definition of delinquency, which are discussed in turn in the section-by-section analyses that follow. Proposed comment 43(e)(7)(iv)(A)–1 would clarify that, in determining whether a scheduled periodic payment is delinquent for purposes of proposed § 1026.43(e)(7), the due date is the date the payment is due under the terms of the legal obligation, without regard to whether the consumer is afforded a period after the due date to pay before the servicer assesses a late fee.

The Bureau believes that the proposed definition of delinquency in § 1026.43(e)(7)(iv)(A) would provide a clear and appropriate method of assessing delinquency for purposes of § 1026.43(e)(7) and that many elements of the proposed definition are already familiar to the mortgage industry from other Bureau regulations. For example, similar to the proposed definition in § 1026.43(e)(7)(iv)(A), the definition of delinquency in Regulation X § 1024.31 considers whether a periodic payment sufficient to cover principal, interest, and, if applicable, escrow is unpaid as of the due date and does so without regard to whether the consumer is afforded a period after the due date to pay before the servicer assesses a late fee.

Paragraphs 43(e)(7)(iv)(A)(*1*) and 43(e)(7)(iv)(A)(*2*)

Proposed § 1026.43(e)(7)(iv)(A)(*1*) and (*2*) would provide when periodic payments are 30 days delinquent and 60 days delinquent, respectively, for purposes of proposed § 1026.43(e)(7)(iv). Proposed § 1026.43(e)(7)(iv)(A)(*1*) would provide that a periodic payment would be 30 days delinquent when it is not paid before the due date of the following scheduled periodic payment. Proposed § 1026.43(e)(7)(iv)(A)(*2*) would provide that a periodic payment would be 60 days delinquent if the consumer is more than 30 days delinquent on the first of two sequential scheduled periodic payments and does not make both sequential scheduled periodic payments before the due date of the next scheduled periodic payment after the two sequential scheduled periodic payments. Proposed comment 43(e)(7)(iv)(A)(*2*)–1 would provide an illustrative example of the meaning of 60 days delinquent for purposes of proposed § 1026.43(e)(7). The Bureau believes that the approach set forth in proposed § 1026.43(e)(7)(iv)(A)(*1*) and (*2*) and comment 43(e)(7)(iv)(A)(*2*)–1 would provide clear standards for determining whether a periodic payment is 30 or 60 days delinquent that would be relatively easy to apply.

Paragraph 43(e)(7)(iv)(A)(*3*)

The Bureau is aware that some servicers elect or may be required to treat consumers as having made a timely payment even if the payment is less than the full periodic payment due by a small amount. For purposes of proposed § 1026.43(e)(7), proposed § 1026.43(e)(7)(iv)(A)(*3*) would provide that for any given billing cycle for which a consumer's payment is less than the periodic payment due, a consumer is not delinquent if: (1) The servicer chooses not to treat the payment as delinquent for purposes of any section of subpart C of Regulation X, 12 CFR part 1024, if applicable, (2) the payment is deficient by $50 or less, and (3) there are no more than three such deficient payments treated as not delinquent during the seasoning period.

The Bureau believes that this proposed approach to small periodic payment deficiencies would result in less burden for financial institutions seeking to avail themselves of the Seasoned QM definition, in the event that their servicing systems and practices already make allowances for treating a payment as not delinquent when the payment is deficient by a small amount. For example, a servicer may have systems in place to accept minimally deficient payments and not count them as delinquent for purposes of calculating delinquency under subpart C of Regulation X, 12 CFR part 1024. Further, the Bureau is concerned that, absent proposed § 1026.43(e)(7)(iv)(A)(*3*), creditors might find it very unlikely that many of their loans would fully meet the requirements to be a Seasoned QM, undermining the rule's objectives.

Even though only fixed-rate covered transactions could become Seasoned QMs pursuant to proposed § 1026.43(e)(7)(i), the required periodic payments for such transactions could vary over time as tax and insurance amounts change. For example, a consumer could overlook an annual escrow statement reflecting an escrow payment increase and pay the previously required amount instead of the new amount. The Bureau believes that small deficiencies in a limited amount of periodic payments would not necessarily mean that the consumer was unable to repay the loan at the time of consummation.

The Bureau is concerned, however, that unless limits are imposed, servicers and creditors could use payment tolerances to mask unaffordability in a way that might undermine the purposes of this proposal. The Bureau understands that Fannie Mae and Freddie Mac servicing guidance allows servicers to apply periodic payments

that are short by $50 or less.[131] Fannie Mae limits the usage of the payment tolerance to three monthly payments during a 12-month period,[132] while the National Mortgage Settlement generally required acceptance of at least two periodic payments that were short by $50 or less.[133] In light of these practices and the considerations discussed above, the Bureau is proposing a cap of no more than three periodic payment deficiencies of $50 or less during the seasoning period to ensure that use of payment tolerances does not mask unaffordability. The Bureau believes that allowing up to three deficient payments over the course of the seasoning period may provide appropriate flexibility for small deficiencies such as those related to variations in tax and insurance amounts.[134]

Paragraph 43(e)(7)(iv)(A)(*4*)

Proposed § 1026.43(e)(7)(iv)(A)(*4*) would provide that unless a qualifying change is made to the loan obligation, the principal and interest used in determining the date a periodic payment sufficient to cover principal, interest, and, if applicable, escrow becomes due and unpaid are the principal and interest payment amounts established by the terms and payment schedule of the loan obligation at consummation. Proposed § 1026.43(e)(7)(iv)(A)(*4*) focuses on the principal and interest payment amounts established by the terms and payment schedule of the loan obligation at consummation because the performance requirements in proposed § 1026.43(e)(7)(ii) are designed to assess whether the creditor made a reasonable and good faith determination of the consumer's ability to repay at the time of consummation.[135] The Bureau is concerned that using a principal and interest amount that has been modified or adjusted after consummation would not provide a basis for presuming that the creditor made such a determination. For example, if a consumer has a modified payment that is much lower than the original contractual payment amount, the consumer might be able to make the modified payments even though the contractual terms at consummation were not affordable.

As explained in the section-by-section analysis of proposed § 1026.43(e)(7)(iv)(B), the Bureau preliminarily concludes that certain unusual circumstances involving disasters or pandemic-related emergencies warrant using a principal and interest amount that has been modified or adjusted after consummation. Accordingly, the Bureau proposes that if a qualifying change as defined in proposed § 1026.43(e)(7)(iv)(B) is made to the loan obligation, the principal and interest used in determining the date a periodic payment sufficient to cover principal, interest, and, if applicable, escrow becomes due and unpaid are the principal and interest payment amounts established by the terms and payment schedule of the loan obligation at consummation as modified by the qualifying change.

Paragraph 43(e)(7)(iv)(A)(*5*)

Proposed § 1026.43(e)(7)(iv)(A)(*5*) addresses how to handle payments made from certain third-party sources in assessing delinquency for purposes of proposed § 1026.43(e)(7). Specifically, proposed § 1026.43(e)(7)(iv)(A)(*5*) provides that, except for making up the deficiency amount set forth in proposed § 1026.43(e)(7)(iv)(A)(*3*)(*ii*), payments from the following sources are not considered in assessing delinquency under proposed § 1026.43(e)(7)(iv)(A): (1) Funds in escrow in connection with the covered transaction, or (2) funds paid on behalf of the consumer by the creditor, servicer, assignee of the covered transaction, or any other person acting on behalf of such creditor, servicer, or assignee.

Because a seasoning approach would condition protection from liability on performance, some commenters that responded to the ANPR expressed concern that creditors might take steps to make it appear that consumers were making payments on their mortgage loans during the seasoning period to ensure those loans season even in situations where consumers were in fact struggling. As discussed in part III above, several consumer advocacy groups suggested that creditors might engage in gaming to minimize defaults during the seasoning period. They noted, as an example, that creditors might place some portion of the loan's proceeds in escrow to be used to fund monthly loan payments. Similarly, two industry commenters that supported a seasoning approach suggested the Bureau could require consumers to use their own funds to make monthly payments.

The Bureau is aware that the GSEs have specific requirements to address these types of concerns in their representation and warranty frameworks. For example, in addition to imposing conditions around the number and duration of delinquencies, Fannie Mae's lender selling representation and warranty framework provides that:

> With the exception of mortgage loans with temporary buydowns, neither the lender nor a third party with a financial interest in the performance of the loan . . . can escrow or advance funds on behalf of the borrower to be used for payment of any principal or interest payable under the terms of the mortgage loan for the purpose of satisfying the payment history requirement.[136]

The Bureau tentatively concludes that proposed § 1026.43(e)(7)(iv)(A)(*5*) is an appropriate step to ensure that the performance history considered in assessing delinquency for purposes of proposed § 1026.43(e)(7) reflects the consumer's ability to repay rather than payments made by the creditor, assignee or servicer or persons acting on their behalf, potentially masking a consumer's inability to repay. Similar to the GSEs' representation and warranty framework, the Bureau believes that payments made from escrow accounts established in connection with the loan should not be considered in assessing performance for seasoning purposes because a creditor could escrow funds from the loan proceeds to cover payments during the seasoning period even if the loan payments were not actually affordable for the consumer on an ongoing basis.

Pursuant to proposed § 1026.43(e)(7)(iv)(A)(*5*), any payment received from one of the identified sources would not be considered in assessing delinquency, except for making up the deficiency amount set forth in proposed § 1026.43(e)(7)(iv)(A)(*3*)(*ii*). Thus, for example, if a creditor or servicer advances $800 to cover a specific periodic payment on the consumer's behalf, it would be as if the advanced $800 were not paid for purposes of assessing whether that periodic payment is delinquent under proposed § 1026.43(e)(7). However, proposed

[131] Fannie Mae, *Servicing Guide* 218–19 (July 15, 2020), *https://singlefamily.fanniemae.com/media/23346/display (July 2020 Servicing Guide);* Freddie Mac, *Seller/Servicer Guide* 8103–3 (Aug. 5, 2020), *https://guide.freddiemac.com/ci/okcsFattach/get/1002095_2.*

[132] *July 2020 Servicing Guide, supra note 131, at* 218–19.

[133] *See, e.g., United States* v. *Bank of Am. Corp.,* No. 1:12–cv–00361–RMC, 2012 U.S. Dist. LEXIS 188892, at *32 (D.D.C. Apr. 4, 2012).

[134] The Bureau also notes that a deficient periodic payment would not trigger a delinquency of 30 days or more under proposed § 1026.43(e)(7)(iv)(A)(*1*) if the consumer pays the deficient amount before the next periodic payment comes due.

[135] The Bureau is not proposing to require that the escrow amount (if applicable) considered in determining whether a delinquency exists for purposes of proposed § 1026.43(e)(7) be the amount disclosed to the consumer at origination, because escrow payments are subject to changes over time.

[136] Fannie Mae, *Selling Guide* 56 (Aug. 5, 2020), *https://singlefamily.fanniemae.com/media/23641/display.*

§ 1026.43(e)(7)(iv)(A)(*5*) would not prohibit creditors from making up a deficiency amount as part of a payment tolerance of $50 or less under the circumstances set forth in proposed § 1026.43(e)(7)(iv)(A)(*3*)(*ii*).

The Bureau seeks comment on whether it should include other sources of funds in proposed § 1026.43(e)(7)(iv)(A)(*5*) as an additional measure to ensure payments in fact reflect ability to repay. Specifically, the Bureau is interested in whether it should include funds from subordinate-lien credit transactions made to the consumer by the creditor, servicer, or assignee of the covered transaction, or a person acting on such creditor, servicer, or assignee's behalf; the reasons for or against treating such funds in the same way as proposed § 1026.43(e)(7)(iv)(A)(*5*) would treat funds paid on behalf of a consumer by such persons; and how such a provision could be structured so as not to impact negatively consumers' ability to access credit.

Paragraph 43(e)(7)(iv)(B)

Proposed § 1026.43(e)(7)(iv)(C)(*2*) would provide that the seasoning period does not include certain periods during which the consumer is in a temporary payment accommodation extended in connection with a disaster or pandemic-related national emergency, provided that during or at the end of the temporary payment accommodation there is a qualifying change or the consumer cures the loan's delinquency under its original terms. Proposed § 1026.43(e)(7)(iv)(C)(*2*) would provide that, under those circumstances, the seasoning period consists of the period before the accommodation begins and an additional period immediately after the accommodation ends, which together must equal at least 36 months. For the reasons discussed below, proposed § 1026.43(e)(7)(iv)(B) defines a qualifying change as an agreement that meets the following conditions: (1) The agreement is entered into during or after a temporary payment accommodation in connection with a disaster or pandemic-related national emergency as defined in proposed § 1026.43(e)(7)(iv)(D), and must end any pre-existing delinquency on the loan obligation when the agreement takes effect; (2) the amount of interest charged over the full term of the loan does not increase as a result of the agreement; (3) the servicer does not charge any fee in connection with the agreement; and (4) the servicer waives all existing late charges, penalties, stop payment fees, or similar charges promptly upon the consumer's acceptance of the agreement.

The Bureau understands that a variety of options may be available to bring current a loan that is subject to a temporary payment accommodation extended in connection with a disaster or pandemic-related national emergency, which include, but are not limited to, curing the delinquency according to the terms of the original obligation, entering into a repayment plan, or entering into a permanent modification. In determining how to define a qualifying change, the Bureau sought to propose standards that would reasonably ensure that any changes in the terms of a loan re-entering the seasoning period after a temporary payment accommodation extended in connection with a disaster or pandemic-related national emergency would not significantly change the affordability of the loan as compared to the loan terms at consummation. As such, the Bureau preliminarily concludes that such a qualifying change should end any pre-existing delinquency, not add to the amount of interest charged over the full term of the loan, not involve an additional fee charged to the consumer in connection with the change, and generally provide a waiver of accumulated fees upon the consumer's acceptance of the change. The Bureau preliminarily determines that these standards would help to ensure that, consistent with the underlying purposes of the ATR and QM requirements, loans that ultimately become Seasoned QMs after a temporary payment accommodation extended in connection with a disaster or pandemic-related national emergency are affordable.

Paragraph 43(e)(7)(iv)(C)

Proposed § 1026.43(e)(7) would require that, to become a Seasoned QM, a covered transaction must meet certain requirements during and at the end of the seasoning period. Proposed § 1026.43(e)(7)(iv)(C) would define the seasoning period as a period of 36 months beginning on the date on which the first periodic payment is due after consummation of the covered transaction, except that: (1) If there is a delinquency of 30 days or more at the end of the 36th month of the seasoning period, the seasoning period does not end until there is no delinquency; (2) the seasoning period does not include any period during which the consumer is in a temporary payment accommodation in connection with a disaster or pandemic-related national emergency, provided that during or at the end of the temporary payment accommodation there is a qualifying change or the consumer cures the loan's delinquency under its original terms. These exceptions are further discussed in the section-by-section analysis of proposed § 1026.43(e)(7)(iv)(C)(*1*) and (*2*) below.

In defining the length of the proposed seasoning period, the Bureau seeks to balance two objectives. First, it seeks to ensure that safe harbor QM status accrues to loans for which the history of sustained, timely payments is long enough to conclusively presume that the consumer had the ability to repay at consummation. Second, in accomplishing its first objective, the Bureau seeks to avoid making the seasoning period so long that the Seasoned QM definition fails to incentivize increased access to credit, especially through increased originations of non-QM loans to consumers with the ability to repay them.

As explained in part V above, in evaluating the length of a seasoning period that is long enough to demonstrate a consumer's ability to repay, the Bureau considered the practices of market participants with respect to penalties and other remedies for deficiencies in underwriting practices. The Bureau also focused on the timing of the first disqualifying event from the proposed Seasoned QM definition as well as the rate at which loans terminate, either through prepayment or foreclosure, to assess the potential population of loans that would be eligible to benefit from this proposal, as discussed in part V above and illustrated in Figures 1 and 2 of part VII below. Based on these considerations and for the reasons discussed in part V above, the Bureau is proposing to define the seasoning period generally as a period of 36 months beginning on the date on which the first periodic payment is due after consummation.

The Bureau solicits comment on its proposal to define the seasoning period generally as a period of 36 months beginning on the date on which the first periodic payment is due after consummation. The Bureau also requests comment on alternative lengths that the Bureau should consider for the seasoning period; considerations and data that the Bureau should consider in determining the length of the seasoning period; and whether the length of the seasoning period should depend on the type of loan or QM status at origination (for example, whether the Bureau should provide a longer seasoning period for loans that are non-QM at origination than for loans that are rebuttable presumption loans at origination).

Paragraph 43(e)(7)(iv)(C)(*1*)

As explained in the section-by-section analysis of proposed § 1026.43(e)(7)(iv)(C) above, the Bureau is proposing a seasoning period of 36 months beginning on the date on which the first periodic payment is due after consummation, unless one of two exceptions applies. The first proposed exception would extend the seasoning period if the loan is 30 days or more delinquent at the point when the seasoning period would otherwise end. Specifically, proposed § 1026.43(e)(7)(iv)(C)(*1*) provides that if there is a delinquency of 30 days or more at the end of the 36th month of the seasoning period, the seasoning period does not end until there is no delinquency.

When a delinquency of 30 days or more exists in the 36th month of the seasoning period, it is possible that the delinquency will be resolved quickly after the seasoning period ends or that the delinquency will continue for an extended period. In situations where the delinquency is not resolved quickly, the Bureau believes that it may not be appropriate for the loan to become a Seasoned QM, as the extended delinquency, when considered with the consumer's prior payment history, could suggest that the creditor failed to make a reasonable, good faith determination of ability to repay at consummation. The Bureau is, therefore, proposing to extend the seasoning period under these circumstances until the loan is no longer delinquent. The loan would then have to meet the performance requirements under proposed § 1026.43(e)(7)(ii) at the conclusion of the extended seasoning period based on performance over the entire, extended seasoning period. The Bureau believes that extending the seasoning period until any delinquency of 30 days or more is resolved would help to ensure that loans for which a creditor failed to make a reasonable, good faith determination of ability to repay at consummation do not season into QMs under the proposal.

Paragraph 43(e)(7)(iv)(C)(*2*)

Proposed § 1026.43(e)(7)(iv)(C)(*2*) addresses how the time during which a loan is subject to a temporary payment accommodation extended in connection with a disaster or pandemic-related national emergency [137] affects the seasoning period. For the reasons set forth below, proposed § 1026.43(e)(7)(iv)(C)(*2*) provides that any period during which the consumer is in a temporary payment accommodation extended in connection with a disaster or pandemic-related national emergency would not be counted as part of the seasoning period. Proposed § 1026.43(e)(7)(iv)(C)(*2*) also states that, if the seasoning period is paused due to a temporary payment accommodation defined in proposed § 1026.43(e)(7)(iv)(D), a loan must undergo a qualifying change [138] or the consumer must cure the delinquency under the loan's original terms before the seasoning period can resume. Section 1026.43(e)(7)(iv)(C)(*2*) further explains that, under these circumstances, the seasoning period consists of the period from the date on which the first periodic payment was due after consummation of the covered transaction to the beginning of the temporary payment accommodation and an additional period immediately after the temporary payment accommodation ends, which together must equal at least 36 months.

The Bureau is proposing to exempt the period of time during which a loan is subject to certain temporary payment accommodations from the seasoning period for three primary reasons, which are further discussed below. First, the Bureau believes that financial hardship experienced as a result of a disaster or pandemic-related national emergency is not likely to be indicative of a consumer's inability to afford a loan at consummation. Second, the Bureau preliminarily believes that the assessment of an entire 36-month seasoning period during which the consumer is obligated to make full periodic payments (whether based on the terms of the original obligation or a qualifying change) is necessary to demonstrate that the consumer was able to afford the loan at consummation. The Bureau believes that a loan's performance during time spent in a temporary payment accommodation due to a disaster or pandemic-related national emergency should be excluded from this period because such accommodations typically involve reduced payments or no payment and are therefore not likely to assist in determining whether the creditor made a reasonable assessment of the consumer's ability to repay at consummation. Third, absent the exclusion of periods of such temporary payment accommodations from the seasoning period definition, financial institutions may be disincentivized from offering these types of accommodations to consumers in a prompt manner.

The Bureau believes that financial hardship experienced as a result of a disaster or pandemic-related national emergency is not likely to be indicative of the consumer's inability to afford the loan at consummation, since it constitutes a change in the consumer's circumstances after consummation. This determination is consistent with the ATR/QM Rule's distinction between failure to repay due to a consumer's inability to repay at the loan's consummation, versus a consumer's subsequent inability to repay due to a change in the consumer's circumstances. Comment 43(c)(1)–2 states that ''[a] change in the consumer's circumstances after consummation . . . that cannot be reasonably anticipated from the consumer's application or the records used to determine repayment ability is not relevant to determining a creditor's compliance with the rule.'' As such, the Bureau tentatively determines that periods of temporary payment accommodation attributable to financial hardship related to a disaster or pandemic-related national emergency should not jeopardize the possibility of the loan seasoning into a QM if the consumer brings the loan current or enters into a qualifying change. Absent an exclusion from the seasoning period for these types of loans, loans that do not meet the proposed performance requirements in proposed § 1026.43(e)(7)(ii) due to a disaster or pandemic-related national emergency would lose their seasoning eligibility even if a temporary payment accommodation could have assisted in resolving the loan's delinquency.

In evaluating how it would propose to treat periods of temporary payment accommodation for purposes of the seasoning period, the Bureau also considered how market participants address temporary payment accommodations with respect to penalties and other remedies for deficiencies in underwriting practices. The GSEs generally treat temporary and permanent payment accommodations as disqualifying for purposes of representation and warranty

[137] As further discussed in the section-by-section analysis of § 1026.43(e)(7)(iv)(D) below, the Bureau is proposing to define a temporary payment accommodation extended in connection with a disaster or pandemic-related national emergency as temporary payment relief granted to a consumer due to financial hardship caused directly or indirectly by a presidentially declared emergency or major disaster under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), Public Law 93–288, 88 Stat. 143 (1974), or a presidentially declared pandemic-related national emergency under the National Emergencies Act, Public Law 94–412, 90 Stat. 1255 (1976).

[138] As further discussed in the section-by-section analysis of § 1026.43(e)(7)(iv)(C) above, the Bureau is proposing specific requirements for the type of qualifying change that can restart the seasoning period.

enforcement relief, but they make certain exceptions for accommodations related to disasters.[139] Similarly, the master policies of mortgage insurers generally provide rescission relief after 36 months of satisfactory payment performance, but a loan that has been subject to a temporary or permanent payment accommodation is typically not eligible for 36-month rescission relief, unless the accommodation was the result of a disaster. These practices, which extend to a significant portion of covered transactions, suggest that the GSEs and mortgage insurers have concluded based on their experience that payment accommodations resulting from disasters are not likely to be attributed to underwriting.[140]

The Bureau is concerned that temporary payment accommodations entered into for reasons other than disasters or emergencies meeting the definition in proposed § 1026.43(e)(7)(iv)(D) may be a sign of ongoing consumer financial distress that could indicate that the creditor did not make a reasonable assessment of the consumer's ability to repay at origination. As such, the Bureau believes it may be appropriate to treat periods of temporary payment accommodation for reasons other than disasters or pandemic-related emergencies as part of the seasoning period.

In defining limits for the types of temporary payment accommodations that qualify to be excluded from the seasoning period, the Bureau is also mindful of its goal of ensuring access to responsible, affordable mortgage credit by proposing requirements which enable a financial institution to obtain a reasonable degree of certainty as to whether a loan has met the definition of a Seasoned QM at the end of the seasoning period. The Bureau is concerned that proposing a broader exclusion from the seasoning period, such as, for example, excluding a period of temporary payment accommodation entered into as the result of financial hardship arising from circumstances not foreseeable at origination, could lead to an uncertain standard whereby financial hardships resulting in temporary payment accommodations would need to be evaluated on a case-by-case basis to determine whether a loan subject to such accommodations could season into a QM. Therefore, the Bureau proposes to exclude from the seasoning period temporary payment accommodations only for disasters and pandemic-related national emergencies meeting the definition in proposed § 1026.43(e)(7)(iv)(D).

The Bureau is also concerned that, absent the exclusion of periods of temporary payment accommodations extended in connection with a disaster or pandemic-related national emergency from the seasoning period definition, financial institutions may be disincentivized from offering these types of accommodations to consumers in a prompt manner. Specifically, the Bureau is concerned that financial institutions may delay the provision of such payment accommodations until and unless affected loans are disqualified from seasoning into QM status due to accumulating two delinquencies of 30 or more days or one delinquency of 60 or more days. The proposed rule's exclusion of temporary payment accommodations related to a disaster or pandemic-related national emergency from the proposed seasoning period is consistent with the Bureau's prior statements and actions encouraging financial institutions to move quickly to assist consumers affected by the urgent circumstances surrounding these types of events.[141]

At the same time, the Bureau recognizes that the QM status is typically reserved for loans that meet various requirements designed to ensure affordability and wants to ensure that loans that season into QMs have affordable terms. For that reason, the Bureau is proposing to allow loans to re-enter the seasoning period after a temporary payment accommodation ends only when the consumer cures the loan's delinquency under its original terms or specific qualifying changes are made to the loan obligation. As discussed further in the section-by-section analysis of proposed § 1026.43(e)(7)(iv)(C), the proposed limitation to qualifying changes is meant to ensure that any changes made to the loan terms after a temporary payment accommodation related to a disaster or pandemic-related national emergency do not undermine the affordability that the QM statutory requirements are designed to ensure. The Bureau is also proposing to require a total cumulative seasoning period of 36 months, excluding the period of temporary payment accommodation, to ensure that there is sufficient information to evaluate the consumer's performance history using the performance requirements in proposed § 1026.43(e)(7)(ii).

Proposed comment 43(e)(7)(iv)(C)(*2*)–1 provides an example illustrating when the seasoning period begins, pauses, resumes, and ends for a loan that enters a temporary payment accommodation extended in connection with a disaster or pandemic-related national emergency. The example uses a three-month temporary payment accommodation and subsequent qualifying change to illustrate that, in such circumstances, the seasoning period would end at least three months later than originally anticipated at the loan's consummation.

The Bureau invites comment on the proposal to exclude from the seasoning period the period of time during which a loan is subject to a temporary payment accommodation extended in connection with a disaster or pandemic-related national emergency.

Paragraph 43(e)(7)(iv)(D)

Proposed § 1026.43(e)(7)(iv)(D) addresses how a temporary payment accommodation made in connection with a disaster or pandemic-related national emergency is defined. The definition of the seasoning period in proposed § 1026.43(e)(7)(iv)(C)(*2*), would not include the period of time during which a consumer has been granted temporary payment relief due to a temporary payment accommodation made in connection with a disaster or a pandemic-related national emergency.

[139] Fannie Mae's Selling Guide states that loans subject to non-disaster related payment accommodations ''may be eligible [for representation and warranty enforcement relief] on the basis of a quality control review of the loan file'' if certain other requirements are met. *See* Fannie Mae, *Selling Guide* 56 (Aug. 5, 2020), *https://singlefamily.fanniemae.com/media/23641/display.* For purposes of representation and warranty enforcement relief, the GSEs allow disaster-related forbearance plans to count as part of seasoning periods, but only if the subject loan is brought current (via reinstatement, a repayment plan, or a permanent modification) after the forbearance plan ends. *See id.* at 57; Freddie Mac, *Seller/Servicer Guide* 1301–19 (Aug. 5, 2020), *https://guide.freddiemac.com/ci/okcsFattach/get/1002095_2.*

[140] Although both the GSEs and mortgage insurers appear to count time spent in a disaster-related forbearance plan towards the 36-month time period, the Bureau believes that excluding temporary payment accommodations related to a disaster or pandemic-related national emergency from the seasoning period may best advance its goal of ensuring that the seasoning period allows enough time to assess whether the creditor made a reasonable assessment of the consumer's ability to repay at origination.

[141] *See, e.g.,* Bureau of Consumer Fin. Prot., *Statement on Bureau Supervisory and Enforcement Response to COVID–19 Pandemic* (Mar. 26, 2020), *https://files.consumerfinance.gov/f/documents/cfpb_supervisory-enforcement-statement_covid-19_2020-03.pdf;* Press Release, Bureau of Consumer Fin. Prot., *Agencies Provide Additional Information to Encourage Financial Institutions to Work with Borrowers Affected by COVID–19* (Mar. 22, 2020), *https://www.consumerfinance.gov/about-us/newsroom/agencies-provide-additional-information-encourage-financial-institutions-work-borrowers-affected-covid-19/; see also* 85 FR 39055 (June 30, 2020) (the Bureau's June 2020 interim final rule amending Regulation X to allow mortgage servicers to finalize loss mitigation options without collecting a complete application).

For the reasons set forth below, proposed § 1026.43(e)(7)(iv)(D) would define a temporary payment accommodation in connection with a disaster or pandemic-related national emergency to mean temporary payment relief granted to a consumer due to financial hardship caused directly or indirectly by a presidentially declared emergency or major disaster under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act) or a presidentially declared pandemic-related national emergency under the National Emergencies Act.

The Bureau is proposing to reference in § 1026.43(e)(7)(iv)(D) presidentially declared emergencies or major disasters under the Stafford Act or presidentially declared pandemic-related national emergencies under the National Emergencies Act to provide financial institutions with a reasonable degree of certainty regarding what types of financial hardships lead to temporary payment accommodations that qualify to be excluded from the seasoning period. The Stafford Act, which has been used for over 30 years to facilitate Federal disaster response, contains detailed definitions of what are considered to be emergencies or major disasters under that statute.[142] The National Emergencies Act, which has been in place for more than 40 years, was invoked to declare a national emergency due to the COVID–19 pandemic.[143] The Bureau preliminarily determines that referring to these two statutes will provide sufficient certainty for financial institutions to ascertain what events can lead to financial hardships that result in temporary payment accommodations qualifying to be excluded from the seasoning period.

The Bureau also preliminary concludes that a presidentially declared emergency or major disaster under the Stafford Act, or a pandemic-related national emergency under the National Emergencies Act, are likely to be events of a scale that warrant the timely provision of temporary payment accommodations for consumers experiencing financial hardship because of them.

The Bureau is aware that various types of temporary payment accommodations may be offered to consumers during a disaster or pandemic-related national emergency. Proposed comment 43(e)(7)(iv)(D)-1 provides a non-exclusive list of examples of the types of temporary payment accommodations in connection with a disaster or pandemic-related national emergency that can be excluded from the seasoning period if they meet the definition in proposed § 1026.43(e)(7)(iv)(D) and the requirements of proposed § 1026.43(e)(7)(iv)(C)(*2*).

The Bureau invites comment generally on the proposed definition of a temporary payment accommodation in connection with a disaster or pandemic related national emergency.

VII. Dodd-Frank Act Section 1022(b) Analysis

A. Overview

In developing this proposal, the Bureau has considered the potential benefits, costs, and impacts as required by section 1022(b)(2)(A) of the Dodd-Frank Act. Specifically, section 1022(b)(2)(A) of the Dodd-Frank Act requires the Bureau to consider the potential benefits and costs of a regulation to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products or services, the impact on depository institutions and credit unions with $10 billion or less in total assets as described in section 1026 of the Dodd-Frank Act, and the impact on consumers in rural areas. The Bureau consulted with appropriate prudential regulators and other Federal agencies regarding the consistency of the proposed rule with prudential, market, or systemic objectives administered by such agencies as required by section 1022(b)(2)(B) of the Dodd-Frank Act. The Bureau requests comment on the preliminary analysis presented below as well as submissions of additional data that could inform the Bureau's analysis of the benefits, costs, and impacts.

The proposal defines a new category of QMs for first-lien, fixed-rate, covered transactions that have fully amortizing payments and do not have loan features proscribed by the statutory QM requirements, such as balloon-payments, interest-only features, terms longer than 30 years, or points and fees above prescribed amounts. Creditors would have to satisfy consider and verify requirements and keep the loans in portfolio until the end of the seasoning period. The loans also would have to meet certain performance requirements. Specifically, loans could have no more than two delinquencies of 30 or more days and no delinquencies of 60 or more days at the end of the seasoning period. Covered transactions that satisfy the proposed Seasoned QM requirements would receive a safe harbor from ATR liability at the end of the seasoning period.

As discussed above, a goal of the proposal is to enhance access to responsible, affordable mortgage credit. The proposal incentivizes the origination of non-QM and rebuttable presumption QM loans that a lender expects to demonstrate a sustained and timely mortgage payment history, by providing a separate path to safe harbor QM status for these loans if lenders' expectations are fulfilled. The proposal therefore may encourage meaningful innovation and lending to broader groups of creditworthy consumers that would otherwise not occur.

1. Data and Evidence

The impact analyses rely on data from a range of sources. These include data collected or developed by the Bureau, including the Home Mortgage Disclosure Act of 1975 (HMDA)[144] and National Mortgage Database (NMDB)[145] data, as well as data obtained from industry, other regulatory agencies, and other publicly available sources. The Bureau also conducted the Assessment and issued the Assessment Report as required under section 1022(d) of the Dodd-Frank Act. The Assessment Report provides quantitative and qualitative information on questions relevant to the analysis that follows, including the share of lenders that originate non-QM loans. Consultations with other regulatory agencies, industry,

[142] Stafford Act section 102(1) and (2), 88 Stat. 144.

[143] Proclamation No. 9994, 85 FR 15337 (Mar. 13, 2020). The Stafford Act was also invoked to declare an emergency due to the COVID–19 pandemic. *See* Press Release, The White House, *Letter from President Donald J. Trump on Emergency Determination Under the Stafford Act* (Mar. 13, 2020), *https://www.whitehouse.gov/briefings-statements/letter-president-donald-j-trump-emergency-determination-stafford-act/.*

[144] Public Law 94–200, tit. III, 89 Stat. 1125. HMDA requires many financial institutions to maintain, report, and publicly disclose loan-level information about mortgages. These data help show whether creditors are serving the housing needs of their communities; they give public officials information that helps them make decisions and policies; and they shed light on lending patterns that could be discriminatory. HMDA was originally enacted by Congress in 1975 and is implemented by Regulation C. *See* Bureau of Consumer Fin. Prot., *https://www.consumerfinance.gov/data-research/hmda/.*

[145] The NMDB, jointly developed by the FHFA and the Bureau, provides de-identified loan characteristics and performance information for a 5 percent sample of all mortgage originations from 1998 to the present, supplemented by de-identified loan and borrower characteristics from Federal administrative sources and credit reporting data. *See* Bureau of Consumer Fin. Prot., *Sources and Uses of Data at the Bureau of Consumer Financial Protection* 55–56 (Sept. 2018), *https://www.consumerfinance.gov/documents/6850/bcfp_sources-uses-of-data.pdf.* Differences in total market size estimates between NMDB data and HMDA data are attributable to differences in coverage and data construction methodology.

and research organizations inform the Bureau's impact analyses.

The data the Bureau relied upon provide detailed information on the number, characteristics, pricing, and performance of mortgage loans originated in recent years. However, it would be useful to supplement these data with more information relevant to pricing and APR calculations, particularly private mortgage insurance (PMI) costs, for originations before 2018. PMI costs are an important component of APRs, particularly for loans with smaller down payments, and thus should be included or estimated in calculations of rate spreads relative to APOR. The Bureau seeks additional information or data that could inform quantitative estimates of PMI costs or APRs for these loans.

The data provide only limited information on the costs to creditors of uncertainty related to legal liability that the proposal may mitigate. As a result, the analysis of impacts of the proposal on creditor costs from reduced uncertainty related to legal liability relies on simplifying assumptions and qualitative information as well as the limited data that are available. This analysis indicates the relative magnitude of the potential effects of the proposal on these costs.

Finally, as discussed further below, the analysis of the impacts of the proposal requires the Bureau to use current data to predict the number of originations of certain types of non-QM loans and the performance of these loans. It is possible, however, that the market for mortgage originations may shift in unanticipated ways given the potential changes considered below. The Bureau seeks additional information or data which could inform its quantitative estimates of the effects of the proposal.

2. Description of the Baseline

The Bureau considers the benefits, costs, and impacts of the proposal against two baselines. The first baseline (Baseline 1) assumes that the Bureau's recent proposals to extend the expiration date of the Temporary GSE QM loan definition and to amend the General QM definition are both adopted as proposed. The second baseline (Baseline 2) assumes that neither proposal is adopted, so the Temporary GSE QM loan definition expires on January 10, 2021 or when the GSEs exit conservatorship, whichever occurs first, and the current General QM definition persists.

Under each baseline, there are different numbers of loans that would be originated, and which would meet all of the requirements for a Seasoned QM loan except for the performance and portfolio requirements of the seasoning period. These are the loans under each baseline that are first-lien, fixed-rate covered transactions that comply, as described above, with certain general restrictions on product features, points and fees limits, and underwriting requirements. Further, only some of these loans would benefit if they met the performance and portfolio requirements for a Seasoned QM loan, meaning that as a result of meeting those requirements, they would obtain QM status, a stronger presumption of compliance, or would not need to satisfy the portfolio retention requirements that would be necessary to obtain safe harbor QM status under the EGRRCPA. The analysis below predicts the annual number of loan originations under each baseline, in years similar to 2018, that meet all of the requirements of a Seasoned QM loan and would benefit if they met the performance and portfolio requirements of the seasoning period. Upon satisfying all the requirements of the Seasoned QM definition, these loans would obtain QM status or a stronger presumption of compliance, or would not need to satisfy the portfolio retention requirements of the EGRRCPA.[146]

As stated above, under Baseline 1, both the proposal to extend the expiration date of the Temporary GSE QM loan definition and the proposal to amend the General QM definition are adopted as proposed. Consider first all of the non-QM loans under Baseline 1 that meet all of the requirements at consummation for a Seasoned QM loan and would benefit if they met the performance and portfolio requirements of the seasoning period.[147] To count these loans, the Bureau has used 2018 HMDA data to identify all residential first-lien, fixed-rate conventional loans for 1–4 unit housing that do not have prohibited features or other disqualifying characteristics; are not Small Creditor QM loans or entitled to a presumption of compliance under the EGRRCPA QM definition; [148] and for which the APR exceeds APOR by the amounts specified in the General QM Proposal's proposed amendments to § 1026.43(e)(2)(vi)(A) through (E). The Bureau estimates that there are 22,816 of these loans. These loans would benefit from the proposal by obtaining safe harbor QM status if they meet the performance and portfolio requirements of the seasoning period, and not otherwise.[149]

Consider next all of the rebuttable presumption QM loans under Baseline 1 that meet all of the requirements at consummation for a Seasoned QM loan and would benefit if they met the performance and portfolio requirements of the seasoning period. To count these loans, the Bureau has used 2018 HMDA data to identify two groups of loans. The first group is all fixed-rate higher-priced covered transactions that meet the proposed General QM definition but are not Small Creditor QM loans or loans entitled to a presumption of compliance under the EGRRCPA QM definition. The Bureau estimates that there are 73,590 of these loans. The second group is all fixed-rate rebuttable presumption Small Creditor QM loans. The Bureau estimates that there are 30,183 of these loans. Thus, the Bureau estimates that 103,773 loans would benefit from the proposal by obtaining safe harbor QM status instead of rebuttable presumption QM status if they meet the performance and portfolio requirements of the seasoning period, and not otherwise.[150]

Finally, consider all of the loans under Baseline 1 that are entitled to a presumption of compliance under the EGRRCPA QM definition and that (1) meet all of the requirements at consummation for a Seasoned QM loan and (2) do not otherwise satisfy the criteria to qualify for a safe harbor under the proposed General QM definition or the Small Creditor QM definition. The Bureau estimates that there would be 24,039 loans in 2018 that would fall into this category. This set of loans could obtain a safe harbor as Seasoned QMs without satisfying the portfolio

[146] Thus, the analysis estimates the maximum number of loans under each baseline that would become Seasoned QM loans if the loans met the performance and portfolio requirements. The Bureau has discretion in any rulemaking to choose an appropriate scope of analysis with respect to benefits, costs, and impacts, as well as an appropriate baseline or baselines.

[147] Analysis of HMDA data for Baseline 1 excludes loans where rate spread is not observed.

[148] EGRRCPA section 101 provides that loans must be originated and retained in portfolio by a covered institution, except for limited permissible transfers. Although EGRRCPA section 101 took effect upon enactment, the Bureau has not undertaken rulemaking to address any statutory ambiguities in Regulation Z.

[149] Note that the analysis uses 2018 data, but the proposal (if adopted) would not apply to these loans since the proposal would apply to covered transactions for which creditors receive an application on or after the effective date.

[150] The Bureau assumes solely for purposes of this section 1022(b) analysis that all loans originated under the EGRRCPA QM definition will obtain a safe harbor in the form of a conclusive presumption of compliance with the ATR requirements. To the extent some subset of such loans should qualify for a lesser presumption, however, these loans would comprise a third group for consideration here, since these loans would benefit if they met the performance and portfolio requirements of the seasoning period.

retention requirements that would be necessary to obtain protection from liability under the EGRRCPA, provided they meet the performance and portfolio requirements of the seasoning period, and not otherwise.

Thus, under Baseline 1, approximately 150,628 loans originated in 2018 would meet all of the requirements at consummation for Seasoned QM loans and would obtain QM status, a stronger presumption of compliance, or would not need to satisfy the portfolio retention requirements of the EGRRCPA, if they subsequently meet the performance and portfolio requirements of the seasoning period. This is the expected annual number of loan originations under the baseline in years similar to 2018, that meet all of the requirements of a Seasoned QM loan and would benefit if they met the performance and portfolio requirements of the seasoning period. Some of these loans will meet those performance and portfolio requirements, and some will not.[151]

Now consider Baseline 2. As stated above, under Baseline 2, neither the proposal to extend the expiration date of the Temporary GSE QM loan definition nor the proposal to amend the General QM definition is adopted, and the Temporary GSE QM loan definition expires on January 10, 2021, or when the GSEs exit conservatorship, whichever occurs first. Consider first all of the non-QM loans under Baseline 2 that meet all of the requirements at consummation for a Seasoned QM loan and would benefit if they met the performance and portfolio requirements of the seasoning period.[152] To count these loans, the Bureau has used 2018 HMDA data to identify all residential first-lien, fixed-rate conventional loans for 1–4 unit housing that do not have prohibited features or other disqualifying characteristics; are not Small Creditor QM loans or originated under the EGRRCPA QM definition; and do not satisfy the DTI requirement specified in § 1026.43(e)(4)(vi) of the current General QM definition. The Bureau estimates that there are 705,915 of these loans. These loans would benefit from the proposal by obtaining safe harbor QM status if they meet the performance and portfolio requirements of the seasoning period, and not otherwise.

Consider next all of the rebuttable presumption QM loans under Baseline 2 that meet all of the requirements at consummation for a Seasoned QM loan and would benefit if they met the performance and portfolio requirements of the seasoning period. To count these loans, the Bureau has used 2018 HMDA data to identify two groups of loans. The first group is all first-lien, fixed-rate higher-priced covered transactions that meet the current General QM definition, but which are not Small Creditor QM loans or loans entitled to a presumption of compliance under the EGRRCPA QM definition. The Bureau estimates that there are 63,646 of these loans. The second group is all first-lien, fixed-rate rebuttable presumption Small Creditor QM loans. The Bureau estimates that there are 30,183 of these loans. Thus, the Bureau estimates that 93,829 loans would obtain safe harbor QM status instead of rebuttable presumption QM status if they meet the performance and portfolio requirements of the seasoning period, and not otherwise.[153]

Finally, consider all of the loans under Baseline 2 that are entitled to a presumption of compliance under the EGRRCPA QM definition and that (1) meet all of the requirements at consummation for a Seasoned QM loan and (2) do not otherwise satisfy the criteria to qualify for a safe harbor under the proposed General QM definition or the Small Creditor QM definition. The Bureau estimates that there would be 127,887 loans in 2018 that would fall into this category. This set of loans could obtain a safe harbor as Seasoned QMs without satisfying the portfolio retention requirements that would be necessary to obtain protection from liability under the EGRRCPA, provided they meet the performance and portfolio requirements of the seasoning period, and not otherwise.

Thus, under Baseline 2, approximately 927,631 loans originated in 2018 would meet all of the requirements at consummation for Seasoned QM loans and would obtain QM status, a stronger presumption of compliance, or relief from portfolio retention requirements, if they subsequently meet the performance and portfolio requirements of the seasoning period. This is the expected annual number of loan originations under the baseline in years similar to 2018 that meet all of the requirements of a Seasoned QM loan and would benefit if they met the performance and portfolio requirements of the seasoning period. Some of these loans will meet those performance and portfolio requirements, and some will not.

B. Potential Benefits and Costs to Covered Persons and Consumers

The proposal reduces the chance a consumer will assert or succeed when asserting violations of ATR requirements in a defense to foreclosure. This section considers the potential benefits and costs of the proposal on creditors first and then consumers. The analysis begins by assessing how the proposal may potentially affect creditors' litigation risk, cost of origination, and the price of borrowing, holding originations constant. The analysis then considers the potential impacts of the proposal on originations and the benefits and costs of this effect. The Bureau cannot reliably quantify this effect, so the analysis considers qualitatively the potential benefits to both creditors and consumers of market expansion.

1. Benefits and Costs to Covered Persons

Benefits From Reduced Litigation Risk

Covered persons, specifically mortgage lenders, primarily benefit from decreased litigation risk under the proposal. Generally, the statute of limitations for a private action for damages for a violation of the ATR requirement is three years after the date on which the violation occurs. As such, the Bureau anticipates that the proposal would not curtail the ability of consumers to bring affirmative claims seeking damages for alleged violations of the ATR requirements. However, TILA also accords consumers the right to assert violations of the ATR requirements as defenses against foreclosure by recoupment or setoff, subject to no statute of limitations. For Seasoned QM loans that are non-QM loans or rebuttable presumption QM loans at consummation, the proposal would effectively limit these rights to approximately three years as a general matter.

The creditors' economic value of the reduction of litigation risk is related to how each of three factors changes with the proposal relative to the baseline: (1) The fraction of consumers that enter foreclosure, (2) the likelihood that ATR defenses are successful in foreclosure lawsuits, and (3) the costs associated with the lawsuits. The Bureau analyzed NMDB data to assess the first factor and seeks pertinent information related to

[151] The Bureau cannot reliably measure the full expansionary effect of the proposal on loan originations. One effect might be that the proposal would cause the share of loan applications that lead to originations of non-QM loans under the baseline (90 percent) to match the overall share (97 percent for loan applications for which Bureau data include the rate spread). This would lead to an additional 1700 non-QM originations not accounted for above.

[152] Analysis of HMDA data for Baseline 2 excludes loans where rate spread or DTI are not observed.

[153] The same caveat with respect to EGRRCPA section 101 discussed for Baseline 1 applies here as well.

ATR defenses in foreclosure proceedings and related costs.

The full NMDB data are a nationally representative sample of mortgages from 1998 to 2020, covering periods with differing economic and interest rate environments. Of these mortgages, the analysis focuses on conventional, fixed-rate purchase and refinance loans with no prohibited features that were privately held at consummation. Due to data limitations in the NMDB, the analysis of loan performance makes three assumptions. First, loans would continue to be originated under each baseline with the same characteristics regardless of QM status. Second, potentially seasonable loans are ineligible for the portfolio requirements of the EGRRCPA and thus can only achieve safe harbor status via the proposal. Finally, loans held in portfolio at consummation would not later be sold on the secondary market.

The likely quantitative impact of the proposal depends in part on the rate of attrition for loans during the first three years, as well as on the performance of the loans that are active for at least three years. Figure 1 plots the fraction of loans open after three years between 2004 and 2013 in order to provide context for the quantitative foreclosure analysis that follows.

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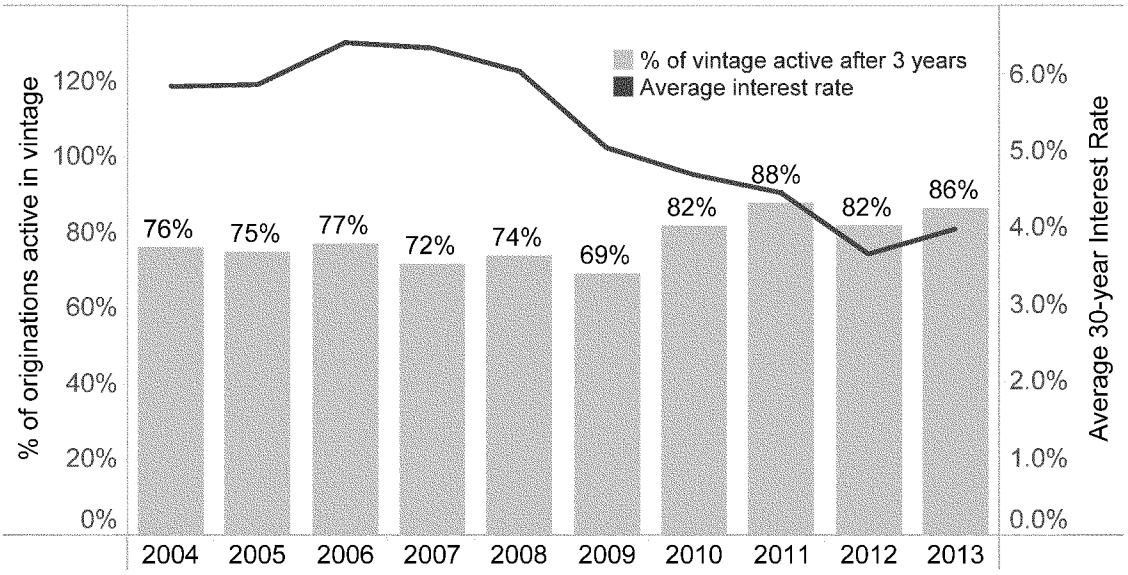
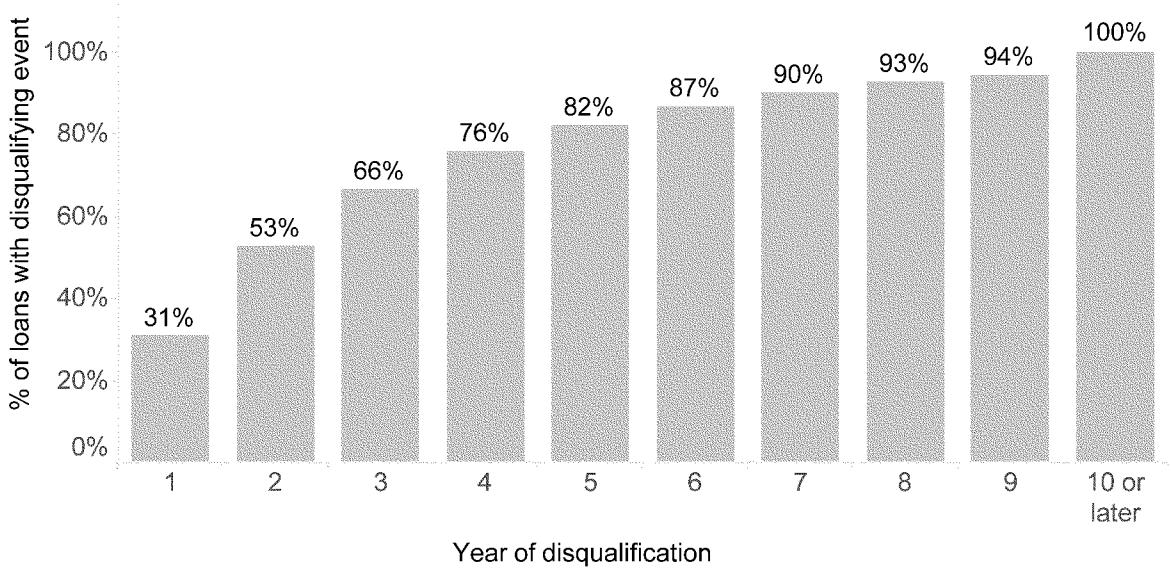
Figure 1: Percentage of Higher-Priced Active Loans by Year



Source: NMDB (percent active) and FRED, Federal Reserve Bank of St. Louis (average interest rate); NMDB numbers show privately held, fixed-rate conventional loans with no restricted product features; high interest rate loans are defined as those with an interest rate 150 basis points or more over the Primary Mortgage Market Survey (PMMS) and is a slightly different rate spread measure from those that use APR; loans with imputed loan purpose or ARM-flag are not included.

Figure 1 serves as a reminder that, over time, the effects of the proposal would depend on trends in interest rates. Loans originated between 2004 and 2009 were typically originated at higher interest rates and therefore would receive a significant benefit from refinancing when interest rates declined during and after the 2008 financial crisis. Loans originated in these same years also experienced elevated foreclosure rates during the 2008 financial crisis. As a result, a lower share of loans remained active beyond three years, and so the potential effects of the proposal would be smaller. This contrasts to post-crisis origination years where initial mortgage rates and foreclosure rates remained low and a larger share of loans remained active beyond three years.

Figure 2: Percentage of loans originated between 1998–2008 that had suffered a disqualifying event among those that ever suffer a disqualifying event



Source: NMDB; privately held, fixed-rate conventional loans with no restricted product features; high interest rate loans are defined as those with an interest rate 150 basis points or more over the Primary Mortgage Market Survey (PMMS) and is a slightly different rate spread measure from those that use APR; loans with imputed loan purpose or ARM-flag are not included; disqualifying event could be either the third 30-day late payment, the first rolling 30-day delinquency, or the first 60-day delinquency.

Figure 2 provides additional context for the quantitative foreclosure analysis. The figure considers higher-priced loans originated between 1998 to 2008, all of which incur sufficient late payments or delinquencies to disqualify them from seasoning depending on the specified length of the seasoning period. Figure 2 shows, for example, that 53 percent of loans with these performance problems would be disqualified from seasoning if the seasoning period were 24 months, 76 percent would be disqualified if the seasoning period were 48 months, and 66 percent would be disqualified from seasoning under the seasoning period of the proposal of 36 months.

Foreclosure Risk of Loans That Meet Seasoned QM's Proposed Performance Requirements in Baseline 1

To assess the proposal's potential effect on foreclosure risk, the Bureau analyzed data from the NMDB on the 1,275,480 conventional fixed-rate, first-lien loans that were originated between 2012 and 2013 without prohibited features.[154] The loans potentially would have met the Seasoned QM proposal's performance criteria in 2015 and 2016.

The analyses first classify loans by whether they would satisfy the General QM requirements for safe harbor and rebuttable presumption in Baseline 1 at consummation.[155] Four percent of loans would be either rebuttable presumption or non-QM loans and would potentially benefit from the Seasoned QM definition's pathway to safe harbor if they performed.

[154] The Bureau analyzed loans originated in 2012 and 2013 instead of other periods for several reasons. This period likely predicts the benefits and costs of the proposal during a period of normal economic expansion. The Bureau excluded later vintages because the analysis requires both a minimum three-year look-forward period to assess Seasoned QM's performance requirements plus some time to see whether foreclosures eventually emerge. The Bureau excluded earlier vintages whose loan performance may have been affected by the financial crisis. This period was somewhat unusual in the number of homes with negative equity and the slowness of the subsequent economic recovery. Thus, the number of loans that would have disqualifying events would be overstated compared to those in a typical business cycle. Using data from an even earlier cycle of expansion and contraction might be more informative about average benefits and costs over the long term, but older data would also reflect the features of the housing and mortgage markets of an earlier time. The analysis below should be understood with this background in mind, and the Bureau welcomes comment on the choice of time frame for the analysis.

[155] The NMDB data do not enable the Bureau to ascertain whether loans were originated by lenders that meet the size criteria for originating QM loans under the Small Creditor QM or EGRRCPA QM definitions.

Table 1: Share of loans under Baseline 1 that are open after three years and meet performance criteria

Type of Loan	Open after three years	Meet performance criteria (cond. on open)
Safe Harbor	78%	99%
Seasonable loans	78%	92%
Rebuttable Presumption	80%	94%
Non-QM	73%	87%
Missing Rate Spread	61%	87%
All Loans	77%	97%

Seventy-eight percent of loans that would have been originated as either rebuttable presumption QM loans or non-QM loans were still open after three years, and of those, 92 percent satisfied the performance criteria to qualify for Seasoned QM status under the proposal. By way of comparison, the corresponding fractions for loans originated as safe harbor were 78 percent and 99 percent, respectively. Altogether, 77 percent of the loans that would be rebuttable presumption QM loans and non-QM loans under Baseline 1 would perform well enough to gain safe harbor via Seasoned QM under the proposal.

The relief from litigation risk depends in part on the fraction of these loans that would eventually enter foreclosure proceedings. Table 1 reports the share of loans that enter foreclosure between origination and the first quarter of 2020 among all loans consummated between 2012 and 2013, those that were still open three years after origination, and those that met the performance criteria of the proposal. 0.2 percent of loans open for at least three years enter foreclosure proceedings before March 2020. Among the loans that satisfy the proposed Seasoned QM definition's performance requirements, foreclosure proceedings begin for 1.4 percent of loans that would be non-QM loans in Baseline 1 and for 0.5 percent of loans that would be rebuttable presumption loans under Baseline 1. Combined, 0.8 percent of loans that met the performance requirements and were potentially seasonable at consummation would foreclose. By comparison, for loans that were still open after three years and originated as safe harbor under Baseline 1, only 0.1 percent of loans enter foreclosure after year three. Thus, the average foreclosure rate among open loans with safe harbor status after three years—either from General QM status at consummation or from Seasoned QM status—would be higher than under Baseline 1, reflecting the inclusion of Seasoned QM loans.

Table 2: Share of loans that enter foreclosure under Baseline 1

Type of loan	All Loans	… open for 3 years	… and meet performance criteria
Safe Harbor	0.3%	0.2%	0.1%
Seasonable Loans	2.3%	2.3%	0.8%
Rebuttable Presumption	1.1%	1.1%	0.5%
Non-QM	4.4%	4.5%	1.4%
Missing Rate Spread	3.8%	1.8%	0.4%
All Loans	0.7%	0.5%	0.2%

In the January 2013 Final Rule, the Bureau estimated litigation costs under the ability-to-repay standards for non-QMs. The Bureau concluded that to reflect the expected value of these litigation costs, the costs of non-QMs would increase by 10 basis points or $212 for a $210,000 loan.[156] This model does not predict changes in costs from this baseline on non-QM loans that obtain QM status or on the remaining non-QM loans. The Bureau seeks comments on methods and data that would allow the Bureau to do so.

Foreclosure Risk of Loans That Meet Seasoned QM's Proposed Performance Requirements in Baseline 2

Paralleling the analyses of the proposal relative to Baseline 1, the analyses here classify loans by whether they would satisfy the General QM requirements for safe harbor and rebuttable presumption QM loans in Baseline 2 and whether they would satisfy the performance requirements of the proposal. Eight percent of analyzed loans would be non-QM loans or rebuttable presumption QM loans at consummation in Baseline 2 and potentially could gain safe harbor status via the proposed Seasoned QM performance criteria. Most of these loans (92 percent) would be non-QM at consummation. These estimates likely overestimate the fraction of non-QM loans that would be originated under Baseline 2.

[156] 78 FR 6408, 6569 (Jan. 30, 2013).

Table 3: Share of loans under Baseline 2 that are open after three years and meet performance criteria

Type of loan	Open after three years	Meet performance criteria (cond. on open)
Safe harbor	85%	99%
Seasonable loans	86%	98%
Rebuttable presumption	58%	92%
Non-QM	89%	99%
Missing rate spread	76%	97%
All loans	77%	97%

Eighty-six percent of the loans that would be potentially seasonable at consummation under Baseline 2 are still open after three years, of which 98 percent would satisfy the proposed performance requirements of Seasoned QM.

Among the loans that satisfy the proposed Seasoned QM definition's performance requirements, foreclosure proceedings begin for 0.2 percent of loans that would be potentially seasonable at consummation under Baseline 2. By comparison, 0.1 percent of loans that would have already met General QM's safe harbor requirements enter foreclosure after year three.

Table 4: Share of loans that enter foreclosure under Baseline 2

Type of loan	All Loans	… open for 3 years	… and meet performance criteria
Safe Harbor	0.2%	0.2%	0.1%
Seasonable Loans	0.4%	0.5%	0.2%
Rebuttable Presumption	2.3%	4.0%	0.0%
Non-QM	0.2%	0.2%	0.2%
Missing Rate Spread	0.7%	0.5%	0.2%
All Loans	0.7%	0.5%	0.2%

The analysis suggests that the foreclosure rate for open loans with safe harbor status after three years—either from General QM at consummation or from Seasoned QM—would not be appreciably different than under Baseline 2.

Benefits to Covered Persons From Market Expansion

The Bureau's analysis of the NMDB holds constant the quantity and composition of loans. However, creditors could potentially gain from originating loans that would not be profitable without the proposal. Such loans potentially have not only the decreased litigation risk discussed in the previous section, but loans that achieve safe harbor status via the proposal are likely more easily sold on the secondary market, freeing liquidity for creditors. This includes both non-QM loans that achieve safe harbor status and loans that achieved safe harbor status through the portfolio requirements of the EGRRCPA. The Assessment Report found that while non-depository institutions sold non-QM loans on the secondary market, almost all surveyed depository institutions kept non-QM loans in their portfolio. The Bureau seeks further information about whether litigation risk from non-QM status impedes depositories' sale of non-QM loans to the secondary market.

Altogether, the Bureau cannot reliably predict how many additional loans would be originated under the proposal's additional incentives and subsequently how much potential profits creditors would accrue relative to either baseline.[157] The Bureau seeks comment as to whether these effects can be ascertained.

Other Costs to Covered Persons

The Bureau preliminarily concludes that the proposal would not directly impose additional costs to mortgage creditors relative to the baseline. The proposal offers a pathway for performing mortgages to gain a safe harbor presumption. Loans meeting the proposed Seasoned QM definition would have at least as much of a presumption of compliance as under the baseline. However, if the proposal succeeds in expanding the market for non-QM loans, certain lenders' profits may be eroded by competitive pressures.

2. Benefits and Costs to Consumers

Consumers primarily benefit from the proposal indirectly via the potential expansion of rebuttable presumption and non-QM loans from decreased

[157] Assessment Report, *supra* note 49, at 117. In the Assessment Report, the Bureau estimated that the ATR/QM Rule eliminated between 63 and 70 percent of non-GSE eligible, high DTI loans for home purchase over the period of 2014 to 2016, accounting for 9,000 to 12,000 loans. The Bureau does not believe it can reliably estimate whether the number of additional loans would be less than, the same as, or more than those that the Assessment Report found were lost as a result of the ATR/QM Rule. The pool of loans analyzed in the Assessment Report is somewhat different from the 150,628 loans in Baseline 1 that would meet all of the requirements at consummation for Seasoned QM loans derived above, and the benefit of seasoning would vary across these loans.

litigation risk to creditors. For consumers that choose to pursue high APR loans without safe harbor QM status, borrowing may be cheaper or more widely available relative to the baseline. However, the Bureau cannot ascertain the additional number of consumers who would choose loans without safe harbor QM status under the proposal relative to the baselines as stated in the previous section.

Consumers who would select loans without safe harbor QM status under both the baseline and the proposal may or may not benefit from the proposal. On the one hand, decreased litigation risk may translate into lower costs in competitive mortgage markets.[158] However, decreased litigation risk for creditors would come from limiting the ability of consumers who make payments throughout the seasoning period to raise violations of ATR requirements as defenses, should they enter foreclosure after the third year. The Bureau neither has the data to estimate consumers' value of using such violations in foreclosure defense nor to estimate the proposal's potential decreases in price.

3. Consideration of Alternatives

The Bureau considered alternative seasoning periods to the one proposed and alternative performance requirements of allowable 30-day delinquencies. Each of the alternatives permits no 60-day delinquencies. The Bureau assesses each alternative along two different measures: (1) The estimated fraction of loans that would be originated as non-QM or rebuttable presumption QM loans in each baseline that would satisfy the performance requirements; and (2) the differences in foreclosure rates between those loans that would gain safe harbor status and those that were safe harbor at consummation.

Mirroring the approach of the foreclosure analysis in section VII.B.1 above, the Bureau analyzes the same data on conventional, fixed-rate, first-lien purchase and refinance mortgage loans without prohibited features that were originated in 2012 and 2013 and held privately in portfolio at consummation. The analyses of alternatives also make the same assumptions on how loans with certain characteristics can obtain safe harbor status and hold constant the quantity and composition of the loans. Specifically, the consideration of alternatives is similar to the analysis of the proposal in that the Bureau cannot reliably predict how many additional loans would be originated under its alternatives.

Table 5: Percentage of potentially seasonable loans under Baseline 1 that would satisfy the proposed Seasoned QM definition's performance criteria under alternative seasoning periods and allowable 30-day delinquencies

Seasoning Period (months)	Allowable 30-day Delinquencies					
	0	1	2	3	4	5
12	91.7%	93.1%	93.9%	94.3%	94.4%	94.5%
24	79.5%	81.3%	82.4%	82.8%	83.0%	83.4%
36	68.1%	70.4%	71.3%	71.7%	72.2%	72.5%
48	57.3%	59.7%	60.7%	61.3%	61.7%	61.9%
60	47.7%	49.7%	50.7%	51.4%	51.8%	52.1%

Table 5 reports the fraction of loans originated as either non-QM or rebuttable presumption QM loans under the General QM standards of Baseline 1 that would have met the seasoning requirements under various alternatives. Allowing for different 30-day delinquencies has modest effects on the fraction of loans that would season. In contrast, varying the seasoning period from 12 months to 60 months captures vastly different numbers of loans that would still be open.

[158] David S. Scharfstein & Adi Sunderam, *Market Power in Mortgage Lending and the Transmission of Monetary Policy,* Mimeo (Aug. 2016) (study how passthrough of lower secondary market costs of funding are passed through to consumers), *https://www.hbs.edu/faculty/Publication%20Files/Market%20Power%20in%20Mortgage%20Lending%20and%20the%20Transmission%20of%20Monetary%20Policy_8d6596e6-e073-4d11-83da-3ae1c6db6c28.pdf.*

Table 6: Difference in percentage points of loans under Baseline 1 that enter foreclosure between potentially seasonable loans that meet the proposed Seasoned QM definition's performance criteria and loans that had safe harbor from consummation and are open after three years

Seasoning Period (months)	Allowable 30-day Delinquencies					
	0	1	2	3	4	5
12	1.00	1.13	1.31	1.38	1.41	1.41
24	0.56	0.61	0.74	0.78	0.82	0.90
36	0.32	0.46	0.47	0.49	0.51	0.53
48	0.10	0.20	0.23	0.25	0.25	0.27
60	-0.07	0.00	0.03	0.06	0.06	0.06

Varying the number of allowable 30-day delinquencies does have some impact on foreclosure risk. Table 6 reports the difference in the share of foreclosures among loans that would have qualified for Seasoned QM status under the proposal with the share of foreclosures among loans that would have been originated as safe harbor QM loans under Baseline 1. For example, under the proposal, among loans that were open for at least three years, the Bureau estimates that with a performance standard of no more than two 30-day delinquencies, 0.47 of a percentage point more Seasoned QM loans would enter foreclosure proceedings than would loans that had safe harbor status from consummation.

Holding constant the seasoning period, decreasing the number of allowable 30-day delinquencies by one decreases the differences in foreclosure share between loans that would have seasoned and loans that were safe harbor QM loans from origination by approximately 4 percent. Similarly, increasing the number of allowed 30-day delinquencies by one increases the difference by approximately 4 percent. Changing the length of the seasoning period generally has a larger effect on the relative foreclosure rate than does changing the number of allowable 30-day delinquencies.

Table 7: Percentage of potentially seasonable loans under Baseline 2 that would satisfy the proposed Seasoned QM definition's performance criteria under alternative seasoning periods and allowable 30-day delinquencies

Seasoning Period (months)	Allowable 30-day Delinquencies					
	0	1	2	3	4	5
12	96.3%	96.5%	96.7%	96.7%	96.7%	96.7%
24	91.1%	91.6%	91.8%	92.2%	92.2%	92.2%
36	83.3%	84.6%	84.6%	84.6%	84.8%	84.8%
48	76.1%	77.6%	77.6%	77.6%	77.8%	77.8%
60	71.0%	72.6%	72.6%	72.8%	73.0%	73.0%

Table 7 repeats the analysis of Table 5 using Baseline 2. A larger fraction of loans—about 13 percentage points—originated as either non-QM or rebuttable presumption QM loans under the General QM standards would meet the seasoning requirements under the proposed rule. This reflects the fact that not only are there significantly more non-QM loans under Baseline 2 than under Baseline 1 but also that the additional non-QM loans have relatively stronger credit characteristics at consummation. The proposed amendments to the General QM definition would provide many of these loans with a pathway to QM status.

Table 8: Difference in percentage points of loans under Baseline 2 that enter foreclosure between potentially seasonable loans that meet the proposed Seasoned QM definition's performance criteria and loans that had safe harbor from consummation and are open after three years

Seasoning Period (months)	Allowable 30-day Delinquencies					
	0	1	2	3	4	5
12	0.06	0.06	0.26	0.26	0.26	0.26
24	0.08	0.08	0.08	0.08	0.08	0.08
36	0.13	0.13	0.13	0.13	0.13	0.13
48	-0.09	-0.09	-0.09	-0.09	-0.09	-0.09
60	-0.09	-0.09	-0.09	-0.09	-0.09	-0.09

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Table 8 shows that under Baseline 2, non-QM and rebuttable presumption QM loans that would achieve safe harbor status through the proposal or alternatives with a seasoning period of at least three years have a 0.13 percentage point higher foreclosure rate than open loans that were safe harbor QM loans at consummation. The difference in the foreclosure rates does not dramatically vary with different numbers of allowable 30-day delinquencies.

C. Potential Impact on Depository Institutions and Credit Unions With $10 Billion or Less in Total Assets, as Described in Section 1026

Depository institutions and credit unions that are also creditors making covered loans (depository creditors) with $10 billion or less in total assets would be expected to benefit from the proposal. As stated above, under each baseline, smaller institutions can originate Small Creditor QM loans or QM loans under the requirements of the EGRRCPA. Thus, they would likely not benefit from the proposal's providing a pathway to safe harbor status for non-QM loans. However, the proposal would allow loans to obtain safe harbor status without having to satisfy the portfolio retention requirements of the EGRRCPA.

D. Potential Impact on Rural Areas

As with the analysis of the proposal's benefits and costs overall, the Bureau can generally not predict how much or how little the proposal would cause the market to expand under either baseline. The Bureau analyzed HMDA data mirroring the analysis discussed above, continuing to assume that loans continue to be originated under each baseline with the same characteristics. Under Baseline 1, relatively more loans in rural areas than in urban areas would achieve only a stronger presumption of compliance or relief from portfolio retention requirements by meeting the performance criteria of the proposal. This share of loans is 20 percent for rural markets relative to 16 percent of the market overall. This includes relatively more loans that do not meet the portfolio requirements under the EGRRCPA that would be either rebuttable presumption under the General QM loan definition's requirements or non-QM (2.9 percent vs. 2.7 percent) and loans that would meet the portfolio and other requirements under the EGRRCPA (16.7 percent vs. 13.3 percent).

However, the overall relative differences under Baseline 2 are modest (34 percent vs. 35 percent). If they met the performance requirements of the proposal, relatively fewer loans would gain a stronger presumption of compliance from the proposal than under Baseline 2 alone (21.7 percent vs. 17.1 percent), and relatively more would gain relief from the portfolio requirements under the EGRRCPA (16.7 percent vs. 13.4 percent).

VIII. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (RFA),[159] as amended by the Small Business Regulatory Enforcement Fairness Act of 1996,[160] requires each agency to consider the potential impact of its regulations on small entities, including small businesses, small governmental units, and small not-for-profit organizations. The RFA defines a ''small business'' as a business that meets the size standard developed by the Small Business Administration pursuant to the Small Business Act.[161]

The RFA generally requires an agency to conduct an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis (FRFA) of any rule subject to notice-and-comment rulemaking requirements, unless the agency certifies that the rule would not have a significant economic impact on a substantial number of small entities (SISNOSE).[162] The Bureau also is subject to certain additional procedures under the RFA involving the convening of a panel to consult with small business representatives before proposing a rule for which an IRFA is required.[163]

An IRFA is not required for this proposal because the proposal, if adopted, would not have a SISNOSE. The Bureau does not expect that the proposed rule would impose costs on small entities relative to any of the baselines. The proposed rule defines a new category of QMs. All methods of compliance with the ATR requirements under a particular baseline would remain available to small entities if the proposal is adopted. Thus, a small entity that is in compliance with the rules under a given baseline would not need to take any different or additional action if the proposal is adopted.

Accordingly, the Director certifies that this proposal, if adopted, would not have a SISNOSE. The Bureau requests comment on its analysis of the impact of the proposal on small entities and requests any relevant data.

IX. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA),[164] Federal agencies are generally required to seek, prior to implementation, approval from the

[159] 5 U.S.C. 601 *et seq.*

[160] Public Law 104–121, tit. II, 110 Stat. 857 (1996).

[161] 5 U.S.C. 601(3) (stating also that the Bureau may establish an alternative definition after consultation with the Small Business Administration and an opportunity for public comment).

[162] 5 U.S.C. 603 through 605.

[163] 5 U.S.C. 609.

[164] 44 U.S.C. 3501 *et seq.*

Office of Management and Budget (OMB) for information collection requirements. Under the PRA, the Bureau may not conduct or sponsor, and, notwithstanding any other provision of law, a person is not required to respond to, an information collection unless the information collection displays a valid control number assigned by OMB.

The Bureau has determined that this proposal does not contain any new or substantively revised information collection requirements other than those previously approved by OMB under OMB control number 3170–0015. The proposal would amend 12 CFR part 1026 (Regulation Z), which implements TILA. OMB control number 3170–0015 is the Bureau's OMB control number for Regulation Z.

The Bureau welcomes comments on these determinations or any other aspect of the proposal for purposes of the PRA.

X. Signing Authority

The Director of the Bureau, having reviewed and approved this document, is delegating the authority to electronically sign this document to Laura Galban, a Bureau Federal Register Liaison, for purposes of publication in the **Federal Register**.

List of Subjects in 12 CFR Part 1026

Advertising, Banking, Banks, Consumer protection, Credit, Credit unions, Mortgages, National banks, Reporting and recordkeeping requirements, Savings associations, Truth-in-lending.

Authority and Issuance

For the reasons set forth above, the Bureau proposes to amend Regulation Z, 12 CFR part 1026, as set forth below:

PART 1026—TRUTH IN LENDING (REGULATION Z)

■ 1. The authority citation for part 1026 continues to read as follows:

Authority: 12 U.S.C. 2601, 2603–2605, 2607, 2609, 2617, 3353, 5511, 5512, 5532, 5581; 15 U.S.C. 1601 *et seq.*

Subpart E—Special Rules for Certain Home Mortgage Transactions

■ 2. Amend § 1026.43 by revising paragraphs (e)(1) and the introductory text of (e)(2) and adding paragraph (e)(7) to read as follows:

§ 1026.43 Minimum standards for transactions secured by a dwelling.

* * * * *

(e) *Qualified mortgages*—(1) *Safe harbor and presumption of compliance*—(i) *Safe harbor for loans that are not higher-priced covered transactions and for seasoned loans.* A creditor or assignee of a qualified mortgage complies with the repayment ability requirements of paragraph (c) of this section if:

(A) The loan is a qualified mortgage as defined in paragraphs (e)(2), (4), (5), (6), or (f) of this section that is not a higher-priced covered transaction, as defined in paragraph (b)(4) of this section; or

(B) The loan is a qualified mortgage as defined in paragraph (e)(7) of this section, regardless of whether the loan is a higher-priced covered transaction.

* * * * *

(2) *Qualified mortgage defined—general.* Except as provided in paragraph (e)(4), (5), (6), (7), or (f) of this section, a qualified mortgage is a covered transaction:

* * * * *

(7) *Qualified mortgage defined—seasoned loans.*

(i) *General.* Notwithstanding paragraph (e)(2) of this section, and except as provided in paragraph (e)(7)(iv) of this section, a qualified mortgage is a first-lien covered transaction that:

(A) Is a fixed-rate mortgage as defined in § 1026.18(s)(7)(iii) with fully amortizing payments as defined in paragraph (b)(2) of this section;

(B) Satisfies the requirements in paragraphs (e)(5)(i)(A) and (e)(5)(i)(B) of this section;

(C) Has met the requirements in paragraph (e)(7)(ii) of this section at the end of the seasoning period as defined in paragraph (e)(7)(iv)(C) of this section; and

(D) Satisfies the requirements in paragraph (e)(7)(iii) of this section.

(ii) *Performance requirements.* To be a qualified mortgage under this paragraph (e)(7) of this section, the covered transaction must have no more than two delinquencies of 30 or more days and no delinquencies of 60 or more days at the end of the seasoning period.

(iii) *Portfolio requirements.* To be a qualified mortgage under this paragraph (e)(7) of this section, the covered transaction must satisfy the following requirements:

(A) The covered transaction is not subject, at consummation, to a commitment to be acquired by another person; and

(B) Legal title to the covered transaction is not sold, assigned, or otherwise transferred to another person before the end of the seasoning period, except that:

(*1*) The covered transaction may be sold, assigned, or otherwise transferred to another person pursuant to a capital restoration plan or other action under 12 U.S.C. 1831o, actions or instructions of any person acting as conservator, receiver, or bankruptcy trustee, an order of a State or Federal government agency with jurisdiction to examine the creditor pursuant to State or Federal law, or an agreement between the creditor and such an agency; or

(*2*) The covered transaction may be sold, assigned, or otherwise transferred pursuant to a merger of the creditor with another person or acquisition of the creditor by another person or of another person by the creditor.

(iv) *Definitions.* For purposes of paragraph (e)(7) of this section:

(A) *Delinquency* means the failure to make a periodic payment (in one full payment or in two or more partial payments) sufficient to cover principal, interest, and, if applicable, escrow by the date the periodic payment is due under the terms of the legal obligation. Other amounts, such as any late fees, are not considered for this purpose.

(*1*) A periodic payment is 30 days delinquent when it is not paid before the due date of the following scheduled periodic payment.

(*2*) A periodic payment is 60 days delinquent if the consumer is more than 30 days delinquent on the first of two sequential scheduled periodic payments and does not make both sequential scheduled periodic payments before the due date of the next scheduled periodic payment after the two sequential scheduled periodic payments.

(*3*) For any given billing cycle for which a consumer's payment is less than the periodic payment due, a consumer is not delinquent as defined in this paragraph (e)(7) if:

(*i*) The servicer chooses not to treat the payment as delinquent for purposes of any section of subpart C of Regulation X, 12 CFR part 1024, if applicable;

(*ii*) The payment is deficient by $50 or less; and

(*iii*) There are no more than three such deficient payments treated as not delinquent during the seasoning period.

(*4*) The principal and interest used in determining the date a periodic payment sufficient to cover principal, interest, and, if applicable, escrow becomes due and unpaid are the principal and interest payment amounts established by the terms and payment schedule of the loan obligation at consummation. If a qualifying change as defined in paragraph (e)(7)(iv)(B) of this section is made to the loan obligation, the principal and interest used in determining the date a periodic payment sufficient to cover principal, interest, and, if applicable, escrow

becomes due and unpaid are the principal and interest payment amounts established by the terms and payment schedule of the loan obligation at consummation as modified by the qualifying change.

(*5*) Except for purposes of making up the deficiency amount set forth in paragraph (e)(7)(iv)(A)(*3*)(ii) of this section, payments from the following sources are not considered in assessing delinquency under paragraph (e)(7)(iv)(A) of this section:

(*i*) Funds in escrow in connection with the covered transaction; or

(*ii*) Funds paid on behalf of the consumer by the creditor, servicer, assignee of the covered transaction, or any other person acting on behalf of such creditor, servicer, or assignee.

(B) *Qualifying change* means an agreement that meets the following conditions:

(*1*) The agreement is entered into during or after a temporary payment accommodation in connection with a disaster or pandemic-related national emergency as defined in paragraph (e)(7)(iv)(D) of this section, and must end any pre-existing delinquency on the loan obligation when the agreement takes effect;

(*2*) The amount of interest charged over the full term of the loan does not increase as a result of the agreement;

(*3*) The servicer does not charge any fee in connection with the agreement; and

(*4*) The servicer waives all existing late charges, penalties, stop payment fees, or similar charges promptly upon the consumer's acceptance of the agreement.

(C) *Seasoning period* means a period of 36 months beginning on the date on which the first periodic payment is due after consummation of the covered transaction, except that:

(*1*) If there is a delinquency of 30 days or more at the end of the 36th month of the seasoning period, the seasoning period does not end until there is no delinquency;

(*2*) The seasoning period does not include any period during which the consumer is in a temporary payment accommodation extended in connection with a disaster or pandemic-related national emergency, provided that during or at the end of the temporary payment accommodation there is a qualifying change as defined in paragraph (e)(7)(iv)(B) of this section or the consumer cures the loan's delinquency under its original terms. If during or at the end of the temporary payment accommodation in connection with a disaster or pandemic-related national emergency there is a qualifying change or the consumer cures the loan's delinquency under its original terms, the seasoning period consists of the period from the date on which the first periodic payment was due after consummation of the covered transaction to the beginning of the temporary payment accommodation and an additional period immediately after the temporary payment accommodation ends, which together must equal at least 36 months.

(D) *Temporary payment accommodation in connection with a disaster or pandemic-related national emergency* means temporary payment relief granted to a consumer due to financial hardship caused directly or indirectly by a presidentially declared emergency or major disaster under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*) or a presidentially declared pandemic-related national emergency under the National Emergencies Act (50 U.S.C. 1601 *et seq.*).

* * * * *

■ 3. In Supplement I to Part 1026—Official Interpretations, under *Section 1026.43—Minimum Standards for Transactions Secured by a Dwelling:*

■ a. Revise *43(e)(1) Safe harbor and presumption of compliance;*

■ b. Remove *43(e)(1)(i) Safe harbor for transactions that are not higher-priced covered transactions;*

■ c. Add *43(e)(1)(i)(A) Safe harbor for transactions that are not higher-priced covered transactions* d. Add the heading *43(e)(7) Seasoned Loans* and add *Paragraphs 43(e)(7)(i)(A), 43(e)(7)(i)(B), 43(e)(7)(iii), 43(e)(7)(iv)(A),* *43(e)(7)(iv)(A)*(2), *43(e)(7)(iv)(C)*(2), *and 43(e)(7)(iv)(D)* after Paragraph 43(e)(5).

The revision and additions read as follows:

Supplement I to Part 1026—Official Interpretations

* * * * *

Section 1026.43—Minimum Standards for Transactions Secured by a Dwelling

* * * * *

43(e)(1) Safe Harbor and Presumption of Compliance

1. *General.* Section 1026.43(c) requires a creditor to make a reasonable and good faith determination at or before consummation that a consumer will be able to repay a covered transaction. Section 1026.43(e)(1)(i) and (ii) provide a safe harbor and presumption of compliance, respectively, with the repayment ability requirements of § 1026.43(c) for creditors and assignees of covered transactions that satisfy the requirements of a qualified mortgage under § 1026.43(e)(2), (4), (5), (6), (7), or (f). *See* § 1026.43(e)(1)(i) and (ii) and associated commentary.

43(e)(1)(i)(A) Safe Harbor for Transactions That are not Higher-Priced Covered Transactions

1. *Higher-priced covered transactions.* For guidance on determining whether a loan is a higher-priced covered transaction, see comment 43(b)(4)–1 through –3.

* * * * *

43(e)(7) Seasoned Loans

Paragraph 43(e)(7)(i)(A)

1. *Fixed-rate mortgage.* Section 1026.43(e)(7)(i)(A) provides that, for a covered transaction to become a qualified mortgage under § 1026.43(e)(7), the covered transaction must be a fixed-rate mortgage, as defined in § 1026.18(s)(7)(iii). Under § 1026.18(s)(7)(iii), the term ''fixed-rate mortgage'' means a transaction secured by real property or a dwelling that is not an adjustable-rate mortgage or a step-rate mortgage. Thus, a covered transaction that is an adjustable-rate mortgage or step-rate mortgage is not eligible to become a qualified mortgage under § 1026.43(e)(7).

2. *Fully amortizing payments.* Section 1026.43(e)(7)(i)(A) provides that for a covered transaction to become a qualified mortgage as a seasoned loan under § 1026.43(e)(7), a mortgage must meet certain product requirements and be a fixed-rate mortgage with fully amortizing payments. Only loans for which the scheduled periodic payments do not require a balloon payment, as defined in § 1026.18(s), to fully amortize the loan within the loan term can become seasoned loans for the purposes of § 1026.43(e)(7). Section 1026.43(e)(7)(i)(A) does not prohibit a qualifying change as defined in § 1026.43(e)(7)(iv)(B) that is entered into during or after a temporary payment accommodation in connection with a disaster or pandemic-related national emergency.

Paragraph 43(e)(7)(i)(B)

1. For purposes of § 1026.43(e)(7)(i)(B), a loan that complies with the consider and verify requirements of any other qualified mortgage definition is deemed to comply with the consider and verify requirements in § 1026.43(e)(7)(i)(B).

Paragraph 43(e)(7)(iii)

1. *Requirement to hold in portfolio.* For a covered transaction to become a qualified mortgage under § 1026.43(e)(7), a creditor generally must hold the transaction in portfolio until the end of the seasoning period, subject to two exceptions set forth in § 1026.43(e)(7)(iii)(B)(*1*) and (*2*). Unless one of these exceptions applies, a covered transaction cannot become a qualified mortgage as a seasoned loan under § 1026.43(e)(7) if legal title to the debt obligation is sold, assigned, or otherwise transferred to another person before the end of the seasoning period.

2. *Application to subsequent transferees.* The exceptions contained in § 1026.43(e)(7)(iii)(B)(*1*) and (*2*) apply not only to an initial sale, assignment, or other transfer by the originating creditor but to subsequent sales, assignments, and other transfers as well. For example, assume Creditor A originates a covered transaction that is not a qualified mortgage at origination.

Six months after consummation, the covered transaction is transferred to Creditor B pursuant to § 1026.43(e)(7)(iii)(B)(*2*). The transfer does not violate the requirements in § 1026.43(e)(7)(iii) because the transfer is pursuant to a merger or acquisition. If Creditor B sells the covered transaction before the end of the seasoning period, the covered transaction is not eligible to season into a qualified mortgage under § 1026.43(e)(7) unless the sale falls within an exception set forth in § 1026.43(e)(7)(iii)(B)(*1*) or (*2*) (*i.e.,* the transfer is required by supervisory action or pursuant to a merger or acquisition).

3. *Supervisory sales.* Section 1026.43(e)(7)(iii)(B)(*1*) facilitates sales that are deemed necessary by supervisory agencies to revive troubled creditors and resolve failed creditors. A covered transaction does not violate the requirements in § 1026.43(e)(7)(iii) if it is sold, assigned, or otherwise transferred to another person before the end of the seasoning period pursuant to: A capital restoration plan or other action under 12 U.S.C. 1831o; the actions or instructions of any person acting as conservator, receiver or bankruptcy trustee; an order of a State or Federal government agency with jurisdiction to examine the creditor pursuant to State or Federal law; or an agreement between the creditor and such an agency. Section 1026.43(e)(7)(iii)(B)(*1*) does not apply to transfers done to comply with a generally applicable regulation with future effect designed to implement, interpret, or prescribe law or policy in the absence of a specific order by or a specific agreement with a governmental agency described in § 1026.43(e)(7)(iii)(B)(*1*) directing the sale of one or more covered transactions held by the creditor or one of the other circumstances listed in § 1026.43(e)(7)(iii)(B)(*1*). For example, a covered transaction does not violate the requirements in § 1026.43(e)(7)(iii) if the covered transaction is sold pursuant to a capital restoration plan under 12 U.S.C. 1831o before the end of seasoning period. However, if the creditor simply chose to sell the same covered transaction as one way to comply with general regulatory capital requirements in the absence of supervisory action or agreement, then the covered transaction cannot become a qualified mortgage as a seasoned loan under § 1026.43(e)(7), though it could qualify under another definition of qualified mortgage.

Paragraph 43(e)(7)(iv)(A)

1. *Due date.* In determining whether a scheduled periodic payment is delinquent for purposes of § 1026.43(e)(7), the due date is the date the payment is due under the terms of the legal obligation, without regard to whether the consumer is afforded a period after the due date to pay before the servicer assesses a late fee.

Paragraph 43(e)(7)(iv)(A)(2)

1. *60 days delinquent.* The following example illustrates the meaning of 60 days delinquent for purposes of § 1026.43(e)(7). Assume a loan is consummated on October 15, 2022, that the consumer's periodic payment is due on the 1st of each month, and that the consumer timely made the first periodic payment due on December 1, 2022. For purposes of § 1026.43(e)(7), the consumer is 30 days delinquent if the consumer fails to make a payment (sufficient to cover the scheduled January 1, 2023 periodic payment of principal, interest, and, if applicable, escrow) before February 1, 2023. For purposes of § 1026.43(e)(7), the consumer is 60 days delinquent if the consumer then fails to make two payments (sufficient to cover the scheduled January 1, 2023 and February 1, 2023 periodic payments of principal, interest, and, if applicable, escrow) before March 1, 2023.

Paragraph 43(e)(7)(iv)(C)(2)

1. *Suspension of seasoning period during certain temporary payment accommodations.* Section 1026.43(e)(7)(iv)(C)(*2*) provides that the seasoning period does not include any period during which the consumer is in a temporary payment accommodation extended in connection with a disaster or pandemic-related emergency, provided that during or at the end of the temporary payment accommodation there is a qualifying change as defined in § 1026.43(e)(7)(iv)(B) or the consumer cures the loan's delinquency under its original terms. Section 1026.43(e)(7)(iv)(C)(*2*) further explains that, under these circumstances, the seasoning period consists of the period from the date on which the first periodic payment was due after origination of the covered transaction to the beginning of the temporary payment accommodation and an additional period immediately after the temporary payment accommodation ends, which together must equal at least 36 months. For example, assume the consumer enters into a covered transaction for which the first periodic payment is due on March 1, 2022, and the consumer enters a three-month temporary payment accommodation in connection with a disaster or pandemic-related national emergency, effective March 1, 2023. Assume further that the consumer misses the March 1, April 1, and May 1, 2023 periodic payments during the forbearance period, but enters into a qualifying change as defined in § 1026.43(e)(7)(iv)(B) on June 1, 2023 and is not delinquent on June 1, 2023. Under these circumstances, the seasoning period consists of the period from March 1, 2022 to February 28, 2023 and the period from June 1, 2023 to May 31, 2025, assuming the consumer is not delinquent on May 31, 2025.

Paragraph 43(e)(7)(iv)(D)

1. *Temporary payment accommodation in connection with a disaster or pandemic-related national emergency.* For purposes of § 1026.43(e)(7), examples of temporary payment accommodations in connection with a disaster or pandemic-related national emergency include, but are not limited to: A trial loan modification plan, a temporary payment forbearance program, or a temporary repayment plan.

* * * * *

Dated: August 18, 2020.

Laura Galban,

Federal Register Liaison, Bureau of Consumer Financial Protection.

[FR Doc. 2020–18490 Filed 8–27–20; 8:45 am]

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Part VI

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 219

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Southwest Fisheries Science Center Fisheries Research; Proposed Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 219

[Docket No. 200810–0212]

RIN 0648–BJ71

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Southwest Fisheries Science Center Fisheries Research

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS's Office of Protected Resources (OPR) has received a request from NMFS's Southwest Fisheries Science Center (SWFSC) for authorization to take marine mammals incidental to fisheries research conducted in multiple specified geographical regions, over the course of five years from the date of issuance. As required by the Marine Mammal Protection Act (MMPA), NMFS is proposing regulations to govern that take, and requests comments on the proposed regulations. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorization and agency responses will be summarized in the final notice of our decision.

DATES: Comments and information must be received no later than September 28, 2020.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2020–0111, by the following method:

- *Electronic submission:* Submit all public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2020-0111,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

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

SUPPLEMENTARY INFORMATION:

Availability

A copy of SWFSC's application and any supporting documents, as well as a list of the references cited in this document, may be obtained online at: *www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-research-and-other-activities.* In case of problems accessing these documents, please call the contact listed above (see **FOR FURTHER INFORMATION CONTACT**).

Purpose and Need for Regulatory Action

This proposed rule would establish a framework under the authority of the MMPA (16 U.S.C. 1361 *et seq.*) to allow for the authorization of take of marine mammals incidental to the SWFSC's fisheries research activities in the California Current Ecosystem and the Antarctic Marine Living Resources Ecosystem research areas.

We received an application from the SWFSC requesting five-year regulations and authorization to take multiple species of marine mammals. Take would occur by Level B harassment incidental to the use of active acoustic devices, as well as by visual disturbance of pinnipeds in the Antarctic, and by Level A harassment, serious injury, or mortality incidental to the use of fisheries research gear. Please see ''Background'' below for definitions of harassment.

Legal Authority for the Proposed Action

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

Summary of Major Provisions Within the Proposed Rule

Following is a summary of the major provisions of this proposed rule regarding SWFSC fisheries research activities. These measures include:

- Required monitoring of the sampling areas to detect the presence of marine mammals before deployment of certain research gear.
- Required implementation of the mitigation strategy known as the ''move-on rule mitigation protocol'' which incorporates best professional judgment, when necessary during certain research fishing operations.

Background

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

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

National Environmental Policy Act

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

In 2015, NMFS prepared a Programmatic Environmental Assessment (PEA; *Programmatic Environmental Assessment for Fisheries Research Conducted and Funded by the Southwest Fisheries Science Center*) to consider the direct, indirect and cumulative effects to the human environment resulting from SWFSC's activities as well as the NMFS Office of Protected Resources (OPR) issuance of the regulations and subsequent incidental take authorization. NMFS made the PEA available to the public for review and comment, in relation specifically to its suitability for assessment of the impacts of our action under the MMPA. OPR signed a Finding of No Significant Impact (FONSI) related to our action under the MMPA on August 31, 2015. The PEA and the 2015 FONSI are available online at: *www.fisheries.noaa.gov/action/incidental-take-authorization-noaa-fisheries-swfsc-fisheries-and-ecosystem-research.*

On May 11, 2020, NMFS announced the availability of a ''*Draft Supplemental Programmatic Environmental Assessment (SPEA) for Fisheries Research Conducted and Funded by the Southwest Fisheries Science Center*'' for review and comment (85 FR 27719). The purpose of the Draft SPEA is to evaluate potential direct, indirect, and cumulative effects of unforeseen changes in research that were not analyzed in the 2015 PEA, or new research activities along the U.S. West Coast, throughout the Eastern Tropical Pacific Ocean, and in the Scotia Sea area off Antarctica. Where necessary, updates to certain information on species, stock status or other components of the affected environment that may result in different conclusions from the 2015 PEA are presented in this analysis.

Information in the PEA, SPEA, SWFSC's application, and this notice collectively provide the environmental information related to proposed issuance of these regulations and subsequent incidental take authorization for public review and comment. We will review all comments submitted in response to this notice prior to concluding our NEPA process or making a final decision on the request for incidental take authorization.

Summary of Request

On April 30, 2020, we received an adequate and complete request from SWFSC for authorization to take marine mammals incidental to fisheries research activities. On May 8, 2020 (85 FR 27388), we published a notice of receipt of SWFSC's application in the **Federal Register**, requesting comments and information related to the SWFSC request for thirty days. We did not receive any comments in response.

These regulations would be the second consecutive five-year incidental take regulations issued in response to a petition from SWFSC. The initial regulations were finalized in 2015 and remain effective through October 30, 2020 (80 FR 58982; September 30, 2015). Three Letters of Authorization (LOA) were issued to SWFSC pursuant to the regulations, related to SWFSC research survey activities in the California Current Ecosystem (CCE), the Eastern Tropical Pacific (ETP), and the Antarctic Marine Living Resources Ecosystem (AMLR). Information related to this rulemaking and required reporting submitted by SWFSC according to the terms of the LOAs may be found online at: *www.fisheries.noaa.gov/action/incidental-take-authorization-noaa-fisheries-swfsc-fisheries-and-ecosystem-research.* SWFSC adhered to all mitigation, monitoring, and reporting requirements and did not exceed authorized numbers of take.

SWFSC proposes to continue conducting fisheries research using pelagic trawl gear used at various levels in the water column, pelagic longlines with multiple hooks, purse seine gear, and other gear. If a marine mammal interacts with gear deployed by SWFSC, the outcome could potentially be Level A harassment, serious injury (*i.e.,* any injury that will likely result in mortality), or mortality. However, there is not sufficient information upon which to base a prediction of what the outcome may be for any particular interaction. Therefore, SWFSC has pooled the estimated number of incidents of take resulting from gear interactions, and we have assessed the potential impacts accordingly. SWFSC also uses various active acoustic devices in the conduct of fisheries research, and use of these devices has the potential to result in Level B harassment of marine mammals. Level B harassment of pinnipeds hauled out on ice may also occur, in the Antarctic only, as a result of visual disturbance from vessels conducting SWFSC research. The proposed regulations would be valid for five years from the date of issuance.

The SWFSC conducts fisheries research surveys in the CCE, ETP, and the AMLR. However, SWFSC does not plan to conduct research over the five-year period in the ETP. Therefore, these proposed regulations address only the CCE and AMLR. In the CCE, SWFSC requests authorization to take individuals of 24 stocks by Level A harassment, serious injury, or mortality (hereafter referred to as M/SI) and of 38 stocks by Level B harassment. In the AMLR, SWFSC requests authorization to take individuals of fifteen species by Level B harassment. No takes by M/SI are anticipated in the AMLR.

Description of the Specified Activity

Overview

The SWFSC collects a wide array of information necessary to evaluate the status of exploited fishery resources and the marine environment. SWFSC scientists conduct fishery-independent research onboard NOAA-owned and operated vessels or on chartered vessels. Some surveys may be conducted onboard commercial fishing vessels or by cooperating scientists on non-NOAA vessels, but the SWFSC designs and executes the studies and funds vessel time. The SWFSC proposes to administer and conduct approximately 18 survey programs over the five-year period, within two separate research areas. Please see Table 1–2 in SWFSC's application for details relating to the planned survey programs. The gear types used fall into several categories: Towed nets fished at various levels in the water column, longline and other hook and line gear, purse seine nets, and other gear. Only use of trawl nets, hook and line gear, and purse seine nets are likely to result in interaction with marine mammals. Many of these surveys also use active acoustic devices.

The Federal government has a responsibility to conserve and protect living marine resources in U.S. waters and has also entered into a number of international agreements and treaties related to the management of living marine resources in international waters outside the United States. NOAA has the primary responsibility for managing marine finfish and shellfish species and their habitats, with that responsibility delegated within NOAA to NMFS.

In order to direct and coordinate the collection of scientific information needed to make informed fishery management decisions, Congress created six regional fisheries science

centers, each a distinct organizational entity and the scientific focal point within NMFS for region-based Federal fisheries-related research. This research is aimed at monitoring fish stock recruitment, abundance, survival and biological rates, geographic distribution of species and stocks, ecosystem process changes, and marine ecological research. The SWFSC is the research arm of NMFS in the southwest region of the United States. The SWFSC conducts research and provides scientific advice to manage fisheries and conserve protected species in the geographic research areas listed above and provides scientific information to support the Pacific Fishery Management Council and numerous other domestic and international fisheries management organizations.

Dates and Duration

The specified activity may occur at any time during the five-year period of validity of the proposed regulations. Dates and duration of individual surveys are inherently uncertain, based on congressional funding levels for the SWFSC, weather conditions, or ship contingencies. In addition, cooperative research is designed to provide flexibility on a yearly basis in order to address issues as they arise. Some cooperative research projects last multiple years or may continue with modifications. Other projects only last one year and are not continued. Most cooperative research projects go through an annual competitive selection process to determine which projects should be funded based on proposals developed by many independent researchers and fishing industry participants. SWFSC survey activity does occur during most months of the year; however, trawl surveys typically occur during May through June and September and longline surveys are typically completed during June–July and September.

Specified Geographical Region

The SWFSC plans to conduct research within two research areas considered to be distinct specified geographical regions: the CCE and AMLR. No research activity is planned within the ETP over the next five years. Please see Figures 1–1, 2–1, and 2–2 in the SWFSC application for maps of the research areas. We note here that, while the specified geographical regions within which the SWFSC operates may extend outside of the U.S. Exclusive Economic Zone (EEZ), the MMPA's authority does not extend into foreign territorial waters. Detailed descriptions of the SWFSC's research areas were provided in our notice of proposed rulemaking for SWFSC's previous incidental take regulations (80 FR 8166; February 13, 2015). Those descriptions remain accurate and sufficient, and we refer the reader to that notice rather than reprinting the information here.

Detailed Description of Activities

The Federal government has a trust responsibility to protect living marine resources in waters of the United States. These waters extend to 200 nm from the shoreline and include the EEZ. The U.S. government has also entered into a number of international agreements and treaties related to the management of living marine resources in international waters outside of the EEZ (*i.e.,* the high seas). To carry out its responsibilities over U.S. and international waters, Congress has enacted several statutes authorizing certain Federal agencies to administer programs to manage and protect living marine resources. Among these Federal agencies, NOAA has the primary responsibility for protecting marine finfish and shellfish species and their habitats. Within NOAA, NMFS has been delegated primary responsibility for the science-based management, conservation, and protection of living marine resources under statutes including the MSA, MMPA, Endangered Species Act (ESA), and the Antarctic Marine Living Resources Convention Act.

Within NMFS, six regional fisheries science centers direct and coordinate the collection of scientific information needed to inform fisheries management decisions. Each science center is a distinct entity and is the scientific focal point for a particular region. SWFSC conducts research and provides scientific advice to manage fisheries and conserve protected species along the U.S. West Coast, throughout the eastern tropical Pacific Ocean, and in the Southern Ocean off Antarctica. SWFSC provides scientific information to support the Pacific Fishery Management Council and other domestic and international fisheries management organizations.

The SWFSC collects a wide array of information necessary to evaluate the status of exploited fishery resources and the marine environment. SWFSC scientists conduct fishery-independent research onboard NOAA-owned and operated vessels or on chartered vessels, and some SWFSC-funded research may be conducted by cooperative scientists. The SWFSC proposes to administer and conduct approximately 18 survey programs over the five-year period.

The gear types used fall into several categories: Towed nets fished at various levels in the water column, longline and other hook and line gear, purse seine nets, and other gear. Only use of trawl nets, hook and line gear, and purse seine nets are likely to result in interaction with marine mammals. Many of these surveys also use active acoustic devices. These surveys may be conducted aboard NOAA-operated research vessels (R/V), aboard vessels owned and operated by cooperating agencies and institutions, or aboard charter vessels.

In the following discussion, we summarily describe various gear types used by SWFSC, with reference to specific fisheries and ecosystem research activities conducted by the SWFSC. This is not an exhaustive list of gear and/or devices that may be utilized by SWFSC but is representative of gear categories and is complete with regard to all gears with potential for interaction with marine mammals. Additionally, relevant active acoustic devices, which are commonly used in SWFSC survey activities, are described separately in a subsequent section. Please see Appendix B of SWFSC's application for further description, pictures, and diagrams of research gear and vessels. Full details regarding planned research activities are provided in Tables 1–2 and 1–3 of SWFSC's application, with specific gear used in association with each research project and full detail regarding gear characteristics and usage provided. Full detail is not repeated here.

Trawl nets—A trawl is a funnel-shaped net towed behind a boat to capture fish. The codend (or bag) is the fine-meshed portion of the net most distant from the towing vessel where fish and other organisms larger than the mesh size are retained. In contrast to commercial fishery operations, which generally use larger mesh to capture marketable fish, research trawls often use smaller mesh to enable estimates of the size and age distributions of fish in a particular area. The body of a trawl net is generally constructed of relatively coarse mesh that functions to gather schooling fish so that they can be collected in the codend. The opening of the net, called the mouth, is extended horizontally by large panels of wide mesh called wings. The mouth of the net is held open by hydrodynamic force exerted on the trawl doors attached to the wings of the net. As the net is towed through the water, the force of the water spreads the trawl doors horizontally apart. The top of a net is called the headrope, and the bottom is called the footrope.

The trawl net is usually deployed over the stern of the vessel and attached with two cables (or warps) to winches

on the deck of the vessel. The cables are played out until the net reaches the fishing depth. Trawl vessels typically travel at speeds of 2–5 kn while towing the net for time periods up to several hours. The duration of the tow depends on the purpose of the trawl, the catch rate, and the target species. At the end of the tow the net is retrieved and the contents of the codend are emptied onto the deck. For research purposes, the speed and duration of the tow and the characteristics of the net are typically standardized to allow meaningful comparisons of data collected at different times and locations. Active acoustic devices (described later) incorporated into the research vessel and the trawl gear monitor the position and status of the net, speed of the tow, and other variables important to the research design. Most SWFSC research trawling activities utilize pelagic (or midwater) trawls, which are designed to operate at various depths within the water column but not to contact the seafloor.

Midwater and surface trawls are used in the juvenile rockfish, juvenile salmon and sardine surveys at fixed stations from southern California to Washington annually from April–July and in August–September. The tows are conducted near the surface down to approximately 15–30 m deep, mainly at night using a charter vessel or a NOAA vessel. These nets are also used in juvenile salmon surveys between southern California and Oregon during daytime trawls that last approximately 45 minutes at the target depth. Compared to the Nordic 264 trawl, takes of marine mammals by Modified-Cobb trawl have been historically small. While the Nordic 264 rope trawl is intended to fish at the surface, the Cobb trawl is typically fishing at 30 m headrope depth, thus it is rarely at the surface aside from the deployment and retrieval stages. Fishing at depth, at slower speeds, and for shorter duration, along with having a smaller opening and mesh size, mitigate marine mammal takes by the modified Cobb. Table 6–3 of the SWFSC application summarizes the number of trawls, fishing depth and average tow time for modified Cobb and Nordic 264 trawl gear over the period 2015–2018. The table shows that while Nordic 264 gear is used more frequently, the total number of trawls using this gear has been reduced while the use of modified Cobb gear has remained at generally the same level. Please see Section 1 and Appendix B of SWFSC's application for additional detail.

Longline—Longline vessels fish with baited hooks attached to a mainline (or groundline). The length of the longline and the number of hooks depend on the species targeted, the size of the vessel, and the purpose of the fishing activity. Hooks are attached to the mainline by another thinner line called a gangion. The length of the gangion and the distance between gangions depends on the purpose of the fishing activity. Depending on the fishery, longline gear can be deployed on the seafloor (bottom longline), in which case weights are attached to the mainline, or near the surface of the water (pelagic longline), in which case buoys are attached to the mainline to provide flotation and keep the baited hooks suspended in the water. Radar reflectors, radio transmitters, and light sources are often used to help fishers determine the location of the longline gear prior to retrieval.

A commercial longline can be miles long and have thousands of hooks attached, although longlines used for research surveys are often shorter. The pelagic longline gear used for SWFSC research surveys typically use 200–400 hooks attached to a steel or monofilament mainline from 2–12 miles long (3–19 km). There are no internationally-recognized standard measurements for hook size, and a given size may be inconsistent between manufacturers. Larger hooks, as are used in longlining, are referenced by increasing whole numbers followed by a slash and a zero as size increases (*e.g.,* 1/0 up to 20/0). The numbers represent relative sizes, normally associated with the gap (the distance from the point tip to the shank). Bottom longlines used for commercial fishing can be up to several miles long, but those used for SWFSC research use shorter lines with approximately 75 hooks per line. SWFSC sablefish and rockfish life history surveys using bottom longline gear are extremely small scale with a low level of effort (approximately 200 hooks per month).

The time period between deployment and retrieval of the longline gear is the soak time. Soak time is an important parameter for calculating fishing effort. For commercial fisheries the goal is to optimize the soak time in order to maximize catch of the target species while minimizing the bycatch rate and minimizing damage to target species that may result from predation by sharks or other predators.

SWFSC also uses deep-set buoy gear. Deep-set buoy gear is a particular type of pelagic longline that includes a buoy flotation system (*i.e.,* a strike-indicator float/flag, a large, non-compressible buoy and a float affixed with a radar reflector). A set of gear consists of 500-lb (227-kg) test mainline monofilament rigged with a 1–2 kg drop sinker to orient the mainline and terminal fishing gear vertically in the water column. Other pelagic longline gear typically uses a long monofilament mainline suspended horizontally near the surface of the water. However, deep-set buoy gear uses a vertically-oriented mainline with two monofilament gangions that branch from the mainline at a target depth below the thermocline (250–400 m for SWFSC). SWFSC also uses hook-and-line, *i.e.,* rod-and-reel, for some survey efforts.

Highly migratory species surveys are conducted June-July from a NOAA vessel or a charter vessel. Table 6–5 of SWFSC's application summarizes hook and line survey efforts over the period 2015–2017; hook and line surveys were not conducted in 2018. Thresher shark surveys are not planned for the 2020–2025 survey period. Please see Section 1 and Appendix B of SWFSC's application for additional detail.

Seine nets—Seine nets typically hang vertically in the water with the bottom edge held down by weights and the top edge buoyed by floats. Commercial fishers use purse seines to capture schooling pelagic species by encircling the fish and then using a line at the bottom that enables the net to be closed like a purse. Commercial purse seines vary in size according to vessel, mesh size, and target species.

The SWFSC proposes to conduct purse seine surveys in nearshore areas. Seining will be based on SWFSC and Washington Department of Fish and Wildlife protocols to allow dip-netting of fish from the seine for sample processing onboard. As an example, a seine net 230 fathoms in length, 2800 meshes deep, with a mesh size of 11/16 may be used for this research. Transects may occur from the northernmost sampling location to the vicinity of Eureka, California in the nearshore area approximately 5 nmi apart, alternating direction (east–west and vice versa) for 3–7 transects each day, ideally coincident with NOAA trawl surveys further offshore, for about 100 total transects. SWFSC may set an average of 3 times/day for 60 minutes for approximately 60 sets total. To conduct day-night comparative surveys, SWFSC may set approximately 4/day in a 24-hour period (each for 60 minutes) over about 5 days (*i.e.,* minimum of 2 sets each during daytime and nighttime for a total of 20 sets). Please see Section 1 and Appendix B of SWFSC's application for additional detail.

Other nets—SWFSC surveys utilize various small, fine-mesh, towed nets designed to sample small fish and pelagic invertebrates. These nets can be

broadly categorized as small trawls (which are separated from large trawl nets due to small trawls' discountable potential for interaction with marine mammals) and plankton nets. Please see Section 1 and Appendix B of SWFSC's application for additional detail.

1. The Tucker trawl is a medium-sized single-warp net used to study pelagic fish and zooplankton. The Tucker trawl consists of a series of nets that can be opened and closed sequentially via stepping motor without retrieving the net from the fishing depth. It is designed for deep oblique tows where up to three replicate nets can be sequentially operated by a double release mechanism and is typically equipped with a full suite of instruments, including inside and outside flow meters; conductivity, temperature, and depth profilers (CTD); and pitch sensor.

2. The Multiple Opening/Closing Net and Environmental Sensing System (MOCNESS) uses a stepping motor to sequentially control the opening and closing of the net. The MOCNESS uses underwater and shipboard electronics to control the device. The electronics system continuously monitors the functioning of the nets, frame angle, horizontal velocity, vertical velocity, volume filtered, and selected environmental parameters, such as salinity and temperature. The MOCNESS is used for specialized zooplankton surveys.

3. The Isaacs-Kidd midwater trawl (IKMT) is used to collect deepwater biological specimens larger than those taken by standard plankton nets. The mouth of the net is approximately 1.5 x 1.8 m, and is attached to a wide, V-shaped, rigid diving vane that keeps the mouth of the net open and maintains the net at depth for extended periods. The IKMT is a long, round net approximately 6.5 m long, with a series of hoops decreasing in size from the mouth of the net to the codend, which maintain the shape of the net during towing. While most trawls must be towed at speeds of 1–2 kn because of the high level of drag exerted by the net in the water, an IKMT can be towed at speeds as high as 5 kn.

4. SWFSC also uses various neuston nets, which are frame trawls towed horizontally at the top of the water column in order to capture neuston (*i.e.,* organisms that inhabit the water's surface), and plankton nets, which usually consist of fine mesh attached to a weighted frame which spreads the mouth of the net to cover a known surface area in order to sample plankton and fish eggs from various parts of the water column. Examples include manta nets, which are towed horizontally at the surface of the water; bongo nets, which are towed through the water at an oblique angle to sample plankton over a range of depths; and the Oozeki net, which is a frame trawl used for quantitative sampling of larval and juvenile pelagic fishes.

Conductivity, temperature, and depth profilers—A CTD profiler is the primary research tool for determining chemical and physical properties of seawater. A shipboard CTD is made up of a set of small probes attached to a large (1–2 m diameter) metal rosette wheel. The rosette is lowered through the water column on a cable, and CTD data are observed in real time via a conducting cable connecting the CTD to a computer on the ship. The rosette also holds a series of sampling bottles that can be triggered to close at different depths in order to collect a suite of water samples that can be used to determine additional properties of the water over the depth of the CTD cast. A standard CTD cast, depending on water depth, requires two to five hours to complete. The data from a suite of samples collected at different depths are often called a depth profile. Depth profiles for different variables can be compared in order to glean information about physical, chemical, and biological processes occurring in the water column. Salinity, temperature, and depth data measured by the CTD instrument are essential for characterization of seawater properties.

Tables 1–2 and 1–3 of the SWFSC's application provide detailed information of all surveys planned by SWFSC; full detail is not repeated here. Many of these surveys also use small trawls, plankton nets, and/or other gear; however, only gear with likely potential for marine mammal interaction is described. Here we provide a summary of projected annual survey effort for those gears that we believe present the potential for marine mammal interaction (Table 1). This summary is intended only to provide a sense of the level of effort, and actual level of effort may vary from year to year. Gear specifications vary; please see Table 1–2 and Appendix B of SWFSC's application. Please note that no trawl surveys are planned within AMLR over the next five years. Take of marine mammals incidental to SWFSC research is expected to occur in the form of Level B harassment only as a result of the use of active acoustic systems or due to visual disturbance of hauled-out pinnipeds.

TABLE 1—PROJECTED ANNUAL SWFSC SURVEY EFFORT BY GEAR TYPE

Survey type	Gear type	Tows/sets	Duration per tow/set
CCE			
Midwater trawl	NETS Nordic 264 (380 m^2 mouth area).	50	30 min.
Midwater trawl	Modified Cobb (80 m^2 mouth area).	150	15 min.
Purse seine	Varies	10–25	Varies.
Pelagic longline	200–400 hooks	Varies	2–4 hr (up to 4–6 hr for certain target species).
Pelagic longline	75 hooks	Varies	2–4 hr.
Hook and line/handline	Various	100–500 casts/cruise	3 hr.
Hook and line	Micro-troll	50	2 hr.

Description of Active Acoustic Sound Sources—This section contains a brief technical background on sound, the characteristics of certain sound types, and on metrics used in this proposal inasmuch as the information is relevant to SWFSC's specified activity and to an understanding of the potential effects of the specified activity on marine mammals. We also describe the active acoustic devices used by SWFSC. For general information on sound and its interaction with the marine environment, please see, *e.g.,* Au and

Hastings (2008); Richardson *et al.* (1995); Urick (1983).

Sound travels in waves, the basic components of which are frequency, wavelength, velocity, and amplitude. Frequency is the number of pressure waves that pass by a reference point per unit of time and is measured in Hz or cycles per second. Wavelength is the distance between two peaks or corresponding points of a sound wave (length of one cycle). Higher frequency sounds have shorter wavelengths than lower frequency sounds, and typically attenuate (decrease) more rapidly, except in certain cases in shallower water. Amplitude is the height of the sound pressure wave or the ''loudness'' of a sound and is typically described using the relative unit of the dB. A sound pressure level (SPL) in dB is described as the ratio between a measured pressure and a reference pressure (for underwater sound, this is 1 microPascal (μPa)) and is a logarithmic unit that accounts for large variations in amplitude; therefore, a relatively small change in dB corresponds to large changes in sound pressure. The source level (SL) represents the SPL referenced at a distance of 1 m from the source (referenced to 1 μPa), while the received level is the SPL at the listener's position (referenced to 1 μPa).

Root mean square (rms) is the quadratic mean sound pressure over the duration of an impulse. Root mean square is calculated by squaring all of the sound amplitudes, averaging the squares, and then taking the square root of the average. Root mean square accounts for both positive and negative values; squaring the pressures makes all values positive so that they may be accounted for in the summation of pressure levels. This measurement is often used in the context of discussing behavioral effects, in part because behavioral effects, which often result from auditory cues, may be better expressed through averaged units than by peak pressures. Peak sound pressure (also referred to as zero-to-peak sound pressure or 0-pk) is the maximum instantaneous sound pressure measurable in the water at a specified distance from the source and is represented in the same units as the rms sound pressure.

Sound exposure level (SEL; represented as dB re 1 μPa^2-s) represents the total energy in a stated frequency band over a stated time interval or event, and considers both intensity and duration of exposure. The per-pulse SEL is calculated over the time window containing the entire pulse (*i.e.,* 100 percent of the acoustic energy). SEL is a cumulative metric; it can be accumulated over a single pulse, or calculated over periods containing multiple pulses. Cumulative SEL represents the total energy accumulated by a receiver over a defined time window or during an event.

When underwater objects vibrate or activity occurs, sound-pressure waves are created. These waves alternately compress and decompress the water as the sound wave travels. Underwater sound waves radiate in a manner similar to ripples on the surface of a pond and may be either directed in a beam or beams (as for the sources considered here) or may radiate in all directions (omnidirectional sources). The compressions and decompressions associated with sound waves are detected as changes in pressure by aquatic life and man-made sound receptors such as hydrophones.

Sounds are often considered to fall into one of two general types: pulsed and non-pulsed (defined in the following). The distinction between these two sound types is important because they have differing potential to cause physical effects, particularly with regard to hearing (*e.g.,* Ward, 1997 in Southall *et al.,* 2007). Please see Southall *et al.* (2007) for an in-depth discussion of these concepts. The distinction between these two sound types is not always obvious, as certain signals share properties of both pulsed and non-pulsed sounds. A signal near a source could be categorized as a pulse; but, due to propagation effects as it moves farther from the source, the signal duration becomes longer (*e.g.,* Greene and Richardson, 1988).

Pulsed sound sources (*e.g.,* airguns, explosions, gunshots, sonic booms, impact pile driving) produce signals that are brief (typically considered to be less than one second), broadband, atonal transients (ANSI, 1986, 2005; Harris, 1998; NIOSH, 1998; ISO, 2003) and occur either as isolated events or repeated in some succession. Pulsed sounds are all characterized by a relatively rapid rise from ambient pressure to a maximal pressure value followed by a rapid decay period that may include a period of diminishing, oscillating maximal and minimal pressures, and generally have an increased capacity to induce physical injury as compared with sounds that lack these features.

Non-pulsed sounds can be tonal, narrowband, or broadband, brief or prolonged, and may be either continuous or intermittent (ANSI, 1995; NIOSH, 1998). Some of these non-pulsed sounds can be transient signals of short duration but without the essential properties of pulses (*e.g.,* rapid rise time). Examples of non-pulsed sounds include those produced by vessels, aircraft, machinery operations such as drilling or dredging, vibratory pile driving, and active sonar systems. The duration of such sounds, as received at a distance, can be greatly extended in a highly reverberant environment. All active acoustic systems used by SWFSC produce non-pulsed intermittent sound.

A wide range of active acoustic devices are used in SWFSC fisheries surveys for remotely sensing bathymetric, oceanographic, and biological features of the environment. Most of these sources involve relatively high frequency, directional, and brief repeated signals tuned to provide sufficient focus and resolution on specific objects. SWFSC also uses passive listening sensors (*i.e.,* remotely and passively detecting sound rather than producing it), which do not have the potential to impact marine mammals. SWFSC active acoustic sources include various echosounders (*e.g.,* multibeam systems), scientific sonar systems, positional sonars (*e.g.,* net sounders for determining trawl position), and environmental sensors (*e.g.,* current profilers).

Mid- and high-frequency underwater acoustic sources typically used for scientific purposes operate by creating an oscillatory overpressure through rapid vibration of a surface, using either electromagnetic forces or the piezoelectric effect of some materials. A vibratory source based on the piezoelectric effect is commonly referred to as a transducer. Transducers are usually designed to excite an acoustic wave of a specific frequency, often in a highly directive beam, with the directional capability increasing with operating frequency. The main parameter characterizing directivity is the beam width, defined as the angle subtended by diametrically opposite ''half power'' (-3 dB) points of the main lobe. For different transducers at a single operating frequency the beam width can vary from 180° (almost omnidirectional) to only a few degrees. Transducers are usually produced with either circular or rectangular active surfaces. For circular transducers, the beam width in the horizontal plane (assuming a downward pointing main beam) is equal in all directions, whereas rectangular transducers produce more complex beam patterns with variable beam width in the horizontal plane.

The types of active sources employed in fisheries acoustic research and monitoring, based largely on their relatively high operating frequencies

and other output characteristics (*e.g.,* signal duration, directivity), should be considered to have very low potential to cause effects to marine mammals that would rise to the level of a ''take,'' as defined by the MMPA. Acoustic sources operating at high output frequencies (>180 kHz) that are outside the known functional hearing capability of any marine mammal are unlikely to be detected by marine mammals. Although it is possible that these systems may produce subharmonics at lower frequencies, this component of acoustic output would also be at significantly lower SPLs. While the production of subharmonics can occur during actual operations, the phenomenon may be the result of issues with the system or its installation on a vessel rather than an issue that is inherent to the output of the system. Many of these sources also generally have short duration signals and highly directional beam patterns, meaning that any individual marine mammal would be unlikely to even receive a signal that would likely be inaudible.

Acoustic sources present on most SWFSC fishery research vessels include a variety of single, dual, and multi-beam echosounders (many with a variety of modes), sources used to determine the orientation of trawl nets, and several current profilers with lower output frequencies that certain marine mammals may detect (*e.g.,* 10–180 kHz). However, while likely potentially audible to certain species, these sources also have generally short ping durations and are typically focused (highly directional) to serve their intended purpose of mapping specific objects, depths, or environmental features. These characteristics reduce the likelihood of an animal receiving or perceiving the signal. A number of these sources, particularly those with relatively lower output frequencies coupled with higher output levels can be operated in different output modes (*e.g.,* energy can be distributed among multiple output beams) that may lessen the likelihood of perception by and potential impact on marine mammals.

We now describe specific acoustic sources used by SWFSC. The acoustic system used during a particular survey is optimized for surveying under specific environmental conditions (*e.g.,* depth and bottom type). Lower frequencies of sound travel further in the water (*i.e.,* good range) but provide lower resolution (*i.e.,* are less precise). Pulse width and power may also be adjusted in the field to accommodate a variety of environmental conditions. Signals with a relatively long pulse width travel further and are received more clearly by the transducer (*i.e.,* good signal-to-noise ratio) but have a lower range resolution. Shorter pulses provide higher range resolution and can detect smaller and more closely spaced objects in the water. Similarly, higher power settings may decrease the utility of collected data. Power level is also adjusted according to bottom type, as some bottom types have a stronger return and require less power to produce data of sufficient quality. Power is typically set to the lowest level possible in order to receive a clear return with the best data. Survey vessels may be equipped with multiple acoustic systems; each system has different advantages that may be utilized depending on the specific survey area or purpose. In addition, many systems may be operated at one of two frequencies or at a range of frequencies. Primary source categories are described below, and characteristics of representative predominant sources are summarized in Table 2. Predominant sources are those that, when operated, would be louder than and/or have a larger acoustic footprint than other concurrently operated sources, at relevant frequencies.

(1) *Multi-Frequency Narrow Beam Scientific Echosounders*—Echosounders and sonars work by transmitting acoustic pulses into the water that travel through the water column, reflect off the seafloor, and return to the receiver. Water depth is measured by multiplying the time elapsed by the speed of sound in water (assuming accurate sound speed measurement for the entire signal path), while the returning signal itself carries information allowing ''visualization'' of the seafloor. Multi-frequency split-beam sensors are deployed from SWFSC survey vessels to acoustically map the distributions and estimate the abundances and biomasses of many types of fish; characterize their biotic and abiotic environments; investigate ecological linkages; and gather information about their schooling behavior, migration patterns, and avoidance reactions to the survey vessel. The use of multiple frequencies allows coverage of a broad range of marine acoustic survey activity, ranging from studies of small plankton to large fish schools in a variety of environments from shallow coastal waters to deep ocean basins. Simultaneous use of several discrete echosounder frequencies facilitates accurate estimates of the size of individual fish, and can also be used for species identification based on differences in frequency-dependent acoustic backscattering between species.

(2) *Multibeam Echosounder and Sonar*—Multibeam echosounders and sonars operate similarly to the devices described above. However, the use of multiple acoustic ''beams'' allows coverage of a greater area compared to single beam sonar. The sensor arrays for multibeam echosounders and sonars are usually mounted on the keel of the vessel and have the ability to look horizontally in the water column as well as straight down. Multibeam echosounders and sonars are used for mapping seafloor bathymetry, estimating fish biomass, characterizing fish schools, and studying fish behavior.

(3) *Single-Frequency Omnidirectional Sonar*—These sources provide omnidirectional imaging around the source with different vertical beamwidths available, which results in differential transmitting beam patterns. The cylindrical multi-element transducer allows the omnidirectional sonar beam to be electronically tilted down to –90°, allowing automatic tracking of schools of fish within the entire water volume around the vessel.

(4) *Acoustic Doppler Current Profiler (ADCP)*—An ADCP is a type of sonar used for measuring water current velocities simultaneously at a range of depths. Whereas current depth profile measurements in the past required the use of long strings of current meters, the ADCP enables measurements of current velocities across an entire water column. The ADCP measures water currents with sound, using the Doppler effect. A sound wave has a higher frequency when it moves towards the sensor (blue shift) than when it moves away (red shift). The ADCP works by transmitting ''pings'' of sound at a constant frequency into the water. As the sound waves travel, they ricochet off particles suspended in the moving water, and reflect back to the instrument. Due to the Doppler effect, sound waves bounced back from a particle moving away from the profiler have a slightly lowered frequency when they return. Particles moving toward the instrument send back higher frequency waves. The difference in frequency between the waves the profiler sends out and the waves it receives is called the Doppler shift. The instrument uses this shift to calculate how fast the particle and the water around it are moving. Sound waves that hit particles far from the profiler take longer to come back than waves that strike close by. By measuring the time it takes for the waves to return to the sensor, and the Doppler shift, the profiler can measure current speed at many different depths with each series of pings.

An ADCP anchored to the seafloor can measure current speed not just at the bottom, but at equal intervals to the surface. An ADCP instrument may be anchored to the seafloor or can be mounted to a mooring or to the bottom of a boat. ADCPs that are moored need an anchor to keep them on the bottom, batteries, and a data logger. Vessel-mounted instruments need a vessel with power, a shipboard computer to receive the data, and a GPS navigation system so the ship's movements can be subtracted from the current velocity data. ADCPs operate at frequencies between 75 and 300 kHz.

(5) *Net Monitoring Systems*—During trawling operations, a range of sensors may be used to assist with controlling and monitoring gear. Net sounders give information about the concentration of fish around the opening to the trawl, as well as the clearances around the opening and the bottom of the trawl; catch sensors give information about the rate at which the codend is filling; symmetry sensors give information about the optimal geometry of the trawls; and tension sensors give information about how much tension is in the warps and sweeps.

TABLE 2—OPERATING CHARACTERISTICS OF REPRESENTATIVE SWFSC ACTIVE ACOUSTIC SOURCES

Active acoustic system	Operating frequencies	Maximum source level	Single ping duration (ms) and repetition rate (Hz)	Orientation/directionality	Nominal beamwidth
Simrad EK60/EK80 narrow beam echosounders.	18, 38, 70, 120, 200, 333 kHz (Primary frequencies are 38, 70, 120, 200 kHz).	226 dB	Variable, commonly 1 ms at 0.5 Hz.	Downward looking	7°
Simrad ME70 multibeam echosounder.	70–120 kHz	205 dB	0.06–5 ms at 1–4 Hz	Primarily downward looking.	130°
Simrad MS70 multibeam sonar.	75–112 kHz	206 dB	2–10 ms at 1–2 Hz	Primarily side looking	60°
Simrad SX90 narrow beam sonar.	20–30 kHz	219 dB	Variable	Omnidirectional	4–5°
Teledyne ADCP, Ocean Surveyor.	75 kHz	224 dB	0.2 Hz	Downward looking	30°
Simrad ITI catch monitoring system.	27–33 kHz	214 dB	0.05–0.5 Hz	Downward looking	40°

Description of Marine Mammals in the Area of the Specified Activity

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

Table 3 lists all species with expected potential for occurrence in the specified geographical regions where SWFSC proposes to continue the specified activities and summarizes information related to the population or stock, including regulatory status under the MMPA and ESA and potential biological removal (PBR), where known. For taxonomy, we follow Committee on Taxonomy (2020). PBR, defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population, is discussed in greater detail later in this document (see ''Negligible Impact Analysis'').

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS's stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. Survey abundance (as compared to stock or species abundance) is the total number of individuals estimated within the survey area, which may or may not align completely with a stock's geographic range as defined in the SARs. These surveys may also extend beyond U.S. waters.

All stocks occurring in the CCE are assessed in either NMFS's U.S. Alaska SARs or U.S. Pacific SARs. All values presented in Table 3 are the most recent available at the time of writing and are available in the 2018 SARs (Carretta *et al.,* 2019; Muto *et al.,* 2019) or draft 2019 SARs (available online at: *www.fisheries.noaa.gov/national/marine-mammal-protection/draft-marine-mammal-stock-assessment-reports*). Antarctic stocks are not generally defined by NMFS, and information relating to species occurring in the AMLR is lacking relative to those occurring in the CCE. For species occurring in AMLR, we provide International Union for the Conservation of Nature (IUCN) status. The IUCN systematically assesses the relative risk of extinction for terrestrial and aquatic plant and animal species via a classification scheme using five designations, including three threatened categories (Critically Endangered, Endangered, and Vulnerable) and two non-threatened categories (Near Threatened and Least Concern) (*www.iucnredlist.org/;* accessed June 22, 2020). These assessments are generally made relative to the species' global status, and therefore may have limited applicability when marine mammal stocks are defined because we analyze the potential population-level effects of the specified activity to the relevant stock. However, where stocks are not defined, IUCN status can provide a useful reference.

California Current

In the CCE, 33 species (with 40 managed stocks) are considered to have the potential to co-occur with SWFSC activities. Species that could potentially occur in the research area but are not expected to have the potential for

interaction with SWFSC research gear or that are not likely to be harassed by SWFSC's use of active acoustic devices are described briefly but omitted from further analysis. These include extralimital species, which are species that do not normally occur in a given area but for which there are one or more occurrence records that are considered beyond the normal range of the species. Species considered to be extralimital here include the North Pacific right whale (*Eubalaena japonica*) and the Bryde's whale (*Balaenoptera edeni brydei*). In addition, the sea otter is found in coastal waters, with the southern sea otter (*Enhydra lutris nereis*) found in California and the northern (or eastern) sea otter (*E. l. kenyoni;* Washington stock only) found in Washington. However, sea otters are managed by the U.S. Fish and Wildlife Service and are not considered further in this document. Most survey activity occurs offshore and is therefore less likely to interact with coastal species such as harbor porpoise, the coastal stock of bottlenose dolphin, or gray whales (during the northbound migration), although these species are considered further in this document. SWFSC does not conduct research activities in the inland waters of Washington. Therefore, stocks occurring solely in those waters (*i.e.,* harbor porpoise and harbor seal) are not addressed herein.

Two populations of gray whales are recognized, eastern and western North Pacific (ENP and WNP). WNP whales are known to feed in the Okhotsk Sea and off Kamchatka before migrating south to poorly known wintering grounds, possibly in the South China Sea. The two populations have historically been considered geographically isolated from each other; however, data from satellite-tracked whales indicate that there is some overlap between the stocks. Two WNP whales were tracked from Russian foraging areas along the Pacific rim to Baja California (Mate *et al.,* 2011), and, in one case where the satellite tag remained attached to the whale for a longer period, a WNP whale was tracked from Russia to Mexico and back again (IWC, 2012). Between 22–24 WNP whales are known to have occurred in the eastern Pacific through comparisons of ENP and WNP photo-identification catalogs (IWC, 2012; Weller *et al.,* 2011; Burdin *et al.,* 2011). Urban *et al.* (2013) compared catalogs of photo-identified individuals from Mexico with photographs of whales off Russia and reported a total of 21 matches. Therefore, a portion of the WNP population is assumed to migrate, at least in some years, to the eastern Pacific during the winter breeding season.

However, the SWFSC does not believe that any gray whale (WNP or ENP) would be likely to interact with its research gear, as it is extremely unlikely that a gray whale in close proximity to SWFSC research activity would be one of the few WNP whales that have been documented in the eastern Pacific. The likelihood that a WNP whale would interact with SWFSC research gear or be exposed to elevated levels of sound due to the use of active acoustic sources is insignificant and discountable, and WNP gray whales are omitted from further analysis.

TABLE 3—MARINE MAMMALS POTENTIALLY PRESENT IN THE VICINITY OF SWFSC RESEARCH ACTIVITIES IN THE CCE

Common name	Scientific name	Stock	ESA/ MMPA status; Strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)						
Family Eschrichtiidae:						
Gray whale	*Eschrichtius robustus*	Eastern North Pacific (ENP)	-; N	26,960 (0.05; 25,849; 2016)	801	139
Family Balaenopteridae (rorquals):						
Humpback whale	*Megaptera novaeangliae kuzira.*	California/Oregon/Washington (CA/OR/WA).	E/D; Y	2,900 (0.03; 2,784; 2014)	[9] 16.7	≥42.1
Minke whale	*Balaenoptera acutorostrata scammoni.*	CA/OR/WA	-; N	636 (0.72; 369; 2014)	3.5	≥1.3
Sei whale	*B. borealis borealis*	ENP	E/D; Y	519 (0.4; 374; 2014)	0.75	≥0.2
Fin whale	*B. physalus physalus*	CA/OR/WA	E/D; Y	9,029 (0.12; 8,127; 2014)	81	≥43.5
Blue whale	*B. musculus musculus*	ENP	E/D; Y	1,496 (0.44; 1,050; 2014)	[9] 1.2	≥19.4
Superfamily Odontoceti (toothed whales, dolphins, and porpoises)						
Family Physeteridae:						
Sperm whale	*Physeter macrocephalus*	CA/OR/WA	E/D; Y	1,997 (0.57; 1,270; 2014)	2.5	0.4
Family Kogiidae:						
Pygmy sperm whale	*Kogia breviceps*	CA/OR/WA	-; N	4,111 (1.12; 1,924; 2014)	19.2	0
Dwarf sperm whale	*K. sima*	CA/OR/WA [5]	-; N	Unknown	n/a	0
Family Ziphiidae (beaked whales):						
Cuvier's beaked whale	*Ziphius cavirostris*	CA/OR/WA	-; N	3,274 (0.67; 2,059; 2014)	21	<0.1
Baird's beaked whale	*Berardius bairdii*	CA/OR/WA	-; N	2,697 (0.6; 1,633; 2014)	16	0
Hubbs' beaked whale	*Mesoplodon carlhubbsi*	CA/OR/WA [6]	-; N	3,044 (0.54; 1,967; 2014)	20	0.1
Blainville's beaked whale	*M. densirostris.*					
Ginkgo-toothed beaked whale.	*M. ginkgodens.*					
Perrin's beaked whale	*M. perrini.*					
Lesser (pygmy) beaked whale.	*M. peruvianus.*					
Stejneger's beaked whale	*M. stejnegeri.*					
Family Delphinidae:						
Common bottlenose dolphin.	*Tursiops truncatus truncatus*	CA/OR/WA Offshore	-; N	1,924 (0.54; 1,255; 2014)	11	≥1.6
		California Coastal	-; N	453 (0.06; 346; 2011)	2.7	≥2.0
Striped dolphin	*Stenella coeruleoalba*	CA/OR/WA	-; N	29,211 (0.2; 24,782; 2014)	238	≥0.8
ENP long-beaked common dolphin.	*Delphinus delphis bairdii*	California	-; N	101,305 (0.49; 68,432; 2014)	657	≥35.4
Common dolphin	*D. d. delphis*	CA/OR/WA	-; N	969,861 (0.17; 839,325; 2014)	8,393	≥40

TABLE 3—MARINE MAMMALS POTENTIALLY PRESENT IN THE VICINITY OF SWFSC RESEARCH ACTIVITIES IN THE CCE—Continued

Common name	Scientific name	Stock	ESA/MMPA status; Strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Pacific white-sided dolphin	*Lagenorhynchus obliquidens*	CA/OR/WA	-; N	26,814 (0.28; 21,195; 2014)	191	7.5
Northern right whale dolphin.	*Lissodelphis borealis*	CA/OR/WA	-; N	26,556 (0.44; 18,608; 2014)	179	3.8
Risso's dolphin	*Grampus griseus*	CA/OR/WA	-; N	6,336 (0.32; 4,817; 2014)	46	≥3.7
Killer whale	*Orcinus orca* [4]	West Coast Transient [7]	-; N	243 (n/a; 2009)	2.4	0
		ENP Offshore	-; N	300 (0.1; 276; 2012)	2.8	0
		ENP Southern Resident	E/D; Y	75 (n/a; 2018)	0.13	0
Short-finned pilot whale	*Globicephala macrorhynchus*	CA/OR/WA	-; N	836 (0.79; 466; 2014)	4.5	1.2
Family Phocoenidae (porpoises):						
Harbor porpoise	*Phocoena phocoena vomerina.*	Morro Bay	-; N	2,917 (0.41; 2,102; 2012)	21	≥0.6
		Monterey Bay	-; N	3,715 (0.51; 2,480; 2011)	25	0
		San Francisco-Russian River	-; N	9,886 (0.51; 6,625; 2011)	66	0
		Northern CA/Southern OR	-; N	35,769 (0.52; 23,749; 2011)	475	≥0.6
		Northern OR/WA Coast	-; N	21,487 (0.44; 15,123; 2011)	151	≥3
Dall's porpoise	*Phocoenoides dalli dalli*	CA/OR/WA	-; N	25,750 (0.45; 17,954; 2014)	172	0.3
Order Carnivora—Superfamily Pinnipedia						
Family Otariidae (eared seals and sea lions):						
Guadalupe fur seal	*Arctocephalus philippii townsendi.*	Mexico to California	T/D; Y	34,187 (n/a; 31,019; 2013)	1,062	[10] ≥3.8
Northern fur seal	*Callorhinus ursinus*	Pribilof Islands/Eastern Pacific	D; Y	620,660 (0.2; 525,333; 2016)	11,295	399
		California	-; N	14,050 (n/a; 7,524; 2013)	451	1.8
California sea lion	*Zalophus californianus*	United States	-; N	257,606 (n/a; 233,515; 2014)	14,011	≥321
Steller sea lion	*Eumetopias jubatus monteriensis.*	Eastern U.S.	-; N	43,201 (n/a; 2017)	2,592	113
Family Phocidae (earless seals):						
Harbor seal	*Phoca vitulina richardii*	California	-; N	30,968 (n/a; 27,348; 2012)	1,641	43
		OR/WA Coast [8]	-; N	24,732 (0.12; 22,380; 1999)	n/a	10.6
Northern elephant seal	*Mirounga angustirostris*	California Breeding	-; N	179,000 (n/a; 81,368; 2010)	4,882	8.8

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

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

[3] These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, subsistence hunting, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value. All M/SI values are as presented in the draft 2019 SARs.

[4] Transient and resident killer whales are considered unnamed subspecies (Committee on Taxonomy, 2020).

[5] No information is available to estimate the population size of dwarf sperm whales off the U.S. West Coast, as no sightings of this species have been documented despite numerous vessel surveys of this region (Carretta *et al.,* 2017). Dwarf and pygmy sperm whales are difficult to differentiate at sea but, based on previous sighting surveys and historical stranding data, it is thought that recent ship survey sightings were of pygmy sperm whales.

[6] The six species of Mesoplodont beaked whales occurring in the CA/OR/WA region are managed as a single stock due to the rarity of records and the difficulty in distinguishing these animals to species in the field. Based on bycatch and stranding records, it appears that *M. carlhubbsi* is the most commonly encountered of these species (Carretta *et al.,* 2008; Moore and Barlow, 2013).

[7] The abundance estimate for this stock includes only animals from the ''inner coast'' population occurring in inside waters of southeastern Alaska, British Columbia, and Washington—excluding animals from the ''outer coast'' subpopulation, including animals from California—and therefore should be considered a minimum count. For comparison, the previous abundance estimate for this stock, including counts of animals from California that are now considered outdated, was 354.

[8] Abundance estimate for this stock is not considered current. PBR is therefore considered undetermined, as there is no current minimum abundance estimate for use in calculation. We nevertheless present the most recent abundance estimates, as it represents the best available information for use in this document.

[9] These stocks are known to spend a portion of their time outside the U.S. EEZ. Therefore, the PBR presented here is the allocation for U.S. waters only and is a portion of the total. The total PBR for blue whales is 2.1 (7/12 allocation for U.S. waters), and the total for CA/OR/WA humpback whales is 33.4 (one half allocation for U.S. waters). Annual M/SI presented for these species is for U.S. waters only.

[10] This represents annual M/SI in U.S. waters. However, the vast majority of M/SI for this stock—the level of which is unknown—would likely occur in Mexican waters. There is insufficient information to determine whether mortality in Mexico exceeds the PBR for this stock, but given the observed growth of the population over time, this is unlikely (Carretta *et al.,* 2019).

Prior to 2016, humpback whales were listed under the ESA as an endangered species worldwide. Following a 2015 global status review (Bettridge *et al.,* 2015), NMFS established 14 distinct population segments (DPS) with different listing statuses (81 FR 62259; September 8, 2016) pursuant to the ESA. The DPSs that occur in U.S. waters do not necessarily equate to the existing stocks designated under the MMPA and shown in Table 3. Because MMPA stocks cannot be portioned, *i.e.,* parts managed as ESA-listed while other parts managed as not ESA-listed, until such time as the MMPA stock delineations are reviewed in light of the DPS designations, NMFS considers the existing humpback whale stocks under the MMPA to be endangered and depleted for MMPA management purposes (*e.g.,* selection of a recovery factor, stock status).

Within U.S. West Coast waters, three current DPSs may occur: The Hawaii DPS (not listed), Mexico DPS (threatened), and Central America DPS

(endangered). According to Wade *et al.* (2016), whales off of Washington are most likely to be from the Hawaii DPS (52.9 percent), but are almost equally likely to be from the Mexico DPS (41.9 percent), and could also be from the Central America DPS (14.7 percent). Off of Oregon and California, whales are most likely to be from the Mexico DPS (89.6 percent), with a 19.7 percent probability of an encountered whale being from the Central America DPS. Note that these probabilities reflect the upper limit of the 95 percent confidence interval of the probability of occurrence; therefore, numbers may not sum to 100 percent for a given area.

Take Reduction Planning—Take reduction plans are designed to help recover and prevent the depletion of strategic marine mammal stocks that interact with certain U.S. commercial fisheries, as required by Section 118 of the MMPA. The immediate goal of a take reduction plan is to reduce, within six months of its implementation, the M/SI of marine mammals incidental to commercial fishing to less than the PBR level. The long-term goal is to reduce, within five years of its implementation, the M/SI of marine mammals incidental to commercial fishing to insignificant levels, approaching a zero serious injury and mortality rate, taking into account the economics of the fishery, the availability of existing technology, and existing state or regional fishery management plans. Take reduction teams are convened to develop these plans.

For marine mammals in the CCE, there is currently one take reduction plan in effect (Pacific Offshore Cetacean Take Reduction Plan). The goal of this plan is to reduce M/SI of several marine mammal stocks incidental to the California thresher shark/swordfish drift gillnet fishery (CA DGN). A team was convened in 1996 and a final plan produced in 1997 (62 FR 51805; October 3, 1997). Marine mammal stocks of concern initially included the California, Oregon, and Washington stocks for all CCE beaked whales, short-finned pilot whales, pygmy sperm whales, sperm whales, and humpback whales. The most recent five-year averages of M/SI for all stocks except the humpback whale are below PBR. For humpback whales, the majority of total annual M/SI is attributed to other fisheries—notably pot/trap fisheries—and ship strikes, with no observed M/SI in the DGN fishery from 2013–2017, and estimated mean annual M/SI in the fishery at <0.1 (CV = 1.9) over the same period. The most recent observed take of a sperm whale in the DGN fishery was in 2010, though the mean annual estimated M/SI attributed to the fishery over the period from 2008–2017 is 0.56 (CV = 0.78). Two short-finned pilot whales were observed taken in the DGN fishery in 2014, leading to a mean annual M/SI estimate of 1.2 (CV = 0.39) for the fishery. None of the other species were observed taken in the fishery in the most recent five-year period for which data are available, though some have estimated mean annual M/SI values for the fishery that are > 0. More information is available online at: *www.fisheries.noaa.gov/national/marine-mammal-protection/pacific-offshore-cetacean-take-reduction-plan.* Of the stocks of concern, the SWFSC has requested the authorization of incidental M/SI for the short-finned pilot whale only (see ''Estimated Take by Incidental Harassment'' later in this document). The SWFSC does not use drift gillnets in its fisheries research program; therefore, take reduction measures applicable to the CA DGN fisheries are not relevant to the SWFSC.

Unusual Mortality Events (UME)—A UME is defined under the MMPA as a stranding that is unexpected; involves a significant die-off of any marine mammal population; and demands immediate response. From 1991 to the present, there have been 16 formally recognized UMEs on the U.S. West Coast involving species under NMFS' jurisdiction. The only currently ongoing investigations involve Guadalupe fur seals and gray whales along the west coast.

Increased strandings of Guadalupe fur seals (up to eight times the historical average) have occurred along the entire coast of California and extending into Oregon and Washington. Increased strandings in California were reported beginning in January 2015 and peaked from April through June 2015, but have remained well above average. Strandings in Oregon and Washington became elevated starting in 2019 and are five times higher than the historical average. Findings from the majority of stranded animals include malnutrition with secondary bacterial and parasitic infections, and the UME has been attributed to ecological factors. For more information, please visit: *www.fisheries.noaa.gov/national/marine-life-distress/2015–2020-guadalupe-fur-seal-unusual-mortality-event-california.*

Since January 1, 2019, elevated gray whale strandings have occurred along the west coast of North America from Mexico through Alaska. As of June 5, 2020, there have been a total of 340 whales reported in the event, with approximately 168 dead whales in Mexico, 159 whales in the United States (53 in California; 9 in Oregon; 42 in Washington, 55 in Alaska), and 13 whales in British Columbia, Canada. For the United States, the historical 18-year 5-month average (Jan–May) is 14.8 whales for the four states for this same time-period. Several dead whales have been emaciated with moderate to heavy whale lice (cyamid) loads. Necropsies have been conducted on a subset of whales with additional findings of vessel strike in three whales and entanglement in one whale. In Mexico, 50–55 percent of the free-ranging whales observed in the lagoons in winter have been reported as ''skinny'' compared to the annual average of 10–12 percent ''skinny'' whales normally seen. The cause of the UME is as yet undetermined. For more information, please visit: *www.fisheries.noaa.gov/national/marine-life-distress/2019–2020-gray-whale-unusual-mortality-event-along-west-coast-and.*

Additional UMEs in the past ten years include those involving California sea lions (2013–2016; ecological factors) and large whales in Alaska and British Columbia (2015–2016; undetermined cause with secondary ecological factors). For more information on UMEs, please visit: *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-unusual-mortality-events.*

Antarctic

The SWFSC's Antarctic Research Area (ARA) comprises a portion of the AMLR ecosystem. In the ARA, seventeen species are considered to have the potential to co-occur with SWFSC activities. Marine mammals in the AMLR do not constitute stocks under U.S. jurisdiction; therefore, the stocks are not managed by NMFS, there are no SARs, and substantially less information is available for these species in relation to the stocks or populations and their occurrence in the ARA than is available for CCE stocks (*e.g.,* PBR is not calculated for AMLR stocks, and strategic designations are not made). Extralimital species in the ARA include the pygmy right whale (*Caperea marginata*), sei whale, Cuvier's beaked whale, Shepherd's beaked whale (*Tasmacetus shepherdi*), Gray's beaked whale (*Mesoplodon grayi*), and strap-toothed beaked whale (*M. layardii*), which have distributions that only border the northernmost edge of the ARA. The Ross seal (*Ommatophoca rossii*) is also considered extralimital to the ARA due to its preference for dense pack ice, which is not typically present in the ARA.

TABLE 5—MARINE MAMMALS POTENTIALLY PRESENT IN THE VICINITY OF SWFSC RESEARCH ACTIVITIES IN THE AMLR

Common name	Scientific name	Stock [2]	ESA/MMPA/ IUCN status [3]	Abundance (CV) [4]
Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)				
Family Balaenidae (right whales):				
Southern right whale	*Eubalaena australis*		E/D/LC	1,755 (0.62) [5]
Family Balaenopteridae (rorquals):				
Humpback whale	*Megaptera novaeangliae australis.*		E/D/LC	9,484 (0.28) [5]
Antarctic minke whale	*Balaenoptera bonaerensis*		-/NT	18,125 (0.28) [5]
Fin whale	*B. physalus quoyi*		E/D/VU	4,672 (0.42) [5]
Blue whale	*B. musculus intermedia*		E/D/EN	1,700 (95% CI 860–2,900) [6]
Superfamily Odontoceti (toothed whales, dolphins, and porpoises)				
Family Physeteridae:				
Sperm whale	*Physeter macrocephalus*		E/D/VU	12,069 (0.17) [7]
Family Ziphiidae (beaked whales):				
Arnoux' beaked whale	*Berardius arnuxii*		-/DD	Unknown
Southern bottlenose whale	*Hyperoodon planifrons*		-/LC	53,743 (0.12) [8]
Family Delphinidae:				
Hourglass dolphin	*Lagenorhynchus cruciger*		-/LC	144,300 (0.17) [9]
Killer whale	*Orcinus orca* [1]		-/DD	24,790 (0.23) [8]
Long-finned pilot whale	*Globicephala melas edwardii*		-/LC	200,000 (0.35) [9]
Family Phocoenidae (porpoises):				
Spectacled porpoise	*Phocoena dioptrica*		-/LC	Unknown
Order Carnivora—Superfamily Pinnipedia				
Family Otariidae (eared seals and sea lions):				
Antarctic fur seal	*Arctocephalus gazella*	South Georgia	-/LC	2,700,000 [10]
Family Phocidae (earless seals):				
Southern elephant seal	*Mirounga leonina*	South Georgia	-/LC	401,572 [11]
Weddell seal	*Leptonychotes weddellii*		-/LC	500,000–1,000,000 [12]
Crabeater seal	*Lobodon carcinophaga*		-/LC	5,000,000–10,000,000 [12]
Leopard seal	*Hydrurga leptonyx*		-/LC	222,000–440,000 [12]

[1] Three distinct forms of killer whale have been described from Antarctic waters; referred to as types A, B, and C, they are purported prey specialists on Antarctic minke whales, seals, and fish, respectively (Pitman and Ensor, 2003; Pitman *et al.,* 2010).

[2] For most species in the AMLR, stocks are not delineated and entries refer generally to individuals of the species occurring in the research area.

[3] Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Any species listed under the ESA is automatically designated under the MMPA as depleted. IUCN status: Endangered (EN), Vulnerable (VU), Near Threatened (NT), Least Concern (LC), Data Deficient (DD).

[4] CV is coefficient of variation. All abundance estimates, except for those from Reilly *et al.* (2004) (right, humpback, minke, and fin whales), are for entire Southern Ocean (*i.e.,* waters south of 60°S) and not the smaller area comprising the SWFSC research area.

[5] Abundance estimates reported in Reilly *et al.* (2004) for the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR) survey area from 2000. Surveys include Antarctic Peninsula (473,300 km^2) and Scotia Sea (1,109,800 km^2) strata, which correspond roughly to ARA, as reported by Hewitt *et al.* (2004).

[6] Southern Ocean abundance estimate (Branch *et al.,* 2007). CI is confidence interval.

[7] Southern Ocean abundance estimate (IWC, 2001 in Whitehead, 2002).

[8] Southern Ocean abundance estimate from circumpolar surveys covering 68 percent of waters south of 60°S from 1991–98 (Branch and Butterworth, 2001).

[9] Southern Ocean abundance estimate derived from surveys conducted from 1976–88 (Kasamatsu and Joyce, 1995).

[10] South Georgia abundance estimate; likely >95 percent of range-wide abundance (Forcada and Staniland, 2009). Genetic evidence shows two distinct population regions, likely descended from surviving post-sealing populations at South Georgia, Bouvetøya, and Kerguelen Islands (Wynen *et al.,* 2000; Forcada and Staniland, 2009). Individuals from the South Georgia population (including breeding populations at the South Orkney and South Shetland Islands, which are within the ARA) are likely to occur in the ARA.

[11] Four genetically distinct populations are recognized: The Peninsula Valdés population in Argentina, the South Georgia population in the South Atlantic Ocean, the Kerguelen population in the South Indian Ocean and the Macquarie population in the South Pacific Ocean (Slade *et al.,* 1998; Hoelzel *et al.,* 2001). Animals occurring in ARA are likely to belong to South Georgia population, which includes subpopulations at South Georgia Island (≤99% of population) and at the South Orkney and South Shetland Islands; South Georgia population abundance estimate from 2001 (McMahon *et al.,* 2005).

[12] Range-wide abundance estimates (Thomas and Terhune, 2009; Bengtson, 2009; Rogers, 2009).

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Current data indicate that not all marine mammal species have equal hearing capabilities (*e.g.,* Richardson *et al.,* 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007) recommended that marine mammals be divided into functional hearing groups based on directly measured or estimated hearing ranges on the basis of available behavioral response data, audiograms derived using auditory evoked potential techniques, anatomical modeling, and other data. Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.,* low-frequency cetaceans).

Subsequently, NMFS (2018) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 dB threshold from the normalized composite audiograms, with an exception for lower limits for low-frequency cetaceans where the result was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. Marine mammal hearing groups and their associated hearing ranges are provided in Table 5.

TABLE 5—MARINE MAMMAL HEARING GROUPS (NMFS, 2018)

Hearing group	Generalized hearing range *
Low-frequency (LF) cetaceans (baleen whales)	7 Hz to 35 kHz.
Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales)	150 Hz to 160 kHz.
High-frequency (HF) cetaceans (true porpoises, *Kogia,* river dolphins, cephalorhynchid, *Lagenorhynchus cruciger* & *L. australis*).	275 Hz to 160 kHz.
Phocid pinnipeds (PW) (underwater) (true seals)	50 Hz to 86 kHz.
Otariid pinnipeds (OW) (underwater) (sea lions and fur seals)	60 Hz to 39 kHz.

* Represents the generalized hearing range for the entire group as a composite (*i.e.,* all species within the group), where individual species' hearing ranges are typically not as broad. Generalized hearing range chosen based on ~65 dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall *et al.,* 2007) and PW pinniped (approximation).

For more detail concerning these groups and associated frequency ranges, please see NMFS (2018) for a review of available information. Within the CCE, 33 marine mammal species (27 cetacean and six pinniped [four otariid and two phocid] species) have the potential to co-occur with SWFSC research activities. Please refer to Table 3. Of the 27 cetacean species that may be present, six are classified as low-frequency cetaceans (*i.e.,* all mysticete species), seventeen are classified as mid-frequency cetaceans (*i.e.,* all delphinid and ziphiid species and the sperm whale), and four are classified as high-frequency cetaceans (*i.e.,* porpoises and *Kogia* spp.). Within the AMLR, seventeen marine mammal species (twelve cetacean and five pinniped [one otariid and four phocid] species) have the potential to co-occur with SWFSC research activities. Please refer to Table 4. Of the twelve cetacean species that may be present, five are classified as low-frequency cetaceans (*i.e.,* all mysticete species), five are classified as mid-frequency cetaceans (*i.e.,* all delphinid and ziphiid species [excluding the hourglass dolphin] and the sperm whale), and two are classified as high-frequency cetaceans (*i.e.,* the hourglass dolphin and spectacled porpoise).

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

Detailed descriptions of the potential effects of the various elements of the SWFSC's specified activity on marine mammals and their habitat were provided in association with the 2015 SWFSC rulemaking (80 FR 8166; February 15, 2015). Additionally, detailed descriptions of the potential effects of similar specified activities have also been provided in other **Federal Register** notices (*e.g.,* 81 FR 38516; 83 FR 37638; 84 FR 6576), and section 7 of SWFSC's application provides a discussion of the potential effects of their specified activity, which we have reviewed for accuracy and completeness. No significant new information is available, and these discussions provide the necessary adequate and relevant information regarding the potential effects of SWFSC's specified activity on marine mammals and their habitat. Therefore, we refer the reader to these documents rather than repeating the information here. The referenced information includes a summary and discussion of the ways that components of the specified activity (*e.g.,* gear deployment, use of active acoustic sources, visual disturbance) may impact marine mammals and their habitat.

As stated previously, the use of certain research gears, including trawl nets, hook and line gear, and purse seine nets, has the potential to result in interaction with marine mammals. In the event of a marine mammal interaction with research gear, injury, serious injury, or mortality may result from entanglement or hooking. Exposure to sound through the use of active acoustic systems for research purposes may result in Level B harassment. However, as detailed in the previously referenced discussions, Level A harassment in the form of permanent threshold shift (PTS) is extremely unlikely to occur, and we consider such effects discountable. Finally, in the Antarctic only, it is expected that hauled pinnipeds may be disturbed by approaching researchers such that Level B harassment could occur. Ship strike is not a reasonably anticipated outcome of SWFSC research activities, given the small amount of distance covered by research vessels and their relatively slow speed in comparison to commercial shipping traffic (*i.e.,* the primary cause of marine mammal vessel strikes).

With specific reference to Level B harassment that may occur as a result of acoustic exposure, we note that the analytical methods from the original 2015 analysis are retained here. However, the state of science with regard to our understanding of the likely potential effects of the use of systems like those used by SWFSC has advanced in the preceding five years, as have readily available approaches to estimating the acoustic footprints of such sources, with the result that we view this analysis as highly conservative. Although more recent literature provides documentation of marine mammal responses to the use of these and similar acoustic systems (*e.g.,* Cholewiak *et al.,* 2017; Quick *et al.,* 2017; Varghese *et al.,* 2020), the described responses do not generally comport with the degree of severity that should be associated with Level B harassment, as defined by the MMPA. We retain the 2015 analytical approach for consistency with existing analyses and for purposes of efficiency here, and consider this acceptable because the approach provides a conservative estimate of potential incidents of Level B harassment. In summary, while we propose to authorize the amount of take by Level B harassment indicated in the ''Estimated Take'' section, and consider these potential takings at face value in our negligible impact analysis, it is uncertain whether use of these acoustic systems are likely to cause take at all, much less at the estimated levels.

The ''Estimated Take'' section later in this document includes a quantitative analysis of the number of individuals that are expected to be taken by this activity. The ''Negligible Impact Analysis and Determination'' section considers the potential effects of the specified activity, the ''Estimated Take'' section, and the ''Proposed Mitigation'' section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and how those impacts on individuals are likely to impact marine mammal species or stocks.

Estimated Take

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

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

Take of marine mammals incidental to SWFSC research activities could occur as a result of (1) injury or mortality due to gear interaction in the CCE (Level A harassment, serious injury, or mortality); (2) behavioral disturbance resulting from the use of active acoustic sources (Level B harassment only); or (3) behavioral disturbance of pinnipeds resulting from incidental approach of researchers in the Antarctic (Level B harassment only). Below we describe how the potential take is estimated.

Estimated Take Due to Gear Interaction

In order to determine the number of incidental takes requested for authorization, SWFSC retained the approach to estimating their requested take numbers that was developed in support of the 2015 rule. That approach was based on historical incidents of gear interaction and on an assessment of which species of marine mammal that have not historically been taken might have similar risk of interaction to those species that have been taken. In particular, records from the year 2008—which remains the year with the highest number of gear interaction incidents—were used as the basis for generating a precautionary, worst-case assessment of potential takes. Reporting from 2015–19 under the current regulations demonstrates that this approach was indeed a precautionary one, as annual numbers of takes have remained well below those recorded in 2008, and only one additional species that had not historically been taken in SWFSC research gear in 2015 has subsequently been taken (common dolphin; see Table 6). SWFSC has elected to carry forward this precautionary approach to their take authorization request in support of this rulemaking, and we incorporate it into our proposed rulemaking, as described in further detail below.

The approach to estimating the number of potential incidents of take that could occur through gear interaction first requires consideration of SWFSC's record of past such incidents. We then consider in addition other species that may have similar vulnerabilities to SWFSC trawl and longline gear as those species for which we have historical interaction records. Historical interactions with research gear are described in Tables 6 and 7, and we anticipate that all species that interacted with SWFSC fisheries research gear historically could potentially be taken in the future. Available records are for the years 2006 through present. All historical SWFSC interactions have taken place in the CCE. The locations of incidental take events from 2015–2019 are shown in Figure 6–1 of SWFSC's application.

TABLE 6—HISTORICAL INTERACTIONS WITH TRAWL GEAR

Gear [1]	Survey	Date	Species	Number killed	Number released alive	Total
Midwater trawl	Coastal Pelagic Species (CPS).	4/24/2006	Northern fur seal (CA stock)	1		1
Midwater trawl	CPS	4/29/2007	Northern fur seal (CA stock)	1		1
Midwater trawl [2]	Juvenile Rockfish	5/30/2007	Northern fur seal (eastern Pacific stock)	1		1
Midwater trawl	CPS	4/18/2008	California sea lion	1		1
Midwater trawl	CPS	4/21/2008	Pacific white-sided dolphin	1		1
Midwater trawl	CPS	4/26/2008	Pacific white-sided dolphin	2		2
Midwater trawl	CPS	4/27/2008	California sea lion	1		1
Midwater trawl	CPS	4/27/2008	Northern fur seal (eastern Pacific stock)	1		1
Midwater trawl [2]	Juvenile Rockfish	6/15/2008	California sea lion	1	2	3
Midwater trawl	CPS	7/19/2008	Pacific white-sided dolphin	1		1
Midwater trawl	CPS	7/28/2008	California sea lion	1		1
Midwater trawl	CPS	7/31/2008	Northern fur seal (CA stock)	1		1
Midwater trawl	CPS	8/3/2008	Northern fur seal (CA stock)	1		1
Midwater trawl	CPS	8/9/2008	Pacific white-sided dolphin	11		11
Midwater trawl	CPS	8/9/2008	Northern right whale dolphin	6		6
Midwater trawl	CPS	8/14/2008	California sea lion	9		9
Midwater trawl	CPS	5/1/2009	Pacific white-sided dolphin		3	3
Midwater trawl [2]	Juvenile Rockfish	5/25/2009	California sea lion		1	1
Midwater trawl	CPS	4/18/2010	Pacific white-sided dolphin		1	1
Midwater trawl	CPS	4/25/2010	Pacific white-sided dolphin	1		1
Midwater trawl [2]	Juvenile Rockfish	9/10/2010	Pacific white-sided dolphin	1		1
Midwater trawl	CPS	4/3/2011	Pacific white-sided dolphin	1		1
Midwater trawl	Juvenile Salmon	9/9/2011	California sea lion	1		1
Midwater trawl	Juvenile Salmon	9/10/2011	Pacific white-sided dolphin	6		6
Midwater trawl	CPS	6/29/2012	Pacific white-sided dolphin		1	1
Midwater trawl	CPS	8/18/2012	Pacific white-sided dolphin	1		1
Midwater trawl	CPS	8/24/2012	Pacific white-sided dolphin	2		2
Midwater trawl	CPS	8/1/2013	Pacific white-sided dolphin	1	2	3
Midwater trawl	Juvenile Salmon	9/14/2013	Pacific white-sided dolphin	3		3
Midwater trawl [2]	Juvenile Rockfish	6/1/2014	Pacific white-sided dolphin	1		1
Surface trawl	Sardine-Hake Acoustic Trawl.	8/26/2015	Pacific white-sided dolphin	1		1
Surface trawl	Juvenile Salmon	9/14/2015	California sea lion		1	1
Midwater trawl [2]	Juvenile Rockfish	5/15/2016	Pacific white-sided dolphin	1		1
Surface trawl	CPS	7/17/2016	Pacific white-sided dolphin	7	1	8
Midwater trawl [2]	Juvenile Rockfish	6/14/2018	Pacific white-sided dolphin	1		1
Midwater trawl [2]	Juvenile Rockfish	6/21/2018	California sea lion	1		1
Midwater trawl	CPS	7/24/2018	Pacific white-sided dolphin	1		1
Midwater trawl	CPS	8/27/2018	Pacific white-sided dolphin	1		1
Surface trawl	CCE Survey (CCES)	6/22/2019	Pacific white-sided dolphin	2		2
Midwater trawl	CCES	8/8/2019	Pacific white-sided dolphin	2		2
Midwater trawl	CCES	8/8/2019	Pacific white-sided dolphin	1		1

TABLE 6—HISTORICAL INTERACTIONS WITH TRAWL GEAR—Continued

Gear [1]	Survey	Date	Species	Number killed	Number released alive	Total
Midwater trawl	CCES	8/26/2019	Common dolphin (long-beaked)	1		1
Total individuals captured (total number of interactions given in parentheses).			Northern fur seal (6)	6		6
			California sea lion (9)	15	4	19
			Pacific white-sided dolphin (25)	49	8	57
			Northern right whale dolphin (1)	6		6
			Common dolphin (1)	1		1

[1] All incidents involved use of the NETS Nordic 264 midwater trawl, except as noted below.
[2] These incidents involved use of the modified-Cobb midwater trawl.

TABLE 7—HISTORICAL INTERACTIONS WITH LONGLINE GEAR

Gear	Survey	Date	Species	Number killed	Number released alive	Total
Pelagic longline	Highly Migratory Species (HMS)	9/6/2008	California sea lion		1	1
Pelagic longline	HMS	9/15/2008	California sea lion		1	1
Pelagic longline	Thresher Shark	9/18/2009	California sea lion		1	1
Pelagic longline	HMS	7/27/2010	California sea lion		1	1
Pelagic longline	HMS	6/23/2012	California sea lion		1	1
Pelagic longline	HMS	7/10/2013	California sea lion		1	1
Pelagic longline	HMS	7/2/2014	California sea lion		1	1
Pelagic longline	HMS	7/8/2015	California sea lion	1		1
Pelagic longline	Thresher Shark	9/20/2015	California sea lion		1	1
Total				1	8	9

In order to use these historical interaction records as the basis for the take estimation process, and because we have no specific information to indicate whether any given future interaction might result in M/SI versus Level A harassment, we conservatively assume that all interactions equate to mortality for these fishing gear interactions. The SWFSC has no recorded interactions with any gear other than midwater trawl and pelagic longline gear, and we do not anticipate any future interactions in any other gears historically used by SWFSC, including the bottom trawl gear periodically employed by the SWFSC in the AMLR. However, SWFSC has not historically used purse seine gear, and we do anticipate that the planned future use of purse seine gear in the CCE could present some risk of marine mammal interaction.

During trawl surveys, SWFSC has recorded interactions with northern fur seals (California and eastern Pacific stocks); California sea lions; Pacific white-sided dolphins; northern right whale dolphins; and common dolphins (long-beaked stock). No northern fur seal has been captured since 2008, and northern right whale dolphins have been involved in only one incident, also in 2008. Common dolphins have been involved in only one incident. Therefore, California sea lions and Pacific white-sided dolphins are the species most likely to interact with SWFSC trawl gear. For longline gear, only California sea lions have been captured.

Take records from 2008 were used as the basis for estimation of potential incidental take in support of the 2015 rule, as this year was the worst on record and therefore was assumed to provide a worst-case basis for predicting potential future take. Take interactions from 2008 remain the historical maximum. Therefore, as noted above, the 2015 analysis is retained here as a potential worst-case scenario for marine mammal take in SWFSC gear over the five years considered in this proposed rulemaking. In the 2015 analysis, the annual average over the most recent five-year period that included 2008 (rounded up to the next whole number) was used to estimate the potential annual take level over the next five years. A five-year time frame provides enough data to adequately capture year-to-year variation in take levels, reflecting environmental conditions that may change over time. In order to incorporate records from the year 2008, we retain 2008–12 as the five-year period over which we consider interaction records. Those annual averages are 7 Pacific white-sided dolphins, 4 California sea lions, 2 northern right whale dolphins, and 1 northern fur seal, and the prior assumption was that this number could be taken in each of the five years (*i.e.,* 35 Pacific white-sided dolphins, 20 California sea lions, 10 northern right whale dolphins, 5 northern fur seals). These take numbers are retained, with the exception of the Pacific white-sided dolphin. Historically, the CPS survey has only surveyed in water depths >50 m and consequently does not sample the nearshore area, potentially under-sampling any nearshore CPS aggregations. The aim of planned collaborative research over the next five years is to quantify this potential sampling bias by using an industry fishing vessel to extend the sampling closer to shore. In order to account for the potential for increased interactions with Pacific white-sided dolphins in nearshore waters, SWFSC added 1 additional take per year. For the species most commonly taken, the maximum number of individuals taken through any one interaction was 11 Pacific white-sided dolphins and 9 California sea lions. Similarly, the annual average of California sea lions taken in longline gear from 2008–12 was 1. Therefore, the assumption is that 5 California sea lions may be taken in hook and line gear over the next five-year period.

In order to evaluate the potential vulnerability of additional species to midwater trawl and pelagic longline gear as part of the take estimation process for the 2015 rule, we consulted NMFS' List of Fisheries (LOF), which classifies U.S. commercial fisheries into one of three categories according to the level of incidental marine mammal M/SI that is known to occur on an annual basis over the most recent five-year period (generally) for which data has been analyzed: Category I, frequent incidental M/SI; Category II, occasional incidental M/SI; and Category III,

remote likelihood of or no known incidental M/SI.

Information related to incidental M/SI in relevant commercial fisheries is not, however, the sole determinant of whether it may be appropriate to authorize take incidental to SWFSC survey operations. A number of factors (*e.g.,* species-specific knowledge regarding animal behavior, overall abundance in the geographic region, density relative to SWFSC survey effort, feeding ecology, propensity to travel in groups commonly associated with other species historically taken) were taken into account by the SWFSC to determine whether a species may have a similar vulnerability to certain types of gear as historically taken species. In some cases, we have determined that species without documented M/SI may nevertheless be vulnerable to capture in SWFSC research gear. Similarly, we have determined that some species groups with documented M/SI are not likely to be vulnerable to capture in SWFSC gear.

This review led to our inference that common dolphin, Risso's dolphin, Dall's porpoise, Steller sea lion, harbor seal, and northern elephant seal could have risk of capture in midwater trawl gear given the demonstrated risk of capture in commercial fishing gear that is similar to the gear used by SWFSC. In addition, as a result of presumed similarities to Pacific white-sided dolphin or California sea lion or to other species for which there are recorded interactions in similar commercial fishing gear, SWFSC determined that there was risk of capture for striped dolphin, bottlenose dolphin, and harbor porpoise despite a lack of relevant LOF records.

The LOF review similarly led to our inference that *Kogia* spp., bottlenose dolphin, common dolphin, striped dolphin, Risso's dolphin, and short-finned pilot whale could have risk of capture in pelagic longline gear given the demonstrated risk of capture in commercial fishing gear that is similar to the gear used by SWFSC. We note that, due to the expected distribution of longline sampling effort in offshore waters, no take of coastal bottlenose dolphins in longline gear is expected. In addition, as a result of presumed similarities to California sea lion or to other species for which there are recorded interactions in similar commercial fishing gear, SWFSC determined that there was risk of capture for Steller sea lion despite a lack of relevant LOF records.

As noted above, the worst-case single interactions with trawl gear for the two most commonly taken species (Pacific white-sided dolphin and California sea lion) involved 11 and 9 individuals, respectively. For species deemed by SWFSC to have a similar risk profile as these two species, these numbers were taken to represent the potential total take over the five-year period. Use of these numbers is sufficient to appropriately analyze either of two scenarios: (1) More frequent interactions with a lesser number of individuals; or (2) a single, worst-case interaction. For trawl gear, species deemed to have a similar risk profile as the Pacific white-sided dolphin include the Risso's dolphin, bottlenose dolphin, striped dolphin, and common dolphins. (Note that the 11 takes proposed for authorization for bottlenose dolphin in trawl gear are split across stocks based on the spatial distribution of SWFSC trawl survey effort; 8 takes are proposed for the offshore stock and 3 takes for the coastal stock.) Species deemed to have a similar risk profile as the California sea lion include the Steller sea lion and harbor seal. The remainder of species determined to be at risk of potential interaction with trawl gear are expected to have a relatively lower risk profile and, therefore, the expected potential take is one per year, or five over the five-year period. Note that a common dolphin has subsequently been captured in SWFSC trawl gear. However, we retain the original approach, which yields a five-year take estimate of 11 animals, versus the approach for historically captured species, which would produce a rounded annual average of 1 and, therefore, a five-year estimate of 5.

For hook and line gear, no species is expected to have a similar risk profile as the California sea lion and, therefore, the expected potential take for all other cetacean species is two over the five-year period, with the exception of bottlenose dolphin, for which only one take over five years is requested. Although take due to use of deep-set buoy gear is generally considered unlikely, SWFSC increased their take request for most cetacean species over the 2015 request (from 1 to 2 over five years) due to the potential that their use of this gear in cetacean habitat could lead to an increased risk of interaction compared with only their use of typical pelagic longline gear.

Regarding potential interactions with purse seine gear, we adopt the analysis that was developed in support of a similar incidental take rulemaking requested by NMFS' Northwest Fisheries Science Center (NWFSC) (83 FR 36370; July 27, 2018). Unlike SWFSC, NWFSC has historically used purse seine gear and similarly operates in the CCE. NWFSC has not had any historical interactions with purse seine gear. Therefore, we followed a similar approach as described above, in which the LOF was consulted and assumptions regarding species that may be vulnerable to interactions with the gear developed. Species with presumed risk of interaction with purse seine gear, based on LOF records, include common dolphins, harbor seal, and California sea lion. In addition, despite a lack of relevant LOF records, NWFSC deemed the following species as having risk of potential interaction with purse seine gear: Dall's porpoise, Pacific white-sided dolphin, Risso's dolphin, northern right whale dolphin, Steller sea lion, and harbor porpoise. SWFSC reviewed the assumptions made by NWFSC and has concurred and adopted the same assumptions in support of their requested take authorization. SWFSC additionally reviews records of marine mammal interactions with commercial purse seines in section 6.2.2 of their application. For most species, the risk of interaction is expected to be relatively low and, therefore, SWFSC has requested authorization of one take per potentially affected stock over the five-year period. However, based on the greater number of recorded interactions with purse seine gear for California sea lions and harbor seals, SWFSC has requested 5 takes for each species over the five-year period.

We have reviewed subsequent LOFs and determined that there are no new records that would change the assumptions regarding potential vulnerability to gear interaction described above. For a summation of the LOF records discussed above for trawl and longline gear, please see Table 13 (80 FR 8166) and Table 6 (81 FR 38516). The final 2020 LOF was published on April 16, 2020 (85 FR 21079), and more information about the LOF is available online at: *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-protection-act-list-fisheries.*

It is also possible that a captured animal may not be able to be identified to species with certainty. Certain pinnipeds and small cetaceans are difficult to differentiate at sea, especially in low-light situations or when a quick release is necessary. For example, a captured delphinid that is struggling in the net may escape or be freed before positive identification is made. Therefore, the SWFSC has requested the authorization of incidental take in trawl gear for one unidentified pinniped and one unidentified small cetacean, and additionally one take of unidentified

pinnipeds in both purse seine and longline gear, over the course of the five-year period of proposed authorization. Table 8 summarizes the total proposed M/SI take authorization due to gear interaction in the CCE.

TABLE 8—TOTAL ESTIMATED TAKE DUE TO GEAR INTERACTION IN THE CCE, 2020–25 [1]

Species	Estimated 5-year total, trawl	Estimated 5-year total, hook and line	Estimated 5-year total, purse seine	Total
Kogia spp. [2]	.....	2	.....	2
Bottlenose dolphin (CA/OR/WA offshore) [3]	8	1	.....	9
Bottlenose dolphin (CA coastal) [3]	3	.....	.....	3
Striped dolphin	11	2	1	14
Common dolphin (short-beaked)	11	2	1	14
Common dolphin (long-beaked)	11	2	1	14
Pacific white-sided dolphin	40	.....	1	41
Northern right whale dolphin	10	.....	1	11
Risso's dolphin	11	2	1	14
Short-finned pilot whale	.....	2	.....	2
Harbor porpoise [4]	5	.....	1	6
Dall's porpoise	5	.....	1	6
Northern fur seal [5]	5	.....	.....	5
California sea lion	20	5	5	30
Steller sea lion	9	1	.....	10
Harbor seal [4]	9	.....	5	14
Northern elephant seal	5	.....	.....	5
Unidentified pinniped	1	1	1	3
Unidentified cetacean	1	.....	.....	1

[1] Please preceding text for derivation of take estimates.
[2] We expect that *Kogia* spp. taken over the five-year timespan could be either a pygmy or dwarf sperm whale.
[3] As a species believed to have similar propensity for capture in trawl gear as that demonstrated by the Pacific white-sided dolphin, we assume that eleven bottlenose dolphins could be captured over the five-year timespan. Total potential take of bottlenose dolphins in trawl gear has been apportioned by stock according to typical occurrence of that stock relative to SWFSC survey locations. We assume that the requested take of a bottlenose dolphin in longline gear would be from the offshore stock due to the typical location of SWFSC longline sampling.
[4] Incidental take may be of animals from any stock, excluding Washington inland waters stocks.
[5] Incidental take may be of animals from either the eastern Pacific or California stocks.

Whales—For large whales (baleen whales and sperm whales), beaked whales, and killer whales, observed M/SI is extremely rare for trawl gear and, for most of these species, only slightly more common in longline gear. Although whale species could become captured or entangled in SWFSC gear, the probability of interaction is extremely low considering the lower level of effort relative to that of commercial fisheries. We believe it extremely unlikely that any large whale, beaked whale, or killer whale would be captured or entangled in SWFSC research gear.

Estimated Take Due to Acoustic Harassment

As described previously, we believe it unlikely that SWFSC use of active acoustic sources is realistically likely to cause Level B harassment of marine mammals. However, per SWFSC request, we conservatively assume that, at worst, Level B harassment may result from exposure to noise from these sources, and we carry forward the analytical approach developed in support of the 2015 rule. At that time, in order to quantify the potential for Level B harassment to occur, NMFS developed an analytical framework considering characteristics of the active acoustic systems, their expected patterns of use, and characteristics of the marine mammal species that may interact with them. The framework incorporated a number of deliberately precautionary, simplifying assumptions, and the resulting exposure estimates, which are presumed here to equate to take by Level B harassment (as defined by the MMPA), may be seen as an overestimate of the potential for such effects to occur as a result of the operation of these systems.

Regarding the potential for Level A harassment in the form of permanent threshold shift to occur, the very short duration sounds emitted by these sources reduces the likely level of accumulated energy an animal is exposed to. An individual would have to remain exceptionally close to a sound source for unrealistic lengths of time, suggesting the likelihood of injury occurring is exceedingly small. Potential Level A harassment is therefore not considered further in this analysis.

The assessment paradigm for active acoustic sources used in SWFSC fisheries research is relatively straightforward and has a number of key simplifying assumptions. Sound produced by these sources is intermittent and, therefore, evaluated against the 160 dB rms criterion for Level B harassment by behavioral disturbance. Estimating the number of exposures at the specified received level requires several determinations:

(1) A detailed characterization of the acoustic characteristics of the effective sound source or sources in operation;

(2) The operational areas exposed to levels at or above those associated with Level B harassment when these sources are in operation;

(3) A method for quantifying the resulting sound fields around these sources; and

(4) An estimate of the average density for marine mammal species in each area of operation.

We provide a summary of the analytical approach here, but invite the reader interested in additional detail to review the detailed description provided in support of the 2015 rule (80 FR 8166) as well as the detailed description provided in section 6.4.2 of SWFSC's application.

Quantifying the spatial and temporal dimension of the sound exposure footprint (or ''swath width'') of the active acoustic devices in operation on moving vessels and their relationship to the average density of marine mammals enables a quantitative estimate of the number of events in which sound levels exceed the relevant threshold. The

number of potentially harassing exposures is ultimately estimated as the product of the volume of water ensonified at 160 dB rms or higher (to a maximum depth of 500 m) and the volumetric density of animals determined from simple assumptions about their vertical stratification in the water column. Specifically, reasonable assumptions based on what is known about diving behavior across different marine mammal species were made to segregate those that predominately remain in the upper 200 m of the water column versus those that regularly dive deeper during foraging and transit. Because depths range dramatically along the margin of the continental slope that define the outer edge of the survey areas, but deeper surveyed depths rarely range over 500 m in practice, the depth range for determining volumes was set at 500 m for deep diving species.

An initial characterization of the general source parameters for the primary active acoustic sources operated by the SWFSC was conducted, enabling a full assessment of all sound sources used by the SWFSC (see Table 2). This auditing of the active acoustic sources also enabled a determination of the predominant sources that, when operated, would have sound footprints exceeding those from any other simultaneously used sources. These sources were effectively those used directly in acoustic propagation modeling to estimate the zones within which the 160 dB rms received level would occur.

Many of these sources can be operated in different modes and with different output parameters. In modeling their potential impact areas, those features among those given previously in Table 2 (*e.g.,* lowest operating frequency) that would lead to the most precautionary estimate of maximum received level ranges (*i.e.,* largest ensonified area) were used. The effective beam patterns took into account the normal modes in which these sources are typically operated. While these signals are brief and intermittent, a conservative assumption was taken in ignoring the temporal pattern of transmitted pulses in calculating potential Level B harassment events. Operating characteristics of each of the predominant sound sources were used in the calculation of effective line-kilometers and area of exposure for each source in each survey.

Three predominant sources were identified as having the largest potential impact zones during operations, based on their relatively lower output frequency, higher output power, and their operational pattern of use. These sources are the SX90, EK60/EK80, and ME70 (Table 2). Estimated effective cross-sectional areas of exposure were estimated for each of these sources. In determining the effective line-kilometers for each of these predominant sources, the operational patterns of use relative to one another were further applied to determine which source was the predominant one operating at any point in time for each survey. When multiple sound sources are used simultaneously, the one with the largest potential impact zone in each relevant depth strata is considered for use in estimating exposures.

The cross-sectional area of water ensonified at or above the 160 dB rms threshold was calculated using a simple model of sound propagation loss, which accounts for the loss of sound energy over increasing range. We used a spherical spreading model (where propagation loss = 20 * log [range]; such that there would be a 6-dB reduction in sound level for each doubling of distance from the source), a reasonable approximation over the relatively short ranges involved. Spherical spreading is a reasonable assumption even in relatively shallow waters since, taking into account the beam angle, the reflected energy from the seafloor will be much weaker than the direct source and the volume influenced by the reflected acoustic energy would be much smaller over the relatively short ranges involved. We also accounted for the frequency-dependent absorption coefficient and beam pattern of these sound sources, which is generally highly directional. The lowest frequency was used for systems that are operated over a range of frequencies. The vertical extent of this area is calculated for two depth strata. These results were applied differentially based on the typical vertical stratification of marine mammals.

Following the determination of effective sound exposure area for transmissions considered in two dimensions, the next step was to determine the effective volume of water ensonified at or above 160 dB rms for the entirety of each survey. For each of the three predominant sound sources, the volume of water ensonified is estimated as the athwartship cross-sectional area (in square kilometers) of sound at or above 160 dB rms multiplied by the total distance traveled by the ship. Where different sources operating simultaneously would be predominant in each different depth strata, the resulting cross-sectional area calculated took this into account. Specifically, for shallow-diving species this cross-sectional area was determined for whichever was predominant in the shallow stratum, whereas for deeper-diving species this area was calculated from the combined effects of the predominant source in the shallow stratum and the (sometimes different) source predominating in the deep stratum. This creates an effective total volume characterizing the area ensonified when each predominant source is operated and accounts for the fact that deeper-diving species may encounter a complex sound field in different portions of the water column.

The best available information regarding marine mammal occurrence in the CCE was used to develop volumetric density values for use in calculating estimated exposures. This information was determined through review of available information, as indicated through NOAA's CetMap catalogue, available online at: *cetsound.noaa.gov/cda-index.* More detail, and the density values used, are provided in section 3 and Appendix A of the SWFSC application. For marine mammals occurring in the AMLR, no new information is available, and the density values used in the 2015 rule are carried forward.

Estimates of potential incidents of Level B harassment (*i.e.,* potential exposure to levels of sound at or exceeding the 160 dB rms threshold) are then calculated by using (1) the combined results from output characteristics of each source and identification of the predominant sources in terms of acoustic output; (2) their relative annual usage patterns for each operational area; (3) a source-specific determination made of the area of water associated with received sounds at the extent of a depth boundary; and (4) determination of a biologically-relevant volumetric density of marine mammal species in each area. Estimates of Level B harassment by acoustic sources are the product of the volume of water ensonified at 160 dB rms or higher for the predominant sound source for each relevant survey and the volumetric density of animals for each species. Please see Tables 6–12 and 6–13 in SWFSC's application for relevant information. Take estimates proposed for authorization are summarized in Table 11 below.

Estimated Take Due to Physical Disturbance

Estimated take due to physical disturbance could potentially happen in the AMLR only as a result of the unintentional approach of SWFSC vessels to pinnipeds hauled out on ice, and would result in no greater than Level B harassment. During Antarctic

ecosystem surveys conducted in the austral winter (*i.e.,* June 1 through August 31), it is expected that shipboard activities may result in behavioral disturbance of some pinnipeds. It is likely that some pinnipeds on ice will move or flush from the haul-out into the water in response to the presence or sound of SWFSC survey vessels. Behavioral responses may be considered according to the scale shown in Table 9 and based on the method developed by Mortenson (1996). We consider responses corresponding to Levels 2–3 to constitute Level B harassment.

TABLE 9—PINNIPED RESPONSE TO DISTURBANCE

Level	Type of response	Definition
1	Alert	Seal head orientation or brief movement in response to disturbance, which may include turning head towards the disturbance, craning head and neck while holding the body rigid in a u-shaped position, changing from a lying to a sitting position, or brief movement of less than twice the animal's body length.
2	Movement	Movements away from the source of disturbance, ranging from short withdrawals at least twice the animal's body length to longer retreats over the beach, or if already moving a change of direction of greater than 90 degrees.
3	Flush	All retreats (flushes) to the water.

The SWFSC has estimated potential incidents of Level B harassment due to physical disturbance (Table 10) using the vessel distance traveled (20,846 km) during a typical AMLR survey, an effective strip width of 200 m (animals are assumed to react if they are less than 100 m from the vessel; see below), and the estimated population density for each species (see Table 3–2 of SWFSC's application). Although there is likely to be variation between individuals and species in reactions to a passing research vessel—that is, some animals assumed to react in this calculation will not react, and others assumed not to react because they are outside the effective strip width may in fact react—we believe that this approach is a reasonable effort towards accounting for this potential source of disturbance and have no information to indicate that the approach is biased either negatively or positively. SWFSC used an effective strip width of 200 m (*i.e.,* 100 m on either side of a passing vessel) to be consistent with the regional marine mammal viewing guidelines that NMFS has established for Alaska, which restrict approaches to marine mammals to a distance of 100 m or greater in order to reduce the potential to cause inadvertent harm. Alaska is believed to have the most similar environment to the Antarctic of all regions for which NMFS has established viewing guidelines. Each estimate is the product of the species-specific density, annual line-kilometers, and the effective strip-width.

TABLE 10—ESTIMATED LEVEL B HARASSMENT OF PINNIPEDS ASSOCIATED WITH AMLR VESSEL TRANSECTS

Species	Estimated annual Level B harassment	5-year total
Antarctic fur seal	417	2,085
Southern elephant seal	1	5
Weddell seal	225	1,125
Crabeater seal	2,704	13,520
Leopard seal	68	340

Proposed Mitigation

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

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

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

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

The following suite of mitigation measures and procedures, *i.e.,* measures taken to monitor, avoid, or minimize the encounter and potential take of marine mammals, will be employed by the SWFSC during research cruises and activities. For a summary of measures proposed by SWFSC, please see Table 11–1 of the application. These procedures are the same whether the survey is conducted by SWFSC or is a SWFSC-supported survey, which may be conducted onboard a variety of vessels, *e.g.,* on board a NOAA vessel or

charter vessel. The procedures described are based on protocols used during previous research surveys and/or best practices developed for commercial fisheries using similar gear. The SWFSC conducts a large variety of research operations, but only activities using trawl, hook and line, and purse seine gears are expected to present a reasonable likelihood of resulting in incidental take of marine mammals. SWFSC's past survey operations have resulted in marine mammal interactions. These protocols are designed to minimize to the extent practicable the interactions that do happen while providing credible, documented, and safe encounters with observed or captured animals. Mitigation procedures will be focused on those situations where mammals, in the best professional judgement of the vessel operator and Chief Scientist (CS), pose a risk of incidental take. In many instances, the SWFSC will use streamlined protocols and training for protected species developed in support of the 2015 rule and refined during implementation of the rule.

The SWFSC has invested significant time and effort in identifying technologies, practices, and equipment to minimize the impact of the proposed activities on marine mammal species and stocks and their habitat. These efforts have resulted in the consideration of many potential mitigation measures, including those the SWFSC has determined to be feasible and has implemented for years as a standard part of sampling protocols. These measures include the move-on rule mitigation protocol (also referred to in the preamble as the move-on rule), protected species visual watches, and use of acoustic pingers and a marine mammal exclusion device (MMED) on surface trawls using the Nordic 264 trawl net.

Effective monitoring is a key step in implementing mitigation measures and is achieved through regular marine mammal watches. Marine mammal watches are a standard part of conducting SWFSC fisheries research activities, particularly those activities that use gears that are known to or potentially interact with marine mammals. Marine mammal watches and monitoring occur during daylight hours prior to deployment of gear (*e.g.,* trawls, purse seine, and longline gear), and they continue through active fishing and during retrieval of gear. If marine mammals are sighted in the area and are considered to be at risk of interaction with the research gear, then the sampling station is either moved or canceled or the activity is suspended until the marine mammals are no longer in the area. On smaller vessels, the CS and the vessel operator are typically those looking for marine mammals and other protected species. When marine mammal researchers are on board (distinct from marine mammal observers dedicated to monitoring for potential gear interactions), they will record the estimated species and numbers of animals present and their behavior. If marine mammal researchers are not on board or available, then the CS in cooperation with the vessel operator will monitor for marine mammals and provide training as practical to bridge crew and other crew to observe and record such information. Because marine mammals are frequently observed in CCE waters, marine mammal observations may be limited to those animals that directly interact with or are near to the vessel or gear. NOAA vessels, chartered vessels, and affiliated vessels or studies are required to monitor interactions with marine mammals but are limited to reporting direct interactions, dead animals, or entangled whales.

General Measures

Coordination and Communication—When SWFSC survey effort is conducted aboard NOAA-owned vessels, there are both vessel officers and crew and a scientific party. Vessel officers and crew are not composed of SWFSC staff but are employees of NOAA's Office of Marine and Aviation Operations (OMAO), which is responsible for the management and operation of NOAA fleet ships and aircraft and is composed of uniformed officers of the NOAA Commissioned Corps as well as civilians. The ship's officers and crew provide mission support and assistance to embarked scientists, and the vessel's Commanding Officer (CO) has ultimate responsibility for vessel and passenger safety and, therefore, decision authority. When SWFSC survey effort is conducted aboard cooperative platforms (*i.e.,* non-NOAA vessels), ultimate responsibility and decision authority again rests with non-SWFSC personnel (*i.e.,* vessel's master or captain). Decision authority includes the implementation of mitigation measures (*e.g.,* whether to stop deployment of trawl gear upon observation of marine mammals). The scientific party involved in any SWFSC survey effort is composed, in part or whole, of SWFSC staff and is led by a CS. Therefore, because the SWFSC—not OMAO or any other entity that may have authority over survey platforms used by SWFSC—is the applicant to whom any incidental take authorization issued under the authority of these proposed regulations would be issued, we require that the SWFSC take all necessary measures to coordinate and communicate in advance of each specific survey with OMAO, or other relevant parties, to ensure that all mitigation measures and monitoring requirements described herein, as well as the specific manner of implementation and relevant event-contingent decision-making processes, are clearly understood and agreed-upon. This may involve description of all required measures when submitting cruise instructions to OMAO or when completing contracts with external entities. SWFSC will coordinate and conduct briefings at the outset of each survey and as necessary between ship's crew (CO/master or designee(s), as appropriate) and scientific party in order to explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures. The CS will be responsible for coordination with the Officer on Deck (OOD; or equivalent on non-NOAA platforms) to ensure that requirements, procedures, and decision-making processes are understood and properly implemented.

Vessel Speed—Vessel speed during active sampling rarely exceeds 5 kn, with typical speeds being 2–4 kn. Transit speeds vary from 6–14 kn but average 10 kn. These low vessel speeds minimize the potential for ship strike. At any time during a survey or in transit, if a crew member or designated marine mammal observer standing watch sights marine mammals that may intersect with the vessel course that individual will immediately communicate the presence of marine mammals to the bridge for appropriate course alteration or speed reduction, as possible, to avoid incidental collisions.

Other Gears—The SWFSC deploys a wide variety of gear to sample the marine environment during all of their research cruises. Many of these types of gear (*e.g.,* plankton nets, video camera and ROV deployments) are not considered to pose any risk to marine mammals and are therefore not subject to specific mitigation measures. However, at all times when the SWFSC is conducting survey operations at sea, the OOD and/or CS and crew will monitor for any unusual circumstances that may arise at a sampling site and use best professional judgment to avoid any potential risks to marine mammals during use of all research equipment.

Handling Procedures—Handling procedures are those taken to return a live animal to the sea or process a dead animal. The SWFSC will continue to

implement handling protocols developed in support of the 2015 rule and refined during implementation of the rule, to minimize potential harm to marine mammals that are incidentally taken during the course of fisheries research activities. These procedures are expected to increase post-release survival and, in general, following a ''common sense'' approach to handling captured or entangled marine mammals will present the best chance of minimizing injury to the animal and of decreasing risks to scientists and vessel crew. Handling or disentangling marine mammals carries inherent safety risks, and using best professional judgment and ensuring human safety is paramount.

Captured live or injured marine mammals are released from research gear and returned to the water as soon as possible with no gear or as little gear remaining on the animal as possible. Animals are released without removing them from the water if possible and data collection is conducted in such a manner as not to delay release of the animal(s) or endanger the crew. SWFSC staff are instructed on how to identify different species; handle and bring marine mammals aboard a vessel; assess the level of consciousness; remove fishing gear; and return marine mammals to water. For further information regarding proposed handling procedures, please see section 11.5 of SWFSC's application.

Trawl Survey Visual Monitoring and Operational Protocols

Visual monitoring protocols, described above, are an integral component of trawl mitigation protocols. Observation of marine mammal presence and behaviors in the vicinity of SWFSC trawl survey operations allows for the application of professional judgment in determining the appropriate course of action to minimize the incidence of marine mammal gear interactions.

The OOD, CS or other designated member of the scientific party, and crew standing watch on the bridge visually scan surrounding waters with the naked eye and rangefinding binoculars (or monocular) for marine mammals prior to, during, and until all trawl operations are completed. Some sets may be made at night or other limited visibility conditions, when visual observation may be conducted using the naked eye and available vessel lighting with limited effectiveness.

Marine mammal watches will be initiated 15 minutes prior to arrival on station (or for the amount of time to travel between stations if less than 15 minutes) to determine if marine mammals are near the planned trawl set location. Either dedicated observers, the OOD, CS, and/or crew standing watch will visually scan for marine mammals during all daytime operations. Marine mammal watches will be conducted using any binocular or monocular sighting instrument, with a means to estimate distance to infringing protected species during daytime, and the best available means of observation during nighttime observations. This typically occurs during transit leading up to arrival at the sampling station because of standard protocol of immediate deployment of trawl gear upon arriving at station (intended to reduce the risk of attracting curious marine mammals). However, in some cases it may be necessary to conduct a plankton tow prior to deploying trawl gear. In these cases, the visual watch will continue until trawl gear is ready to be deployed.

Lookouts immediately alert the OOD and CS as to their best estimate of the species and number of animals observed and any observed animal's distance, bearing, and direction of travel relative to the ship's position. If any marine mammals are sighted around the vessel before setting gear, the vessel may be moved away from the animals to a different section of the sampling area if the animals appear to be at risk of interaction with the gear. This is what is referred to as the ''move-on'' rule.

If marine mammals are sighted within 1 nm of the planned set location in the 15 minutes before setting the gear, the vessel will transit to a different section of the sampling area to maintain a minimum set distance of 1 nm. An exception to this protocol is for baleen whales; baleen whales are commonly observed within the 1 nm distance from SWFSC trawl sampling locations but have never been observed to be attracted to SWFSC research activity and have never interacted with SWFSC research gear. Decision regarding the potential need to move-on in response to baleen whale presence will be made on the basis of professional judgment based on the specific circumstances. If after moving on, protected species remain within the 1 nm exclusion zone, the CS or watch leader may decide to move again or to skip the station. However, SWFSC acknowledges that the effectiveness of visual monitoring may be limited depending on weather and lighting conditions, and it may not always be possible to conduct visual observations out to 1 nm. The CS or watch leader will determine the best strategy to avoid potential takes of marine mammals based on the species encountered, their numbers and behavior, position and vector relative to the vessel, and other factors. For instance, a marine mammal transiting through the area off in the distance might only require a short move from the designated station while a pod of dolphins gathered around the vessel may require a longer move from the station or possibly cancellation if they follow the vessel. In any case, no gear will be deployed if marine mammals other than baleen whales have been sighted within 1 nm of the planned set location during the 15-minute watch period.

In many cases, trawl operations will be the first activity undertaken upon arrival at a new station, in order to reduce the opportunity to attract marine mammals to the vessel. However, in some cases it will be necessary to conduct plankton tows prior to deploying trawl gear in order to avoid trawling through extremely high densities of jellies and similar taxa that are numerous enough to severely damage trawl gear.

Once the trawl net is in the water, the OOD, CS, and/or crew standing watch will continue to monitor the waters around the vessel and maintain a lookout for marine mammal presence as far away as environmental conditions allow. If marine mammals are sighted before the gear is fully retrieved, the most appropriate response to avoid incidental take will be determined by the professional judgment of the CS, watch leader, OOD and other experienced crew as necessary. This judgment will be based on their past experience operating gears around marine mammals and SWFSC training sessions that facilitate dissemination of expertise operating in these situations (*e.g.,* factors that contribute to marine mammal gear interactions and those that aid in successfully avoiding these events). These judgments take into consideration the species, numbers, and behavior of the animals, the status of the trawl net operation (net opening, depth, and distance from the stern), the time it would take to retrieve the net, and safety considerations for changing speed or course.

The appropriate course of action to minimize the risk of incidental take is determined by the professional judgment of the OOD, vessel operator, and the CS based on all situation variables, even if the choices compromise the value of the data collected at the station. We recognize that it is not possible to dictate in advance the exact course of action that the OOD or CS should take in any given event involving the presence of marine mammals in proximity to an ongoing

trawl tow, given the sheer number of potential variables, combinations of variables that may determine the appropriate course of action, and the need to prioritize human safety in the operation of fishing gear at sea. Nevertheless, we require a full accounting of factors that shape both successful and unsuccessful decisions, and these details will be fed back into SWFSC training efforts and ultimately help to refine the best professional judgment that determines the course of action taken in any given scenario (see further discussion in ''Proposed Monitoring and Reporting'').

If trawling operations have been suspended because of the presence of marine mammals, the vessel will resume trawl operations (when practicable) only when the mammals have not been sighted within 1 nm of the planned set location. This decision is at the discretion of the officer on watch and is dependent on the situation.

Care will be taken when emptying the trawl to avoid damage to any marine mammals that may be caught in the gear but are not visible upon retrieval. The gear will be emptied as quickly as possible after retrieval in order to determine whether or not marine mammals, or any other protected species, are present.

Standard survey protocols that are expected to lessen the likelihood of marine mammal interactions include standardized tow durations and distances. Standard tow durations of not more than 45 minutes at the target depth have been implemented, excluding deployment and retrieval time (which may require an additional 30 minutes depending on depth), to reduce the likelihood of attracting and incidentally taking marine mammals and other protected species. These short tow durations decrease the opportunity for curious marine mammals to find the vessel and investigate. Trawl tow distances are less than 3 nm, which should reduce the likelihood of attracting and incidentally taking marine mammals. Typical tow distances are 1–2 nm, depending on the survey and trawl speed. In addition, the vessel's crew will clean trawl nets prior to deployment to remove prey items that might attract marine mammals. Catch volumes are typically small, with every attempt made to collect all organisms caught in the trawl.

Marine Mammal Excluder Devices—The NETS Nordic 264 trawl gear will be fitted with MMEDs to allow marine mammals caught during trawling operations an opportunity to escape. These devices enable target species to pass through a grid or mesh barrier and into the codend while preventing the passage of marine mammals, which are ejected out through an escape opening or swim back out of the mouth of the net. Potential for interactions with protected species, such as marine mammals, is often greatest during the deployment and retrieval of the trawl, when the net is at or near the surface of the water. During retrieval of the net, protected species may become entangled in the net while attempting to feed from the codend as it floats near the surface of the water. Considerable effort has been given to developing MMEDs that allow marine mammals to escape from the net while allowing retention of the target species (*e.g.,* Dotson *et al.,* 2010). MMEDs generally consist of a large aluminum grate positioned in the intermediate portion of the net forward of the codend and below an ''escape panel'' constructed into the upper net panel above the grate (Figure A–1 of SWFSC's application). The angled aluminum grate is intended to guide marine mammals through the escape panel and prevent them from being caught in the codend (Dotson *et al.,* 2010). MMEDs are currently deployed on all surveys using Nordic 264 nets.

Acoustic Deterrent Devices—Pingers will be deployed during all trawl operations and on all types of trawl nets. Two to four pingers will be placed along the footrope and/or headrope to discourage marine mammal interactions.

Acoustic pingers are underwater sound emitting devices that are designed to decrease the probability of entanglement or unintended capture of marine mammals (see Appendix B of the SWFSC application). Acoustic pingers have been shown to effectively deter several species of small cetaceans from becoming entangled in gillnets and driftnets (for detailed discussion, please see 80 FR 8166).

The CPS Survey uses the Netguard 70 kHz dolphin pinger manufactured by Future Oceans and the Rockfish Recruitment and Ecosystem Assessment Surveys use the DDD–03H pinger manufactured by STM Products. Pingers remain operational at depths between 10 m and 200 m. Tones range from 100 microseconds to seconds in duration, with variable frequency of 5–500 kHz and maximum sound pressure level of 176 dB rms re 1 μPa at 1 m at 30–80 kHz.

If one assumes that use of a pinger is effective in deterring marine mammals from interacting with fishing gear, one must therefore assume that receipt of the acoustic signal has a disturbance effect on those marine mammals (*i.e.,* potential Level B harassment). However, Level B harassment that may be incurred as a result of SWFSC use of pingers does not constitute take that must be authorized under the MMPA. The MMPA prohibits the taking of marine mammals by U.S. citizens or within the U.S. EEZ unless such taking is appropriately permitted or authorized. However, the MMPA provides several narrowly defined exemptions from this requirement (*e.g.,* for Alaskan natives; for defense of self or others; for Good Samaritans (16 U.S.C. 1371(b)–(d))). Section 109(h) of the MMPA (16 U.S.C. 1379(h)) allows for the taking of marine mammals in a humane manner by Federal, state, or local government officials or employees in the course of their official duties if the taking is necessary for the protection or welfare of the mammal, the protection of the public health and welfare, or the non-lethal removal of nuisance animals. SWFSC use of pingers as a deterrent device, which may cause Level B harassment of marine mammals, is intended solely for the avoidance of potential marine mammal interactions with SWFSC research gear (*i.e.,* avoidance of Level A harassment, serious injury, or mortality). Therefore, use of such deterrent devices, and the taking that may result, is for the protection and welfare of the mammal and is covered explicitly under MMPA section 109(h)(1)(A). Potential taking of marine mammals resulting from SWFSC use of pingers is not discussed further in this document.

Longline Survey Visual Monitoring and Operational Protocols

Visual monitoring requirements for all longline surveys are similar to the general protocols described above for trawl surveys. Please see that section for full details of the visual monitoring protocol and the move-on rule mitigation protocol. In summary, requirements for longline surveys are to: (1) Conduct visual monitoring prior to arrival on station; (2) implement the move-on rule if marine mammals are observed within the area around the vessel and may be at risk of interacting with the vessel or gear; (3) deploy gear as soon as possible upon arrival on station (depending on presence of marine mammals); and (4) maintain visual monitoring effort throughout deployment and retrieval of the longline gear. As was described for trawl gear, the OOD, CS, or watch leader will use best professional judgment to minimize the risk to marine mammals from potential gear interactions during deployment and retrieval of gear. If

marine mammals are detected during setting operations and are considered to be at risk, immediate retrieval or suspension of operations may be warranted. If operations have been suspended because of the presence of marine mammals, the vessel will resume setting (when practicable) only when the animals are believed to have departed the area. If marine mammals are detected during retrieval operations and are considered to be at risk, haul-back may be postponed. These decisions are at the discretion of the OOD/CS and are dependent on the situation.

An exception is when California sea lions are sighted during the watch period prior to setting longline gear. For this species only, longline gear may be set if a group of 5 or fewer animals is sighted within 1 nm of the planned set location; when groups of more than 5 sea lions are sighted within 1 nm of the sampling station, deployment of gear would be suspended. This exception has been defined considering the rarity of past interactions between this gear and California sea lions and in order to make this mitigation measure practicable to implement. Without it, given the density of California sea lions in the areas where longline surveys are conducted, the SWFSC believes implementing the move-on rule for a single animal would preclude sampling in some areas and introduce significant bias into survey results. Groups of five California sea lions or greater is believed to represent a trigger for the move-on rule that would allow sampling in areas where target species can be caught without increasing the number of interactions between marine mammals and research longline gear. This measure was implemented under the 2015 rule, and no increase in sea lion take was observed, nor were multiple sea lions captured during any set.

As for trawl surveys, some standard survey protocols are expected to minimize the potential for marine mammal interactions. SWFSC longline sets are conducted with drifting pelagic or anchored gear marked at both ends with buoys. Typical soak times are 2–4 hours, but may be as long as 8 hours when targeting swordfish (measured from the time the last hook is in the water to when the first hook is brought out of the water).

SWFSC longline protocols specifically prohibit chumming (releasing additional bait to attract target species to the gear). However, spent bait may be discarded during gear retrieval while gear is still in the water. In the experience of SWFSC, this practice increases survey efficiency and has not resulted in interactions with marine mammals. Scientist observations indicate pinnipeds do not gather immediately aft of the survey vessel as a result of discarding spent bait. However, if protected species interactions with longline gear increase, or if SWFSC staff observe that this practice is contributing to protected species interactions, the SWFSC will revisit this practice and consider the need to retain spent bait until no gear remains in the water.

Purse Seine Survey Visual Monitoring and Operational Protocols

Visual monitoring and operational protocols for purse seine surveys are similar to those described previously for trawl surveys, with a focus on visual observation in the survey area and avoidance of marine mammals that may be at risk of interaction with survey vessels or gear. The crew will keep watch for marine mammals before and during a set. If a bird or marine mammal observer is on board, the observer(s) inform the CS and captain of any marine mammals detected at or near a sampling station. Observations focus on avoidance of cetaceans (*e.g.,* dolphins, and porpoises) and aggregations of pinnipeds.

If any killer whales, dolphins, or porpoises are observed within approximately 500 m of the purse seine survey location, the set will be delayed. If any dolphins or porpoises are observed in the net, the net will be immediately opened to let the animals go. Pinnipeds may be attracted to fish caught in purse seine gear but are known to jump in and out of the net without entanglement. If pinnipeds are in the immediate area where the net is to be set, the set is delayed until the animals move out of the area or the station is abandoned. However, if fewer than 5 pinnipeds are seen in the vicinity but do not appear to be in the direct way of the setting operation, the net may be set.

SWFSC also uses unmanned aerial systems (UAS) to conduct research. For pinnipeds, UAS flights will be at 100–200 ft depending on species (*i.e.,* 100 ft for elephant seals and 200 ft for other species); in mixed aggregations, the most conservative altitude is used. UASs will not be flown directly over pinniped haulouts.

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

Proposed Monitoring and Reporting

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

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

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

SWFSC plans to continue its systematic training, operations, data collection, animal handling and sampling protocols, etc., as refined through implementation of the 2015 rule, in order to improve its ability to understand how mitigation measures influence interaction rates and ensure its research operations are conducted in an informed manner and consistent with lessons learned from those with experience operating these gears in close proximity to marine mammals. It is in this spirit that we propose to continue the monitoring requirements described below.

Visual Monitoring

Marine mammal watches are a standard part of conducting fisheries research activities, and are implemented as described previously in ''Proposed Mitigation.'' Dedicated marine mammal visual monitoring occurs as described (1) for some period prior to deployment of most research gear; (2) throughout deployment and active fishing of all research gears; (3) for some period prior to retrieval of longline gear; and (4) throughout retrieval of all research gear. This visual monitoring is performed by trained SWFSC personnel or other trained crew during the monitoring period. Observers record the species and estimated number of animals present and their behaviors, which may be valuable information towards an understanding of whether certain species may be attracted to vessels or certain survey gears. Separately, marine mammal watches are conducted by watch-standers (those navigating the vessel and other crew; these will typically not be SWFSC personnel) at all times when the vessel is being operated. The primary focus for this type of watch is to avoid striking marine mammals and to generally avoid navigational hazards. These watch-standers typically have other duties associated with navigation and other vessel operations and are not required to record or report to the scientific party data on marine mammal sightings, except when gear is being deployed or retrieved.

SWFSC will also monitor disturbance of hauled-out pinnipeds resulting from the presence of researchers in the Antarctic, paying particular attention to the distance at which different species of pinniped are disturbed. Disturbance will be recorded according to the three-point scale, representing increasing seal response to disturbance, shown in Table 9.

Training

SWFSC anticipates that additional information on practices to avoid marine mammal interactions can be gleaned from training sessions and the continuation of systematic data collection standards. The SWFSC will conduct annual trainings for all chief scientists and other personnel who may be responsible for conducting marine mammal visual observations or handling incidentally captured marine mammals to explain mitigation measures and monitoring and reporting requirements, mitigation and monitoring protocols, marine mammal identification, recording of count and disturbance observations, completion of datasheets, and use of equipment. Some of these topics may be familiar to SWFSC staff, who may be professional biologists; the SWFSC shall determine the agenda for these trainings and ensure that all relevant staff have necessary familiarity with these topics. Training typically includes three primary elements: (1) An overview of the purpose and need for the authorization, including mandatory mitigation measures by gear and the purpose for each, and species that SWFSC is authorized to incidentally take; (2) detailed descriptions of reporting, data collection, and sampling protocols; and (3) discussion of best professional judgment (which is recognized as an integral component of mitigation implementation; see ''Proposed Mitigation'').

The second topic includes instruction on how to complete data collection forms such as the marine mammal watch log, the incidental take form (*e.g.,* specific gear configuration and details relevant to an interaction with protected species), and forms used for species identification and biological sampling.

The third topic includes use of professional judgment in any incidents of marine mammal interaction and instructive examples where use of best professional judgment was determined to be successful or unsuccessful. We recognize that many factors come into play regarding decision-making at sea and that it is not practicable to simplify what are inherently variable and complex situational decisions into rules that may be defined on paper. However, it is our intent that use of best professional judgment be an iterative process from year to year, in which any at-sea decision-maker (*i.e.,* responsible for decisions regarding the avoidance of marine mammal interactions with survey gear through the application of best professional judgment) learns from the prior experience of all relevant SWFSC personnel (rather than from solely their own experience). The outcome should be increased transparency in decision-making processes where best professional judgment is appropriate and, to the extent possible, some degree of standardization across common situations, with an ultimate goal of reducing marine mammal interactions. It is the responsibility of the SWFSC to facilitate such exchange.

To reduce marine mammal takes over time, the SWFSC maximizes efficient use of charter and NOAA ship time, and engages in operational planning with the NMFS Northwest and Pacific Islands Fisheries Science Centers to delineate respective research responsibilities and to reduce duplication of effort among the Centers.

Handling Procedures and Data Collection

Improved standardization of handling procedures were discussed previously in ''Proposed Mitigation.'' In addition to the benefits implementing these protocols are believed to have on the animals through increased post-release survival, SWFSC believes adopting these protocols for data collection will also increase the information on which ''serious injury'' determinations are based and improve scientific knowledge about marine mammals that interact with fisheries research gears and the factors that contribute to these interactions. SWFSC personnel are provided standard guidance and training regarding handling of marine mammals, including how to identify different species, bring an individual aboard a vessel, assess the level of consciousness, remove fishing gear, return an individual to water and log activities pertaining to the interaction.

SWFSC will record interaction information on their own standardized forms. To aid in serious injury determinations and comply with the current NMFS Serious Injury Guidelines (NMFS, 2012a, 2012b), researchers will also answer a series of supplemental questions on the details of marine mammal interactions. Finally, for any marine mammals that are killed during fisheries research activities, scientists will collect data and samples as appropriate.

Reporting

As is normally the case, SWFSC will coordinate with the relevant stranding coordinators for any unusual marine mammal behavior and any stranding, beached live/dead, or floating marine mammals that are encountered during field research activities. In addition, Chief Scientists (or cruise leader, CS) will provide reports to SWFSC leadership and to the Office of Protected Resources (OPR). As a result, when

marine mammals interact with survey gear, whether killed or released alive, a report provided by the CS will fully describe any observations of the animals, the context (vessel and conditions), decisions made and rationale for decisions made in vessel and gear handling. The circumstances of these events are critical in enabling SWFSC and OPR to better evaluate the conditions under which takes are most likely occur. We believe in the long term this will allow the avoidance of these types of events in the future.

The SWFSC will submit annual summary reports to OPR including: (1) Annual line-kilometers surveyed during which the predominant acoustic systems were used (see ''Estimated Take by Acoustic Harassment'' for further discussion), specific to each region; (2) summary information regarding use of all hook and line, purse seine, and trawl gear, including number of sets, tows, etc., specific to each research area and gear; (3) accounts of all incidents of marine mammal interactions, including circumstances of the event and descriptions of any mitigation procedures implemented or not implemented and why; (4) summary information related to any disturbance of pinnipeds, including event-specific total counts of animals present, counts of reactions according to the three-point scale shown in Table 9, and distance of closest approach; and (5) a written evaluation of the effectiveness of SWFSC mitigation strategies in reducing the number of marine mammal interactions with survey gear, including best professional judgment and suggestions for changes to the mitigation strategies, if any. The period of reporting will be annually, and the report must be submitted not less than ninety days following the end of a given year. Submission of this information is in service of an adaptive management framework allowing NMFS to make appropriate modifications to mitigation and/or monitoring strategies, as necessary, during the proposed five-year period of validity for these regulations.

NMFS has established a formal incidental take reporting system, the Protected Species Incidental Take (PSIT) database, requiring that incidental takes of protected species be reported within 48 hours of the occurrence. The PSIT generates automated messages to NMFS leadership and other relevant staff, alerting them to the event and to the fact that updated information describing the circumstances of the event has been inputted to the database. The PSIT and CS reports represent not only valuable real-time reporting and information dissemination tools but also serve as an archive of information that may be mined in the future to study why takes occur by species, gear, region, etc.

SWFSC will also collect and report all necessary data, to the extent practicable given the primacy of human safety and the well-being of captured or entangled marine mammals, to facilitate serious injury (SI) determinations for marine mammals that are released alive. SWFSC will require that the CS complete data forms and address supplemental questions, both of which have been developed to aid in SI determinations. SWFSC understands the critical need to provide as much relevant information as possible about marine mammal interactions to inform decisions regarding SI determinations. In addition, the SWFSC will perform all necessary reporting to ensure that any incidental M/SI is incorporated as appropriate into relevant SARs.

Negligible Impact Analysis and Determination

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

We note here that the takes from potential gear interactions enumerated below could result in non-serious injury, but their worse potential outcome (mortality) is analyzed for the purposes of the negligible impact determination. We discuss here the connection between the mechanisms for authorizing incidental take under section 101(a)(5) for activities, such as SWFSC's research activities, and for authorizing incidental take from commercial fisheries. In 1988, Congress amended the MMPA's provisions for addressing incidental take of marine mammals in commercial fishing operations. Congress directed NMFS to develop and recommend a new long-term regime to govern such incidental taking (see MMC, 1994). The need to develop a system suited to the unique circumstances of commercial fishing operations led NMFS to suggest a new conceptual means and associated regulatory framework. That concept, Potential Biological Removal (PBR), and a system for developing plans containing regulatory and voluntary measures to reduce incidental take for fisheries that exceed PBR were incorporated as sections 117 and 118 in the 1994 amendments to the MMPA.

PBR is defined in the MMPA (16 U.S.C. 1362(20)) as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population, and is a measure to be considered when evaluating the effects of M/SI on a marine mammal species or stock. Optimum sustainable population (OSP) is defined by the MMPA (16 U.S.C. 1362(9)) as the number of animals which will result in the maximum productivity of the population or the species, keeping in mind the carrying capacity of the habitat and the health of the ecosystem of which they form a constituent element. A primary goal of the MMPA is to ensure that each species or stock of marine mammal is maintained at or returned to its OSP.

PBR values are calculated by NMFS as the level of annual removal from a stock that will allow that stock to equilibrate within OSP at least 95 percent of the time, and is the product of factors relating to the minimum population estimate of the stock (N_{min}); the productivity rate of the stock at a small population size; and a recovery factor. Determination of appropriate values for these three elements incorporates significant precaution, such that application of the parameter to the

management of marine mammal stocks may be reasonably certain to achieve the goals of the MMPA. For example, calculation of N_{min} incorporates the precision and variability associated with abundance information and is intended to provide reasonable assurance that the stock size is equal to or greater than the estimate (Barlow *et al.,* 1995). In general, the three factors are developed on a stock-specific basis in consideration of one another in order to produce conservative PBR values that appropriately account for both imprecision that may be estimated as well as potential bias stemming from lack of knowledge (Wade, 1998).

PBR can be used as a consideration of the effects of M/SI on a marine mammal stock but was applied specifically to work within the management framework for commercial fishing incidental take. PBR cannot be applied appropriately outside of the section 118 regulatory framework for which it was designed without consideration of how it applies in section 118 and how other statutory management frameworks in the MMPA differ. PBR was not designed as an absolute threshold limiting commercial fisheries, but rather as a means to evaluate the relative impacts of those activities on marine mammal stocks. Even where commercial fishing is causing M/SI at levels that exceed PBR, the fishery is not suspended. When M/SI exceeds PBR, NMFS may develop a take reduction plan, usually with the assistance of a take reduction team. The take reduction plan will include measures to reduce and/or minimize the taking of marine mammals by commercial fisheries to a level below the stock's PBR. That is, where the total annual human-caused M/SI exceeds PBR, NMFS is not required to halt fishing activities contributing to total M/SI but rather utilizes the take reduction process to further mitigate the effects of fishery activities via additional bycatch reduction measures. PBR is not used to grant or deny authorization of commercial fisheries that may incidentally take marine mammals.

Similarly, to the extent consideration of PBR may be relevant to considering the impacts of incidental take from activities other than commercial fisheries, using it as the sole reason to deny incidental take authorization for those activities would be inconsistent with Congress's intent under section 101(a)(5) and the use of PBR under section 118. The standard for authorizing incidental take under section 101(a)(5) continues to be, among other things, whether the total taking will have a negligible impact on the species or stock. When Congress amended the MMPA in 1994 to add section 118 for commercial fishing, it did not alter the standards for authorizing non-commercial fishing incidental take under section 101(a)(5), acknowledging that negligible impact under section 101(a)(5) is a separate standard from PBR under section 118. In fact, in 1994 Congress also amended section 101(a)(5)(E) (a separate provision governing commercial fishing incidental take for species listed under the Endangered Species Act) to add compliance with the new section 118 but kept the requirement for a negligible impact finding, showing that the determination of negligible impact and application of PBR may share certain features but are different.

Since the introduction of PBR, NMFS has used the concept almost entirely within the context of implementing sections 117 and 118 and other commercial fisheries management-related provisions of the MMPA. The MMPA requires that PBR be estimated in stock assessment reports and that it be used in applications related to the management of take incidental to commercial fisheries (*i.e.,* the take reduction planning process described in section 118 of the MMPA and the determination of whether a stock is ''strategic'' (16 U.S.C. 1362(19))), but nothing in the MMPA requires the application of PBR outside the management of commercial fisheries interactions with marine mammals.

Nonetheless, NMFS recognizes that as a quantitative metric, PBR may be useful in certain instances as a consideration when evaluating the impacts of other human-caused activities on marine mammal stocks. Outside the commercial fishing context, and in consideration of all known human-caused mortality, PBR can help inform the potential effects of M/SI caused by activities authorized under 101(a)(5)(A) on marine mammal stocks. As noted by NMFS and the USFWS in our implementation regulations for the 1986 amendments to the MMPA (54 FR 40341; September 29, 1989), the Services consider many factors, when available, in making a negligible impact determination, including, but not limited to, the status of the species or stock relative to OSP (if known), whether the recruitment rate for the species or stock is increasing, decreasing, stable, or unknown, the size and distribution of the population, and existing impacts and environmental conditions. To specifically use PBR, along with other factors, to evaluate the effects of M/SI, we first calculate a metric for each species or stock that incorporates information regarding ongoing anthropogenic M/SI into the PBR value (*i.e.,* PBR minus the total annual anthropogenic mortality/serious injury estimate), which is called ''residual PBR'' (Wood *et al.,* 2012). We then consider how the anticipated potential incidental M/SI from the activities being evaluated compares to residual PBR. Anticipated or potential M/SI that exceeds residual PBR is considered to have a higher likelihood of adversely affecting rates of recruitment or survival, while anticipated M/SI that is equal to or less than residual PBR has a lower likelihood (both examples given without consideration of other types of take, which also factor into a negligible impact determination). In such cases where the anticipated M/SI is near, at, or above residual PBR, consideration of other factors, including those outlined above as well as mitigation and other factors (positive or negative), is especially important to assessing whether the M/SI will have a negligible impact on the stock. As described above, PBR is a conservative metric and is not intended to be used as a solid cap on mortality—accordingly, impacts from M/SI that exceed residual PBR may still potentially be found to be negligible in light of other factors that offset concern, especially when robust mitigation and adaptive management provisions are included.

Alternately, for a species or stock with incidental M/SI less than 10 percent of residual PBR, we consider M/SI from the specified activities to represent an insignificant incremental increase in ongoing anthropogenic M/SI that alone (*i.e.,* in the absence of any other take) cannot affect annual rates of recruitment and survival. In a prior incidental take rulemaking and in the commercial fishing context, this threshold is identified as the significance threshold, but it is more accurately an insignificance threshold outside commercial fishing because it represents the level at which there is no need to consider other factors in determining the role of M/SI in affecting rates of recruitment and survival. Assuming that any additional incidental take by harassment would not exceed the negligible impact level, the anticipated M/SI caused by the activities being evaluated would have a negligible impact on the species or stock. This 10 percent was identified as a workload simplification consideration to avoid the need to provide unnecessary additional information when the conclusion is relatively obvious; but as described above, values above 10 percent have no particular significance

associated with them until and unless they approach residual PBR.

Our evaluation of the M/SI for each of the species and stocks for which mortality could occur follows. In addition, all mortality authorized for some of the same species or stocks over the next several years pursuant to our final rulemakings for the NMFS Alaska Fisheries Science Center (AFSC) and the NMFS Northwest Fisheries Science Center (NWFSC) has been incorporated into the residual PBR.

We first consider maximum potential incidental M/SI for each stock (Table 8) in consideration of NMFS's threshold for identifying insignificant M/SI take (10 percent of residual PBR (69 FR 43338; July 20, 2004)). By considering the maximum potential incidental M/SI in relation to PBR and ongoing sources of anthropogenic mortality, we begin our evaluation of whether the potential incremental addition of M/SI through SWFSC research activities may affect the species' or stock's annual rates of recruitment or survival. We also consider the interaction of those mortalities with incidental taking of that species or stock by harassment pursuant to the specified activity.

Summary of Estimated Incidental Take

Here we provide a summary of the total incidental take authorization on an annual basis, as well as other information relevant to the negligible impact analysis. Table 11 shows information relevant to our negligible impact analysis concerning the total annual taking that could occur for each stock from NMFS' scientific research activities when considering incidental proposed for authorization for SWFSC, as well as take previously authorized for AFSC (84 FR 46788; September 5, 2019) and NWFSC (83 FR 36370; July 27, 2018). We propose to authorize take by M/SI over the five-year period of validity for these regulations as indicated in Table 11 below. As noted previously, although some gear interactions may result in Level A harassment or the release of an uninjured animal, for the purposes of the negligible impact analysis, we assume that all of these takes could potentially be in the form of M/SI. Table 11 also summarizes annual amounts of take by Level B harassment that are proposed for authorization.

We previously authorized take of marine mammals incidental to fisheries research operations conducted by the AFSC (see 83 FR 37638 and 84 FR 46788), and NWFSC (see 81 FR 38516 and 83 FR 36370). This take would occur to some of the same stocks for which we propose to authorize take incidental to SWFSC fisheries research operations. Therefore, in order to evaluate the likely impact of the take by M/SI in this rule, we consider not only other ongoing sources of human-caused mortality but the potential mortality authorized for AFSC/NWFSC. As used in this document, other ongoing sources of human-caused (anthropogenic) mortality refers to estimates of realized or actual annual mortality reported in the SARs and does not include authorized or unknown mortality. Below, we consider the total taking by M/SI for SWFSC and previously authorized for AFSC/NWFSC together to produce a maximum annual M/SI take level (including take of unidentified marine mammals that could accrue to any relevant stock) and compare that value to the stock's PBR value, considering ongoing sources of anthropogenic mortality. PBR and annual M/SI values considered in Table 11 reflect the most recent information available (*i.e.,* draft 2019 SARs).

TABLE 11—SUMMARY INFORMATION RELATED TO SWFSC PROPOSED ANNUAL TAKE AUTHORIZATION, 2020–25 (CCE)

Species [1]	Stock	Proposed annual Level B harassment authorization	Percent of estimated population abundance [2]	SWFSC total proposed M/SI authorization, 2020–25 [3]	AFSC/NWFSC total M/SI authorization	Estimated maximum annual M/SI [4]	PBR minus annual M/SI (%) [5]
Gray whale	ENP	533	2.0	0	0	0	n/a.
Humpback whale	CA/OR/WA	23	0.8	0	0	0	n/a.
Minke whale	Alaska	19	3.0	0	0	0	n/a.
Sei whale	CA/OR/WA	10	1.9	0	0	0	n/a.
Fin whale	CA/OR/WA	124	1.4	0	0	0	n/a.
Blue whale	ENP	18	1.2	0	0	0	n/a.
Sperm whale	CA/OR/WA	96	4.8	0	0	0	n/a.
Kogia spp.	CA/OR/WA	213	5.2	2	1	0.6	19.2 (3.1).
Cuvier's beaked whale	CA/OR/WA	160	4.9	0	0	0	n/a.
Baird's beaked whale	CA/OR/WA	72	2.7	0	0	0	n/a.
Mesoplodont beaked whales.	CA/OR/WA	84	2.8	0	0	0	n/a.
Bottlenose dolphin	CA/OR/WA Offshore	62	3.2	9	3	2.8	9.4 (29.8).
	CA Coastal	.....	13.7	3	0	0.8	0.7 (114.3).
Striped dolphin	CA/OR/WA	883	3.0	14	7	4.6	237.2 (1.9).
Common dolphin (short-beaked).	CA/OR/WA	14,430	1.4	14	4	4	621.6 (0.6).
Common dolphin (long-beaked).	California	1,425	1.5	14	2	3.6	8,353 (0.0).
Pacific white-sided dolphin.	CA/OR/WA	412	1.5	41	31	14.8	183.5 (8.1).[9]
Northern right whale dolphin.	CA/OR/WA	614	2.3	11	7	4	175.2 (2.3).
Risso's dolphin	CA/OR/WA	209	3.3	14	9	5	42.3 (11.8).
Killer whale	ENP Offshore	13	4.3	0	0	n/a	n/a.
	West Coast Transient	.....	5.3	0	0	n/a	n/a.
	ENP Southern Resident	.....	17.3	0	0	n/a	n/a.
Short-finned pilot whale	CA/OR/WA	30	3.6	2	2	0.8	3.3 (24.2).
Harbor porpoise	Morro Bay	675	23.1	6	[6] 2	2	20.4 (9.8).
	Monterey Bay	.....	18.2	.....	.....	2	25 (8.0).
	San Francisco-Russian River.	.....	6.8	.....	.....	2	66 (3.0).
	Northern CA/Southern OR	.....	1.9	.....	.....	2	474.4 (0.4).
	Northern OR/WA Coast	.....	3.1	.....	[6] 4	2.4	148 (1.6).
Dall's porpoise	CA/OR/WA	916	3.6	6	4	2.4	171.7 (1.4).
Guadalupe fur seal	Mexico-CA	313	0.9	0	0	0	n/a.
Northern fur seal	Pribilof Islands/Eastern Pacific.	12,595	[8] 2.0	5	[7] 18–23	6.2	10,896 (0.1).

TABLE 11—SUMMARY INFORMATION RELATED TO SWFSC PROPOSED ANNUAL TAKE AUTHORIZATION, 2020–25 (CCE)—Continued

Species [1]	Stock	Proposed annual Level B harassment authorization	Percent of estimated population abundance [2]	SWFSC total proposed M/SI authorization, 2020–25 [3]	AFSC/NWFSC total M/SI authorization	Estimated maximum annual M/SI [4]	PBR minus annual M/SI (%) [5]
	California	.....	[8] 2.0	.....	[7] 5–13	4.2	449.2 (0.9).
California sea lion	United States	5,095	2.0	30	11	9.2	13,690 (0.1).[9]
Steller sea lion	Eastern U.S.	914	2.1	10	[7] 16–21	7	2,479 (0.3).
Harbor seal	California	1,114	3.6	14	[6] 6	4.8	1,598 (0.3).
	OR/WA Coast	.....	4.5	.....	[6] 8	5.2	?
Northern elephant seal	California Breeding	4,916	2.7	5	1	1.6	4,873.2 (0.0).

[1] For some species with multiple stocks, indicated level of take could occur to individuals from any stock (as indicated in table). For some stocks, a range is presented.

[2] For species with multiple potentially affected stocks, value is conservatively calculated as though all estimated annual takes accrue to each potentially affected stock.

[3] As explained earlier in this document, gear interaction could result in mortality, serious injury, or Level A harassment. Because we do not have sufficient information to enable us to parse out these outcomes, we present such take as a pool. For purposes of this negligible impact analysis we assume the worst case scenario (that all such takes incidental to research activities result in mortality).

[4] This column represents the total number of incidents of M/SI that could potentially accrue to the specified species or stock as a result of NMFS's fisheries research activities and is the number carried forward for evaluation in the negligible impact analysis (later in this document). To reach this total, we add one to the total for each pinniped and cetacean that may be captured in trawl gear and one to the total for each pinniped that may be captured in hook and line gear. This represents the potential that the take of an unidentified pinniped or cetacean could accrue to any given stock captured in that gear in that area. The proposed take authorization is formulated as a five-year total; the annual average is used only for purposes of negligible impact analysis. We recognize that portions of an animal may not be taken in a given year.

[5] This value represents the calculated PBR less the average annual estimate of ongoing anthropogenic mortalities (*i.e.,* total annual human-caused M/SI, which is presented in the SARs) (see Table 3). In parentheses, we provide the estimated maximum annual M/SI expressed as a percentage of this value.

[6] A total of 4 takes of harbor porpoise by M/SI were authorized incidental to NWFSC research occurring offshore CA/OR/WA. However, two of these were expected to occur in the lower Columbia River. Therefore, a maximum of 4 takes could accrue to the Northern OR/WA Coast stock, while a maximum of only 2 of those takes could potentially accrue to the remaining stocks of harbor porpoise. A total of 7 takes of harbor seal by M/SI were authorized incidental to NWFSC research occurring offshore CA/OR/WA. However, two of these were expected to occur in the lower Columbia River. Therefore, a maximum of 7 takes could accrue to the OR/WA Coast stock, while a maximum of only 5 of those takes could potentially accrue to the California stock of harbor seal. One take of each stock by M/SI was authorized incidental to AFSC research.

[7] These ranges reflect that, as part of the overall take authorization for AFSC, a total of five takes of northern fur seals and Steller sea lions are expected to occur as a result specifically of International Pacific Halibut Commission longline operations. These five takes are considered as potentially accruing to either stock of northern fur seal or to either the eastern or western stocks of Steller sea lion; therefore, we assess the consequences of the take authorization for these stocks as though the maximum could occur for that stock.

[8] Calculated on the basis of assumed relative abundance; *i.e.,* we would expect on the basis of relative abundance in the study area that approximately 98 percent of Level B harassment would accrue to the Pribilof Islands/Eastern Pacific stock and approximately two percent would accrue to the California stock.

[9] Calculation of residual PBR for these stocks includes M/SI that occurred incidental to SWFSC. Assumed annual M/SI due to SWFSC is accounted for in this calculation through the proposed take authorization number. Therefore, the assumed effects of SWFSC research on these stocks is overestimated as the take numbers are incorporated to the calculation through both the reduction of ''available'' PBR due to past interactions as well as through the proposed take number that is then evaluated against the residual PBR.

TABLE 12—ANNUAL TAKE AUTHORIZATION IN THE AMLR, 2020–25

Species	Estimated annual Level B harassment (acoustic exposure)	Estimated annual Level B harassment (on-ice disturbance)	Total annual Level B harassment authorization	Percent of estimated population
Southern right whale	0	0	0	n/a
Humpback whale	25	0	25	0.3
Antarctic minke whale	5	0	5	0.0
Fin whale	57	0	57	1.2
Blue whale	0	0	0	n/a
Sperm whale	5	0	5	0.0
Arnoux' beaked whale [1]	2	0	2	?
Southern bottlenose whale	10	0	10	0.0
Hourglass dolphin	10	0	10	0.0
Killer whale	10	0	10	0.0
Long-finned pilot whale	21	0	21	0.0
Spectacled porpoise [1]	10	0	10	?
Antarctic fur seal	136	417	553	0.0
Southern elephant seal	2	2	4	0.0
Weddell seal	74	226	300	[2] 0.1
Crabeater seal	884	2,704	3,588	[2] 0.1
Leopard seal	22	68	90	[2] 0.0

[1] There is no available abundance information for these species. See ''Small Numbers Analyses'' below for further discussion.

[2] A range is provided for these species' abundance. We have used the lower bound of the given range for calculation of these values.

Analysis—To avoid repetition, the majority of our analysis applies to all the species listed in Tables 11–12, given that the anticipated effects of SWFSC's research activities on marine mammals are expected to be relatively similar in nature. Where there are meaningful differences between species or stocks, or groups of species, in anticipated individual responses to activities, impact of expected take on the population due to differences in population status, or impacts on habitat, they are described independently in the analysis below.

The majority of stocks that may potentially be taken by M/SI (18 of 22) fall below the insignificance threshold (*i.e.,* 10 percent of residual PBR), while an additional two stocks do not have current PBR values and therefore are evaluated using other factors. We first consider stocks expected to be affected only by behavioral harassment and those stocks that fall below the insignificance threshold. Next, we consider those stocks above the insignificance threshold (*i.e.,* two stocks of bottlenose dolphin, Risso's dolphin, and short-finned pilot whale) and those without PBR values (the dwarf sperm whale, for which no information is available, and the Oregon and Washington coastal stock of harbor seal).

As stated previously and described in detail in support of the 2015 rule (80 FR 8166), we do not believe that SWFSC use of active acoustic sources has the likely potential to cause any effect exceeding Level B harassment of marine mammals. We have produced what we believe to be precautionary estimates of potential incidents of Level B harassment. There is a general lack of information related to the specific way that these acoustic signals, which are generally highly directional and transient, interact with the physical environment. Additionally, there is a lack of meaningful understanding of marine mammal perception of these signals. The procedure for producing these estimates, described in detail in ''Estimated Take Due to Acoustic Harassment,'' represents a reasonable and precautionary effort towards quantifying the potential for exposure to noise from these sources, which we equate herein with Level B harassment. The sources considered here have moderate to high output frequencies, generally short ping durations, and are typically focused (highly directional) to serve their intended purpose of mapping specific objects, depths, or environmental features. In addition, some of these sources can be operated in different output modes (*e.g.,* energy can be distributed among multiple output beams) that may lessen the likelihood of perception by and potential impacts on marine mammals in comparison with the quantitative estimates that guide our proposed take authorization. We also produced estimates of incidents of potential Level B harassment due to disturbance of hauled-out pinnipeds that may result from the physical presence of researchers in the Antarctic; these estimates are combined with the estimates of Level B harassment that may result from use of active acoustic devices.

Here, we consider authorized Level B harassment take less than five percent of population abundance to be ''de minimis,'' and authorized Level B harassment taking between 5–15 percent as ''low.'' A ''moderate'' amount of authorized taking by Level B harassment would be from 15–25 percent, and ''high'' above 25 percent. Of the 53 stocks that may be subject to Level B harassment, the level of taking proposed for authorization would represent a de minimis impact for 43 stocks and a low impact for an additional four stocks. We do not consider these impacts further for these 47 stocks.

The level of taking by Level B harassment would represent a moderate impact on three additional stocks: The southern resident stock of killer whales and Morro Bay and Monterey Bay stocks of harbor porpoise. However, the values calculated for proportion of population potentially affected assume that all estimated takes species-wide would accrue to each of the potentially affected stocks. In the absence of information to better refine stock-specific values, this worst-case proportion is an appropriate way to evaluate whether an amount of taking is greater than small numbers. For purposes of determining whether the total impacts to a stock represent no greater than a negligible impact, however, these values are overly conservative. We know that a majority of SWFSC use of active acoustic systems will not be concentrated in either of Morro Bay or Monterey Bay and, therefore, we conclude that the actual significance of taking by Level B harassment for these stocks of harbor porpoise will likely be significantly less than ''moderate.'' Similarly, the only potential avenue for effects to southern resident killer whales would be during the time when whales are foraging in coastal waters. Considering that whales are present in coastal waters for relatively brief portions of the year and that SWFSC research has limited overlap with the whales' relatively shallow foraging grounds in coastal waters, we again conclude that actual significance of any potential acoustic exposure for the stock would be less than moderate. Therefore, we do not consider these stocks further. For an additional three stocks (Arnoux' beaked whale and spectacled porpoise in Antarctica and dwarf sperm whales in the CCE whale), there is no abundance estimate upon which to base a comparison. However, we note that the anticipated number of incidents of take by Level B harassment are very low (2 and 10 for the Antarctic species, respectively, and 213 combined for both stocks of *Kogia* spp.) and likely represent a de minimis impact on these stocks.

As described previously, there is some minimal potential for temporary effects to hearing for certain marine mammals, but most effects would likely be limited to temporary behavioral disturbance. Effects on individuals that are taken by Level B harassment will likely be limited to reactions such as increased swimming speeds, increased surfacing time, or decreased foraging (if such activity were occurring), which are all reactions that are considered to be of low severity (*e.g.,* Ellison *et al.,* 2012). Individuals may move away from the source if disturbed; but, because the source is itself moving and because of the directional nature of the sources considered here, there is unlikely to be even temporary displacement from areas of significance and any disturbance would be of short duration. Although there is no information on which to base any distinction between incidents of harassment and individuals harassed, the same factors, in conjunction with the fact that SWFSC survey effort is widely dispersed in space and time, indicate that repeated exposures of the same individuals would be very unlikely. For these reasons, we do not consider the proposed level of take by acoustic disturbance to represent a significant additional population stressor when considered in context with the proposed level of take by M/SI for any species, including those for which no abundance estimate is available.

Similarly, disturbance of pinnipeds on haul-outs by researchers (expected for Antarctic pinnipeds) are expected to be infrequent and cause only a temporary disturbance on the order of minutes. Monitoring results from other activities involving the disturbance of pinnipeds and relevant studies of pinniped populations that experience more regular vessel disturbance indicate that individually significant or population level impacts are unlikely to occur. When considering the individual animals likely affected by this disturbance, only a small fraction of the estimated population abundance of the affected stocks would be expected to experience the disturbance.

For Risso's dolphin, short-finned pilot whale, and the offshore stock of bottlenose dolphin, maximum total potential M/SI due to NMFS' fisheries research activity (SWFSC, NWFSC, and AFSC combined) is approximately 12, 24, and 30 percent of residual PBR, respectively. For example, PBR for Risso's dolphin is currently set at 46

and the annual average of known ongoing anthropogenic M/SI is 3.7, yielding a residual PBR value of 42.3. The maximum combined annual average M/SI incidental to NMFS fisheries research activity is 5, or 11.8 percent of residual PBR. The only known source of other anthropogenic mortality for these species is in commercial fisheries. For the Risso's dolphin and offshore stock of bottlenose dolphin, such take is considered to be insignificant and approaching zero mortality and serious injury. This is not the case for the short-finned pilot whale; however, the annual take from fisheries (1.2) and from NMFS's fisheries research (0.8) are both very low. There are no other factors that would lead us to believe that take by M/SI of 24 percent of residual PBR would be problematic for this species.

For the California coastal stock of bottlenose dolphin, maximum total potential M/SI due to NMFS' fisheries research activity (SWFSC, NWFSC, and AFSC combined) is approximately 114 percent of residual PBR. Although the maximum annual take by M/SI is low (0.8), the residual PBR is also low (0.7). (Note that there is no take by M/SI authorized for this stock other than for SWFSC activities.) Here we provide additional detail regarding the available information for the coastal stock of bottlenose dolphin and explain our conclusion that the calculated proportion of residual PBR presents an unrealistically conservative assessment of the potential impacts to the stock due to SWFSC fisheries research activity. First, the available information indicates that the PBR value is biased low. PBR is calculated in consideration of the minimum population size which, for coastal bottlenose dolphins, represents the minimum number of individually identifiable animals documented during mark-recapture surveys in 2009–11 (Carretta *et al.,* 2017). This number (346 animals) represents the minimum abundance, but estimates of population abundance resulting from the 2009–11 study range from 411–564 animals (Carretta *et al.,* 2017). Even these higher abundance estimates represent marked animals only, and exclude the approximately 40 percent of animals that are not individually recognizable (Weller *et al.,* 2016). In addition, the estimates based on the 2009–11 study were the highest ever for the population and included a high proportion (~75 percent) of previously uncatalogued dolphins (Weller *et al.,* 2016). The number of individually identifiable animals from 2009–11 exceeded previous estimates for the abundance of the entire marked population. These facts suggest that the stock may have grown in the ten years since conclusion of the last abundance study. Finally, although the stock is confined to U.S. waters for management purposes, the biological stock is transboundary and an unknown additional number of dolphins are likely found in Mexico. Regarding anthropogenic M/SI that is assumed to be ongoing, current estimates are based on scant data. With 9 percent observer coverage in the coastal halibut/yellowtail gillnet fishery during 2010–14, no entanglements were observed, and none have been observed since 2003 (Carretta *et al.*, 2017). The basis for the assumption that a minimum of 1.6 dolphins are killed annually in fisheries was the discovery of two carcasses with evidence of entanglement from 2010–14. In addition, during this same period, one dolphin was found floating under a U.S. Navy marine mammal program dolphin pen enclosure dock and was assumed to have become entangled in the net curtain, and another dolphin became entrapped and drowned in a sea otter research net. Both of these incidents could rightly be considered as unpredictable occurrences with little likelihood of recurring. However, they add 0.4 animals to the assumed amount of ongoing annual anthropogenic M/SI. None of NMFS' fisheries research activities on the west coast have ever resulted in an interaction with bottlenose dolphins. In summary, the available information leads us to conclude that the PBR value for the stock is likely unrealistically low and that the assumed annual anthropogenic M/SI value may be higher than is actually occurring. Therefore, we preliminarily find that the potential total take of coastal bottlenose dolphin proposed for authorization here represents a negligible impact on the stock.

PBR is unknown for harbor seals on the Oregon and Washington coasts. The Oregon/Washington coast stock of harbor seal was considered to be stable following the most recent abundance estimates (in 1999, stock abundance estimated at 24,732). However, a Washington Department of Fish and Wildlife expert (S. Jeffries) stated an unofficial abundance of 32,000 harbor seals in Washington (Mapes, 2013). Therefore, it is reasonable to assume that at worst, the stocks have not declined since the last abundance estimates. Ongoing anthropogenic mortality is estimated at 10.6 harbor seals per year. Therefore, we reasonably assume that the maximum potential annual M/SI incidental to NMFS' fisheries research activities (5.2) is a small fraction of any sustainable take level that might be calculated for the stock.

PBR is also undetermined for the dwarf sperm whale. However, a PBR of 19.2 is calculated for the pygmy sperm whale, and there are no additional known sources of anthropogenic M/SI for *Kogia* spp. Although it is possible that there are fewer dwarf sperm whales than pygmy sperm whales in the CCE, we reasonably assume that the maximum potential annual M/SI incidental to NMFS' fisheries research activities (0.6) is a small fraction of any sustainable take level that might be calculated for the stock.

In summary, our negligible impact analysis is founded on the following factors: (1) The possibility of injury, serious injury, or mortality from the use of active acoustic devices may reasonably be considered discountable; (2) the anticipated incidents of Level B harassment from the use of active acoustic devices and physical disturbance of pinnipeds consist of, at worst, temporary and relatively minor modifications in behavior; (3) the predicted number of incidents of potential mortality are at insignificant levels for a majority of affected stocks; (4) consideration of additional factors for Risso's dolphin, short-finned pilot whale, and the offshore stock of bottlenose dolphin do not reveal cause for concern; (5) total maximum potential M/SI incidental to NMFS fisheries research activity for coastal bottlenose dolphin, considered in conjunction with other sources of ongoing mortality and in context of the available information regarding stock abundance, presents only a minimal incremental additional to total M/SI; (6) available information regarding stocks for which no current PBR estimate is available indicates that total maximum potential M/SI is sustainable; and (7) the presumed efficacy of the planned mitigation measures in reducing the effects of the specified activity to the level of least practicable adverse impact. In combination, we believe that these factors demonstrate that the specified activity will have only short-term effects on individuals (resulting from Level B harassment) and that the total level of taking will not impact rates of recruitment or survival sufficiently to result in population-level impacts.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation

measures, we preliminarily find that the total marine mammal take from the proposed activities will have a negligible impact on the affected marine mammal species or stocks.

Small Numbers

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

Please see Tables 11 and 12 for information relating to this small numbers analysis. The total amount of taking proposed for authorization is less than five percent for a majority of stocks, and the total amount of taking proposed for authorization is less than one-third of the stock abundance for all stocks.

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

Impact on Availability of Affected Species for Taking for Subsistence Uses

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

Adaptive Management

The regulations governing the take of marine mammals incidental to SWFSC fisheries research survey operations would contain an adaptive management component. The inclusion of an adaptive management component will be both valuable and necessary within the context of five-year regulations for activities that have been associated with marine mammal mortality.

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

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

Endangered Species Act (ESA)

There are multiple marine mammal species listed under the ESA with confirmed or possible occurrence in the proposed specified geographical regions (see Tables 3 and 4). The proposed authorization of incidental take pursuant to the SWFSC's specified activity would not affect any designated critical habitat. OPR has initiated consultation with NMFS's West Coast Regional Office under section 7 of the ESA on the promulgation of five-year regulations and the subsequent issuance of LOAs to SWFSC under section 101(a)(5)(A) of the MMPA. This consultation will be concluded prior to issuing any final rule.

Request for Information

NMFS requests interested persons to submit comments, information, and suggestions concerning the SWFSC request and the proposed regulations (see **ADDRESSES**). All comments will be reviewed and evaluated as we prepare final rules and make final determinations on whether to issue the requested authorizations. This notice and referenced documents provide all environmental information relating to our proposed action for public review.

Classification

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

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA), the Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. NMFS is the sole entity that would be subject to the requirements in these proposed regulations, and NMFS is not a small governmental jurisdiction, small organization, or small business, as defined by the RFA. Because of this certification, a regulatory flexibility analysis is not required and none has been prepared.

This proposed rule does not contain a collection-of-information requirement subject to the provisions of the Paperwork Reduction Act (PRA) because the applicant is a Federal agency. Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number. These requirements have been approved by OMB under control number 0648–0151 and include applications for regulations, subsequent LOAs, and reports.

List of Subjects in 50 CFR Part 219

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

Dated: August 10, 2020.

Samuel D. Rauch III,

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

For reasons set forth in the preamble, 50 CFR part 219 is proposed to be amended as follows:

PART 219—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

■ 1. The authority citation for part 219 continues to read as follows:

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

■ 2. Revise subpart A to part 219 to read as follows:

Subpart A—Taking Marine Mammals Incidental to Southwest Fisheries Science Center Fisheries Research

Sec.

219.1 Specified activity and specified geographical region.
219.2 Effective dates.
219.3 Permissible methods of taking.
219.4 Prohibitions.
219.5 Mitigation requirements.
219.6 Requirements for monitoring and reporting.
219.7 Letters of Authorization.
219.8 Renewals and modifications of Letters of Authorization.
219.9–219.10 [Reserved]

Subpart A—Taking Marine Mammals Incidental to Southwest Fisheries Science Center Fisheries Research

§ 219.1 Specified activity and specified geographical region.

(a) Regulations in this subpart apply only to the National Marine Fisheries Service's (NMFS) Southwest Fisheries Science Center (SWFSC) and those persons it authorizes or funds to conduct activities on its behalf for the taking of marine mammals that occurs in the areas outlined in paragraph (b) of this section and that occurs incidental to research survey program operations.

(b) The taking of marine mammals by SWFSC may be authorized in a Letter of Authorization (LOA) only if it occurs within the California Current Ecosystem (CCE) or Antarctic Marine Living Resources Ecosystem (AMLR).

§ 219.2 Effective dates.

Regulations in this subpart are effective from October 31, 2020, through October 31, 2025.

§ 219.3 Permissible methods of taking.

Under LOAs issued pursuant to § 216.106 of this chapter and § 219.7, the Holder of the LOA (hereinafter ''SWFSC'') may incidentally, but not intentionally, take marine mammals within the area described in § 219.1(b) by Level B harassment associated with use of active acoustic systems and physical or visual disturbance of hauled-out pinnipeds and by Level A harassment, serious injury, or mortality associated with use of fisheries research gear, provided the activity is in compliance with all terms, conditions, and requirements of the regulations in this subpart and the appropriate LOA.

§ 219.4 Prohibitions.

Notwithstanding takings contemplated in § 219.1 and authorized by a LOA issued under §§ 216.106 of this chapter and 219.7, no person in connection with the activities described in § 219.1 may:

(a) Violate, or fail to comply with, the terms, conditions, and requirements of this subpart or a LOA issued under §§ 216.106 of this chapter and 219.7;

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

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

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

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

§ 219.5 Mitigation requirements.

When conducting the activities identified in § 219.1(a), the mitigation measures contained in any LOA issued under §§ 216.106 of this chapter and 219.7 must be implemented. These mitigation measures shall include but are not limited to:

(a) *General conditions.* (1) SWFSC shall take all necessary measures to coordinate and communicate in advance of each specific survey with the National Oceanic and Atmospheric Administration's (NOAA) Office of Marine and Aviation Operations (OMAO) or other relevant parties on non-NOAA platforms to ensure that all mitigation measures and monitoring requirements described herein, as well as the specific manner of implementation and relevant event-contingent decision-making processes, are clearly understood and agreed upon.

(2) SWFSC shall coordinate and conduct briefings at the outset of each survey and as necessary between ship's crew (Commanding Officer/master or designee(s), as appropriate) and scientific party in order to explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures.

(3) SWFSC shall coordinate as necessary on a daily basis during survey cruises with OMAO personnel or other relevant personnel on non-NOAA platforms to ensure that requirements, procedures, and decision-making processes are understood and properly implemented.

(4) When deploying any type of sampling gear at sea, SWFSC shall at all times monitor for any unusual circumstances that may arise at a sampling site and use best professional judgment to avoid any potential risks to marine mammals during use of all research equipment.

(5) SWFSC shall implement handling and/or disentanglement protocols as specified in guidance provided to SWFSC survey personnel.

(b) *Trawl survey protocols.* (1) SWFSC shall conduct trawl operations as soon as is practicable upon arrival at the sampling station.

(2) SWFSC shall initiate marine mammal watches (visual observation) at least 15 minutes prior to beginning of net deployment (or for the amount of time to travel between stations if less than 15 minutes) but shall also conduct monitoring during any pre-set activities including CTD casts and plankton or bongo net hauls.

(3) In the CCE, SWFSC shall implement the move-on rule mitigation protocol, as described in this paragraph. If one or more marine mammals, with the exception of baleen whales, are observed within 1 nautical mile (nm) of the planned sampling location during the visual observation period, SWFSC shall move on to another sampling location. If, after moving on, marine mammals remain within 1 nm, the SWFSC shall move again or skip the station. SWFSC may use best professional judgment in making these decisions but may not elect to conduct trawl survey activity when marine mammals other than baleen whales remain within the 1-nm zone.

(4) SWFSC shall maintain visual monitoring effort during the entire period of time that trawl gear is in the water (*i.e.,* throughout gear deployment, fishing, and retrieval). If marine mammals are sighted before the gear is fully removed from the water, SWFSC shall take the most appropriate action to avoid marine mammal interaction. SWFSC may use best professional judgment in making this decision.

(5) If trawling operations have been suspended because of the presence of marine mammals, SWFSC may resume trawl operations when practicable only when the animals are believed to have departed the 1 nm area. SWFSC may use best professional judgment in making this determination.

(6) SWFSC shall implement standard survey protocols to minimize potential for marine mammal interactions, including maximum tow durations at target depth and maximum tow distance, and shall carefully empty the trawl as quickly as possible upon retrieval. Trawl nets must be cleaned prior to deployment.

(7) SWFSC must install and use a marine mammal excluder device at all times when the Nordic 264 trawl net or any other net is used for which the device is appropriate.

(8) SWFSC must install and use acoustic deterrent devices whenever any midwater trawl net is used, with two to four devices placed along the footrope and/or headrope of the net. SWFSC

must ensure that the devices are operating properly before deploying the net.

(c) *Pelagic longline survey protocols.* (1) SWFSC shall deploy longline gear as soon as is practicable upon arrival at the sampling station.

(2) SWFSC shall initiate marine mammal watches (visual observation) no less than 15 minutes (or for the duration of transit between locations, if shorter than 15 minutes) prior to both deployment and retrieval of longline gear.

(3) SWFSC shall implement the move-on rule mitigation protocol, as described in this paragraph. If one or more marine mammals, with the exception of groups of five or fewer California sea lions, are observed within 1 nm of the planned sampling location during the visual observation period, SWFSC shall move on to another sampling location. If, after moving on, marine mammals remain within 1 nm, the SWFSC shall move again or skip the station. SWFSC may use best professional judgment in making these decisions but may not elect to conduct pelagic longline survey activity when animals remain within the 1-nm zone.

(4) SWFSC shall maintain visual monitoring effort during the entire period of gear deployment and retrieval. If marine mammals are sighted before the gear is fully deployed or retrieved, SWFSC shall take the most appropriate action to avoid marine mammal interaction. SWFSC may use best professional judgment in making this decision.

(5) If deployment or retrieval operations have been suspended because of the presence of marine mammals, SWFSC may resume such operations when practicable only when the animals are believed to have departed the 1 nm area. SWFSC may use best professional judgment in making this decision.

(6) SWFSC shall implement standard survey protocols, including maximum soak durations and a prohibition on chumming.

(d) *Purse seine survey protocols.* (1) SWFSC shall conduct purse seine operations as soon as is practicable upon arrival at the sampling station.

(2) SWFSC shall conduct marine mammal watches (visual observation) prior to beginning of net deployment.

(3) SWFSC shall implement the move-on rule mitigation protocol, as described in this paragraph for use of purse seine gear. If one or more killer whales or small cetaceans (*i.e.,* dolphin or porpoise) or five or more pinnipeds are observed within 500 m of the planned sampling location before setting the purse seine gear, SWFSC shall either remain onsite or move on to another sampling location. If remaining onsite, the set shall be delayed. If the animals depart or appear to no longer be at risk of interacting with the vessel or gear, a further observation period shall be conducted. If no further observations are made or the animals still do not appear to be at risk of interaction, then the set may be made. If the vessel is moved to a different area, the move-on rule mitigation protocol would begin anew. If, after moving on, marine mammals remain at risk of interaction, the SWFSC shall move again or skip the station. Marine mammals that are sighted further than 500 m from the vessel shall be monitored to determine their position and movement in relation to the vessel to determine whether the move-on rule mitigation protocol should be implemented. SWFSC may use best professional judgment in making these decisions.

(4) SWFSC shall maintain visual monitoring effort during the entire period of time that purse seine gear is in the water (*i.e.,* throughout gear deployment, fishing, and retrieval). If marine mammals are sighted before the gear is fully removed from the water, SWFSC shall take the most appropriate action to avoid marine mammal interaction. SWFSC may use best professional judgment in making this decision.

(5) If purse seine operations have been suspended because of the presence of marine mammals, SWFSC may resume seine operations when practicable only when the animals are believed to have departed the area. SWFSC may use best professional judgment in making this determination.

(6) If any cetaceans are observed in a purse seine net, SWFSC shall immediately open the net and free the animals.

§ 219.6 Requirements for monitoring and reporting.

(a) *Compliance coordinator.* SWFSC shall designate a compliance coordinator who shall be responsible for ensuring compliance with all requirements of any LOA issued pursuant to § 216.106 of this chapter and § 219.7 and for preparing for any subsequent request(s) for incidental take authorization.

(b) *Visual monitoring program.* (1) Marine mammal visual monitoring shall occur prior to deployment of trawl, hook and line, and purse seine gear, respectively; throughout deployment of gear and active fishing of research gears (not including longline soak time); prior to retrieval of longline gear; and throughout retrieval of all research gear.

(2) Marine mammal watches shall be conducted by watch-standers (those navigating the vessel and/or other crew) at all times when the vessel is being operated.

(3) SWFSC shall monitor any potential disturbance of pinnipeds on ice, paying particular attention to the distance at which different species of pinniped are disturbed. Disturbance shall be recorded according to a three-point scale representing increasing seal response to disturbance.

(c) *Training.* (1) SWFSC must conduct annual training for all chief scientists and other personnel who may be responsible for conducting dedicated marine mammal visual observations to explain mitigation measures and monitoring and reporting requirements, mitigation and monitoring protocols, marine mammal identification, completion of datasheets, and use of equipment. SWFSC may determine the agenda for these trainings.

(2) SWFSC shall also dedicate a portion of training to discussion of best professional judgment, including use in any incidents of marine mammal interaction and instructive examples where use of best professional judgment was determined to be successful or unsuccessful.

(3) SWFSC shall coordinate with NMFS' Northwest Fisheries Science Center (NWFSC) regarding surveys conducted in the CCE, such that training and guidance related to handling procedures and data collection is consistent.

(d) *Handling procedures and data collection.* (1) SWFSC must implement standardized marine mammal handling, disentanglement, and data collection procedures. These standard procedures will be subject to approval by NMFS's Office of Protected Resources (OPR).

(2) When practicable, for any marine mammal interaction involving the release of a live animal, SWFSC shall collect necessary data to facilitate a serious injury determination.

(3) SWFSC shall provide its relevant personnel with standard guidance and training regarding handling of marine mammals, including how to identify different species, bring an individual aboard a vessel, assess the level of consciousness, remove fishing gear, return an individual to water, and log activities pertaining to the interaction.

(4) SWFSC shall record such data on standardized forms, which will be subject to approval by OPR. SWFSC shall also answer a standard series of supplemental questions regarding the

details of any marine mammal interaction.

(e) *Reporting.* (1) SWFSC shall report all incidents of marine mammal interaction to NMFS's Protected Species Incidental Take database within 48 hours of occurrence and shall provide supplemental information to OPR upon request. Information related to marine mammal interaction (animal captured or entangled in research gear) must include details of survey effort, full descriptions of any observations of the animals, the context (vessel and conditions), decisions made, and rationale for decisions made in vessel and gear handling.

(2) SWFSC shall submit an annual summary report to OPR.

(i) The annual report must be submitted no later than 90 days following the end of a given year. SWFSC shall provide a final report within thirty days following resolution of comments on the draft report.

(ii) These reports shall contain, at minimum, the following:

(A) Annual line-kilometers surveyed during which predominant active acoustic sources were used;

(B) Summary information regarding use of all hook and line, purse seine, and trawl gear, including number of sets, hook hours, tows, etc., specific to each gear;

(C) Accounts of all incidents of significant marine mammal interactions, including circumstances of the event and descriptions of any mitigation procedures implemented or not implemented and why;

(D) Summary information related to any on-ice disturbance of pinnipeds, including event-specific total counts of animals present, counts of reactions according to a three-point scale of response severity, and distance of closest approach;

(E) A written evaluation of the effectiveness of SWFSC mitigation strategies in reducing the number of marine mammal interactions with survey gear, including best professional judgment and suggestions for changes to the mitigation strategies, if any;

(F) Final outcome of serious injury determinations for all incidents of marine mammal interactions where the animal(s) were released alive; and

(G) A summary of all relevant training provided by SWFSC and any coordination with NWFSC or NMFS' West Coast Regional Office.

(f) *Reporting of injured or dead marine mammals—*

(1) In the event that personnel involved in the survey activities covered by the authorization discover an injured or dead marine mammal, SWFSC shall report the incident to OPR and to the appropriate West Coast Regional Stranding Coordinator as soon as feasible. The report must include the following information:

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

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

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

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

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

(vi) General circumstances under which the animal was discovered.

(2) In the event of a ship strike of a marine mammal by any vessel involved in the activities covered by the authorization, SWFSC shall report the incident to OPR and to the appropriate West Coast Regional Stranding Coordinator as soon as feasible. The report must include the following information:

(i) Time, date, and location (latitude/longitude) of the incident;

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

(iii) Vessel's speed during and leading up to the incident;

(iv) Vessel's course/heading and what operations were being conducted (if applicable);

(v) Status of all sound sources in use;

(vi) Description of avoidance measures/requirements that were in place at the time of the strike and what additional measures were taken, if any, to avoid strike;

(vii) Environmental conditions (*e.g.,* wind speed and direction, Beaufort sea state, cloud cover, visibility) immediately preceding the strike;

(viii) Estimated size and length of animal that was struck;

(ix) Description of the behavior of the marine mammal immediately preceding and following the strike;

(x) If available, description of the presence and behavior of any other marine mammals immediately preceding the strike;

(xi) Estimated fate of the animal (*e.g.,* dead, injured but alive, injured and moving, blood or tissue observed in the water, status unknown, disappeared); and

(xii) To the extent practicable, photographs or video footage of the animal(s).

§ 219.7 Letters of Authorization.

(a) To incidentally take marine mammals pursuant to these regulations, SWFSC must apply for and obtain an LOA.

(b) An LOA, unless suspended or revoked, may be effective for a period of time not to exceed the expiration date of these regulations.

(c) If an LOA expires prior to the expiration date of these regulations, SWFSC may apply for and obtain a renewal of the LOA.

(d) In the event of projected changes to the activity or to mitigation and monitoring measures required by an LOA, SWFSC must apply for and obtain a modification of the LOA as described in § 219.8.

(e) The LOA shall set forth:

(1) Permissible methods of incidental taking;

(2) Means of effecting the least practicable adverse impact (*i.e.,* mitigation) on the species, its habitat, and on the availability of the species for subsistence uses; and

(3) Requirements for monitoring and reporting.

(f) Issuance of the LOA shall be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under these regulations.

(g) Notice of issuance or denial of an LOA shall be published in the **Federal Register** within thirty days of a determination.

§ 219.8 Renewals and modifications of Letters of Authorization.

(a) An LOA issued under §§ 216.106 of this chapter and 219.7 for the activity identified in § 219.1(a) shall be renewed or modified upon request by the applicant, provided that:

(1) The proposed specified activity and mitigation, monitoring, and reporting measures, as well as the anticipated impacts, are the same as those described and analyzed for these regulations (excluding changes made pursuant to the adaptive management provision in paragraph (c)(1) of this section), and

(2) OPR determines that the mitigation, monitoring, and reporting measures required by the previous LOA under these regulations were implemented.

(b) For an LOA modification or renewal requests by the applicant that include changes to the activity or the mitigation, monitoring, or reporting (excluding changes made pursuant to the adaptive management provision in paragraph (c)(1) of this section) that do not change the findings made for the regulations or result in no more than a minor change in the total estimated number of takes (or distribution by species or years), OPR may publish a

notice of proposed LOA in the **Federal Register**, including the associated analysis of the change, and solicit public comment before issuing the LOA.

(c) An LOA issued under § 216.106 of this chapter and § 219.7 for the activity identified in § 219.1(a) may be modified by OPR under the following circumstances:

(1) OPR may modify (including augment) the existing mitigation, monitoring, or reporting measures (after consulting with SWFSC regarding the practicability of the modifications) if doing so creates a reasonable likelihood of more effectively accomplishing the goals of the mitigation and monitoring set forth in the preamble for these regulations.

(i) Possible sources of data that could contribute to the decision to modify the mitigation, monitoring, or reporting measures in an LOA:

(A) Results from SWFSC's monitoring from the previous year(s).

(B) Results from other marine mammal and/or sound research or studies.

(C) Any information that reveals marine mammals may have been taken in a manner, extent or number not authorized by these regulations or subsequent LOAs.

(ii) If, through adaptive management, the modifications to the mitigation, monitoring, or reporting measures are substantial, OPR will publish a notice of proposed LOA in the **Federal Register** and solicit public comment.

(2) If OPR determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in LOAs issued pursuant to §§ 216.106 of this chapter and 219.7, an LOA may be modified without prior notice or opportunity for public comment. Notice would be published in the **Federal Register** within thirty days of the action.

§§ 219.9–219.10 [Reserved]

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FEDERAL REGISTER

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Part VII

The President

Proclamation 10063—Women's Equality Day, 2020

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Presidential Documents

Title 3—

The President

Proclamation 10063 of August 25, 2020

Women's Equality Day, 2020

By the President of the United States of America

A Proclamation

Recently, our Nation celebrated the 100th anniversary of the ratification of the 19th Amendment to our Constitution. On the commemoration of this historic day, I was proud to issue a Proclamation honoring the women's suffrage movement and sign a full pardon for one of its greatest leaders, Susan B. Anthony, who was unjustly convicted for voting on account of her sex. On Women's Equality Day, we remember the trailblazers like Anthony who worked tirelessly to achieve a more just and equal United States, and we recognize the myriad ways in which women contribute to our society and strengthen our country.

Women are an essential part of the political, economic, and social fabric of our Nation. All American women—regardless of the role they play in the workplace or at home—contribute every day to the success of our great country. In addition to being homemakers, caregivers, mothers, and counselors, along with a host of other important roles, women also fill critical jobs in every sector of our economy, contributing to the financial security of their families and our Nation. Currently, more than 200,000 women serve in our Armed Forces, and tens of thousands more courageously protect our communities as first responders. The women who call our Nation home epitomize the grit, determination, and work ethic that is indicative of the American Spirit, and their wisdom and compassion are among the greatest virtues of our society.

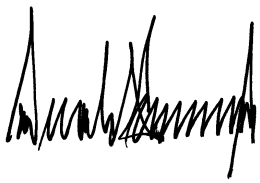
Recognizing that women contribute to the strength and security of our Nation, my Administration will always make supporting women and working families a top priority. In December of last year, we secured 12 weeks of paid family leave for Federal workers, and we continue to call on the Congress to pass a similar paid family leave program nationwide. Additionally, we doubled the child tax credit through the historic 2017 Tax Cuts and Jobs Act and signed legislation providing for record funding for the Child Care and Development Block Grant, supporting working mothers and families throughout the United States. We have also worked to expand opportunities for women globally through policies like the Women's Global Development and Prosperity (W–GDP) Initiative, the first ever whole-of-government approach to increase economic opportunities for women worldwide. W–GDP helped enhance economic opportunities for 12 million women in its first year and has a goal of reaching 50 million women by 2025. My Administration recognizes that by empowering women at home and abroad, we are safeguarding the cultural foundation of our Nation and creating a more prosperous future for all global citizens.

On Women's Equality Day, we honor all of the women who inspire and improve our Nation. Their talent and hard work strengthen our economy, our families, and our communities, and sustain our unique American way of life.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim August 26, 2020, as Women's Equality Day. I call upon the people of the United States

to celebrate the achievements of women and observe this day with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fifth day of August, in the year of our Lord two thousand twenty, and of the Independence of the United States of America the two hundred and forty-fifth.



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