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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–0733; Project Identifier AD–2020–00990–E; Amendment 39–21286; AD 2020–21–13]

RIN 2120–AA64

Airworthiness Directives; General Electric Company Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain General Electric Company (GE) GE90–110B1 and GE90–115B model turbofan engines. This AD was prompted by the detection of melt-related freckles in the billet, which may reduce the life limits of certain high-pressure turbine (HPT) rotor stage 2 disks and certain rotating compressor discharge pressure (CDP) HPT seals. This AD requires the replacement of the affected HPT rotor stage 2 disks and rotating CDP HPT seals. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective November 17, 2020.

ADDRESSES: For service information identified in this final rule, contact General Electric Company, 1 Neumann Way, Cincinnati, OH 45215; phone: (513) 552–3272; email: *aviation.fleetsupport@ae.ge.com;* website: *www.ge.com.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781–238–7759. It is also available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0733.

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–2020–0733; 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: Mehdi Lamnyi, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7743; fax: 781–238–7199; email: *Mehdi.Lamnyi@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain GE GE90–110B1 and GE90–115B model turbofan engines. The NPRM published in the **Federal Register** on August 13, 2020 (85 FR 49322). The NPRM was prompted by the detection of melt-related freckles in the billet, which may reduce the life limits of certain HPT rotor stage 2 disks and certain rotating CDP HPT seals. The NPRM proposed to require the replacement of certain HPT rotor stage 2 disks and certain rotating CDP HPT seals. The FAA is issuing this AD to address the unsafe condition on these products.

Comments

The FAA gave the public the opportunity to participate in developing this final rule. The FAA has considered the comments received. Boeing Commercial Airplanes supported the NPRM. The Air Line Pilots Association and United Airlines reviewed the NPRM and have no objections.

Conclusion

The FAA reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting this final rule as proposed.

Related Service Information

The FAA reviewed GE Service Bulletin GE90–100 S/B 72–0845, Revision 1, dated July 17, 2020. The service information describes procedures for the removal of affected HPT rotor stage 2 disks and rotating CDP HPT seals from service.

Interim Action

The FAA considers this AD an interim action. This issue is still under investigation by the manufacturer and, depending on the results of that investigation, the FAA may consider further rulemaking action.

Costs of Compliance

The FAA estimates that this AD will affect 1 engine installed on an airplane of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Remove and replace the HPT rotor stage 2 disk.	1,500 work-hours × $85 per hour = $127,500	$565,600	$693,100	$693,100
Remove and replace the rotating CDP HPT Seal.	600 work-hours × $85 per hour = $51,000	209,900	260,900	0

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.

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):

2020–21–13 General Electric Company: Amendment 39–21286; Docket No. FAA–2020–0733; Project Identifier AD–2020–00990–E.

(a) Effective Date

This AD is effective November 17, 2020.

(b) Affected ADs

None.

(c) Applicability

This AD applies to General Electric Company GE90–110B1 and GE90–115B model turbofan engines with:

(1) A high-pressure turbine (HPT) rotor stage 2 disk, part number (P/N) 2505M73P03, and serial number (S/N) TMT1BA38 or TMT1BA41, installed; or

(2) A rotating compressor discharge pressure (CDP) HPT seal, P/N 2479M03P01, and S/N GEE1H7GH or GEE1H7JJ, installed.

(d) Subject

Joint Aircraft System Component (JASC) Code 7250, Turbine Section.

(e) Unsafe Condition

This AD was prompted by the detection of melt-related freckles in the billet, which may reduce the life limits of certain HPT rotor stage 2 disks and certain rotating CDP HPT seals. The FAA is issuing this AD to prevent uncontained release of both the HPT rotor stage 2 disk and the rotating CDP HPT seal. The unsafe condition, if not addressed, could result in damage to the engine and damage to the aircraft.

(f) Compliance

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

(g) Required Actions

(1) Before the affected HPT rotor stage 2 disk or the rotating CDP HPT seal listed in Table 1 to paragraph (g) of this AD (''Table 1'') accumulates the cycles since new (CSN) threshold in Table 1, or at the next engine shop visit, whichever occurs first after the effective date of this AD, remove the affected part from service and replace it with a part eligible for installation.

(2) If the affected HPT rotor stage 2 disk or rotating CDP HPT seal has already exceeded the CSN threshold in Table 1, remove the affected part before further flight and replace with a part eligible for installation.

Table 1 to Paragraph (g): Affected Parts and CSN Threshold

Part Name	Part Number	Part S/N	CSN Threshold
Rotating CDP HPT seal	2479M03P01	GEE1H7GH	3,500
Rotating CDP HPT seal	2479M03P01	GEE1H7JJ	3,500
HPT rotor stage 2 disk	2505M73P03	TMT1BA38	2,418
HPT rotor stage 2 disk	2505M73P03	TMT1BA41	1,466

(h) Definitions

(1) For the purpose of this AD, a part eligible for installation is any HPT stage 2 disk or rotating CDP HPT seal with an S/N that is not listed in Table 1.

(2) For the purpose of this AD, an engine shop visit is the induction of an engine into the shop for maintenance involving the separation of pairs of major mating engine flanges, except that the separation of engine flanges solely for the purposes of transportation of the engine without subsequent engine maintenance does not constitute an engine shop visit.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, ECO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (j) of this AD. You may email your request to: *ANE-AD-AMOC@faa.gov.*

(2) 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.

(j) Related Information

For more information about this AD, contact Mehdi Lamnyi, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7743; fax: 781–238–7199; email: *Mehdi.Lamnyi@faa.gov.*

(k) Material Incorporated by Reference

None.

Issued on October 6, 2020.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–22505 Filed 10–9–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2019–0815; Airspace Docket No. 19–ASW–8]

RIN 2120–AA66

Revocation, Amendment, and Establishment of Multiple Air Traffic Service (ATS) Routes Due to the Decommissioning of the Greene County, MS, VOR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, delay of effective date.

SUMMARY: This action changes the effective date of a final rule published in the **Federal Register** on August 20, 2020, removing Jet Route J–590, amending VHF Omnidirectional Range (VOR) Federal airways V–11 and V–70, and establishing area navigation (RNAV) routes T–362 and T–365 due to the planned decommissioning of the VOR portion of the Greene County, MS (GCV), VOR/Tactical Air Navigation (VORTAC) navigation aid (NAVAID). The FAA is delaying the effective date to coincide with the slipped decommissioning date of the Greene County VOR to June 17, 2021, and the anticipated completion of flight inspection activities associated with related VOR Minimum Operational Network (MON) Program projects necessary to adopt the rule amendments.

DATES: The effective date of the final rule published on August 20, 2020 (85 FR 51329) is delayed until June 17, 2021. The Director of the Federal Register approved 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.

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:

Background

The FAA published a final rule in the **Federal Register** for Docket No. FAA–2019–0815 (85 FR 51329, August 20, 2020), removing Jet Route J–590, amending VOR Federal airways V–11 and V–70, and establishing RNAV routes T–362 and T–365 due to the planned decommissioning of the VOR portion of the Greene County, MS, VORTAC NAVAID. The effective date for that final rule is November 5, 2020. Subsequent to the final rule, the required flight inspection activities for related VOR MON projects supporting the Greene County VOR decommissioning were not able to be accomplished in time due to NAVAID outages associated with the related VOR MON projects. The FAA anticipates the NAVAID outages will be resolved and the required flight inspection activities accomplished by June 17, 2021.

To facilitate the safe and continuous use of existing air traffic procedures, and in anticipation the NAVAID outages will be resolved and the required flight inspection activities for the related VOR MON projects accomplished, the planned decommissioning date for the Greene County, MS, VOR has been slipped to June 17, 2021. Therefore, the rule removing J–590, amending V–11 and V–70, and establishing T–362 and T–365 is delayed to coincide with that date.

Jet routes are published in paragraph 2004, VOR Federal airways are published in paragraph 6010(a), and RNAV T-routes are published in paragraph 6011 of FAA Order 7400.11E dated July 21, 2020, and effective September 15, 2020, which is incorporated by reference in 14 CFR 71.1. The ATS routes listed in this document will be subsequently published in the Order.

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

Good Cause for No Notice and Comment

Section 553(b)(3)(B) of Title 5, United States Code, (the Administrative Procedure Act) authorizes agencies to dispense with notice and comment procedures for rules when the agency for ''good cause'' finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under this section, an agency, upon finding good cause, may issue a final rule without seeking comment prior to the rulemaking. The FAA finds that prior notice and public comment to this final rule is unnecessary due to the brief length of the extension of the effective date and the fact that there is no substantive change to the rule.''

Delay of Effective Date

■ Accordingly, pursuant to the authority delegated to me, the effective date of the final rule, Airspace Docket 19–ASW–8, as published in the **Federal Register** on August 20, 2020 (85 FR 51329), FR Doc. 2020–18253, is hereby delayed until June 17, 2021.

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.

Issued in Washington, DC, on October 6, 2020.

Scott M. Rosenbloom,

Acting Manager, Rules and Regulations Group.

[FR Doc. 2020–22426 Filed 10–9–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 705

[Docket No. 201006–0266]

RIN 0694–AI26

Procedures To Grant Relief From the Quantitative Limitation Applicable to Certain Steel Articles for Brazil for Parties With Preexisting Contracts That Meet Specified Criteria

AGENCY: Bureau of Industry and Security, U.S. Department of Commerce.

ACTION: Temporary final rule.

SUMMARY: This temporary final rule establishes procedures to grant relief from the quantitative limitation applicable to certain steel articles for Brazil for parties with preexisting contracts that meet specified criteria as authorized by the President as part of the action he took to adjust imports under Section 232 of the Trade Expansion Act of 1962, as amended (''section 232'').

DATES: *Effective date:* This temporary final rule is effective October 13, 2020, through December 31, 2020.

See **SUPPLEMENTARY INFORMATION** section for information on submitting certifications for relief from the quantitative limitation for Brazil for steel articles.

ADDRESSES: All certifications for relief from the quantitative limitation for Brazil for steel articles on this temporary final rule must be submitted through the email: *steel232-exp@bis.doc.gov.*

FOR FURTHER INFORMATION CONTACT: For questions regarding this temporary final rule, contact Erika Maynard at 202–482–5572 or via email *Erika.Maynard@bis.doc.gov,* or to *steel232-exp@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

Background

On August 28, 2020, President Trump issued Proclamation 10064 (85 FR 54877), Adjusting Imports of Steel Into the United States, which lowered one of the section 232 quantitative limitations applicable to Brazil for the remainder of 2020 and added a new basis for relief from those lowered quantitative limitations. The President determined that the modification to the quantitative limitations applicable to certain steel products was necessary to preserve the effectiveness of the alternative means to address the threatened impairment of national security posed by steel article imports which were previously agreed to with Brazil. This temporary final rule implements the President's directive to the Secretary of Commerce (Secretary) to grant relief from the modified quantitative limitations in a limited aggregate amount under specific circumstances related to the fulfillment of existing contracts.

Background on Quantitative Limitations Applicable to Brazil

On January 11, 2018, the Secretary transmitted to President Trump a report on his investigation into the effect of imports of steel mill articles (steel articles) on the national security of the United States under section 232 of the Trade Expansion Act of 1962, as amended (19 U.S.C. 1862). The Secretary found and advised President Trump that steel articles were being imported into the United States in such quantities and under such circumstances as to threaten to impair the national security of the United States.

In Proclamation 9705 of March 8, 2018 (Adjusting Imports of Steel Into the United States) (83 FR 11625), President Trump concurred in the Secretary's finding that certain steel articles were being imported into the United States in such quantities and under such circumstances as to threaten to impair the national security of the United States, and decided to adjust the imports of these steel articles by imposing a 25 percent ad valorem tariff on such articles imported from most countries.

In Proclamation 9705, President Trump further stated that any country with which the United States has a security relationship is welcome to discuss with the United States alternative ways to address the threatened impairment of the national security caused by imports from that country. The President noted that, should the United States and any such country arrive at a satisfactory alternative means to address the threat to the national security such that he determines that imports from that country no longer threaten to impair the national security, the President may remove or modify the restriction on steel article imports from that country.

Alternative Means To Address the Threatened Impairment to U.S. National Security Posed by Steel Articles Imported From Brazil

In Proclamation 9759 of May 31, 2018 (Adjusting Imports of Steel Into the United States) (85 FR 25857), President Trump noted that the United States had agreed on measures with Brazil that would provide effective, long-term alternative means to address Brazil's contribution to the threatened impairment to our national security. These included quantitative limitations that restrict the volume of steel articles imported into the United States from Brazil. In light of these agreed-upon measures, President Trump determined that steel article imports from Brazil would no longer threaten to impair the national security and decided to exclude Brazil from the tariff proclaimed in Proclamation 9705, as amended.

Monitoring Implementation of Quantitative Limitations

In Proclamation 9759, President Trump also noted that the United States would monitor the implementation and effectiveness of the quantitative limitations applicable to steel article imports from Brazil, and directed the Secretary to inform him of any circumstance that in the Secretary's opinion might indicate that an adjustment of the quantitative limitation is necessary.

The Secretary has advised President Trump that there have been significant changes in the United States steel market since the President decided to exclude Brazil, on a long-term basis, from the tariff proclaimed in Proclamation 9705, as amended. The United States steel market has contracted in 2020. After increasing in 2018 and 2019, steel shipments by domestic producers through June of this year were approximately 15 percent lower than shipments for the same time period in 2019, with shipments in April and May of this year more than 30 percent lower than the shipments in the same months in 2019. The Secretary has further advised President Trump that domestic producers' adjusted year-to-date capacity utilization rate through August 15, 2020 is below 70 percent and that the rate has been near or below 60 percent since the second week of April. Brazil is the second largest source of steel imports to the United States and the largest source of imports of semi-finished steel products. Moreover, while imports from most countries have declined this year in a manner commensurate with this contraction, imports from Brazil have decreased only slightly.

Actions Taken To Address Significant Changes in the United States Steel Market

In light of these significantly changed market conditions, President Trump determined in Proclamation 10064 that absent modifications, the alternative measures applicable to Brazilian steel imports would be ineffective in eliminating the threat to the national security posed by imports of such articles in the current environment. The United States and Brazil have held consultations regarding Brazil's steel exports to the United States in light of the changed market conditions. As a result of these discussions, the United States will lower, for the remainder of 2020, one of the quantitative limitations set forth in Proclamation 9759 applicable to steel articles imported from Brazil.

In President Trump's judgment, this modification will preserve the effectiveness of the alternative means to address the threatened impairment to U.S. national security by further restraining steel article exports to the United States from Brazil during the current period of market contraction. In light of these modifications, President Trump has determined that steel article imports from Brazil will not threaten to impair the national security and thus has decided to continue to exclude Brazil from the tariff proclaimed in Proclamation 9705, as amended. The United States and Brazil will hold further consultations in December 2020 to discuss the state of the steel trade

between the two countries in light of then-prevailing market conditions.

Ensuring That Lowered Quantitative Limitations for Brazil Do Not Delay or Disrupt Specific Production Activities in the United States Already Contracted for Delivery

President Trump in Proclamation 10064 noted that he has been informed that a reduction in the quantitative limitation set forth in Proclamation 9759 applicable to certain steel article imports from Brazil may delay or disrupt specific production activities in the United States for which imports of the steel articles covered by the quantitative limitations have already been contracted for delivery in the fourth quarter of this year. In light of these circumstances, and after considering the impact on the economy and the national security objectives of section 232, President Trump in Proclamation 10064 determined to direct the Secretary to provide relief from the modified quantitative limitations in certain limited circumstances specified in more detail below and in paragraph (j) of this rule. This relief is in addition to the relief from the quantitative limitations that the Secretary is already authorized to provide pursuant to clause 1 of Proclamation 9777 of August 29, 2018 (Adjusting Imports of Steel Into the United States) (83 FR 45025). However, exclusion requests submitted under paragraph (j) involve different criteria and procedures than those submitted under existing paragraph (c) and determined pursuant to the criteria and procedures described in existing paragraphs (a)–(i). In addition, the Secretary may not, prior to January 1, 2021, grant relief under paragraph (c) for steel articles for which relief is granted under paragraph (j).

Proclamation 10064 sets forth several directives that are being implemented in this rule. Clause 1 of Proclamation 10064 specifies that the quantitative limitation applicable to imports of steel articles classified under subheading 9903.80.57 of subchapter III of chapter 99 of the HTSUS from Brazil are being lowered for the remainder of calendar year 2020, and specifies that the new quantitative limitation is described in the Annex to the proclamation. For calendar year 2021 and for subsequent years, the annual aggregate limit for steel articles classified under this subheading from Brazil reverts to the annual aggregate limit for Brazil set forth in the Annex to Proclamation 9759, unless that limit is further modified or terminated by President Trump.

Under clause 2 of Proclamation 10064, President Trump directed that the Secretary shall, on an expedited basis, grant relief from the modified quantitative limitation now applicable to subheading 9903.80.57 of subchapter III of chapter 99 of the HTSUS for Brazil for any steel article where:

(i) The party requesting relief entered into a contract or other written agreement for the production and shipment of such steel article before August 28, 2020;

(ii) such agreement specifies the quantity of such steel article that is to be produced and shipped to the United States prior to December 31, 2020;

(iii) such steel article is to be used in production activities in the United States and such steel article cannot be procured from another supplier to meet the delivery schedule and specifications contained in such agreement; *and*

(iv) lack of relief from the quantitative limitation on such steel article would significantly disrupt the production activity in the United States for which the steel article specified in such agreement is intended.

Also under clauses 2 and 5, President Trump specified that the volume of imports for which the Secretary grants relief under this clause shall not exceed 60,000,000 kilograms in the aggregate, and under clauses 1 and 5 that any steel article for which relief is granted must be entered for consumption or withdrawn from warehouse for consumption on or before December 31, 2020. Also under clause 5, President Trump further provided that the Secretary may not, prior to January 1, 2021, grant further relief for such an article through the preexisting exclusion request process (set out in paragraphs (a)–(i) of this supplement) applicable to items not available in the United States in sufficient or reasonably available quantity or of satisfactory quality or based on specific national security considerations, as provided for by clause 1 of Proclamation 9777.

Under clause 3 of Proclamation 10064, President Trump directed that the Secretary shall grant relief under clause 2 of this proclamation only upon receipt of a sworn statement signed by the chief executive officer and the chief legal officer of the party requesting relief, attesting that:

(i) The steel article for which relief is sought and the associated contract or other written agreement meet the criteria for relief set forth in clause 2(i) through (iv) of Proclamation 10064;

(ii) the party requesting relief will accurately report to U.S. Customs and Border Protection (CBP), in the manner that CBP prescribes, the quantity of steel articles entered for consumption, or withdrawn from warehouse for consumption, pursuant to any grant of relief; *and*

(iii) the quantity of steel articles entered pursuant to a grant of relief will not exceed the quantity for which the Secretary has granted relief.

Clause 3 of Proclamation 10064 also specified that the Secretary shall notify CBP of any grant of relief made pursuant to Proclamation 10064. Clause 3 further provided that the Secretary shall revoke any grant of relief under clause 2 of the proclamation if the Secretary determines at any time after such grant that the criteria for relief have not been met and may, if the Secretary deems it appropriate, notify the Attorney General of the facts that led to such revocation.

Under clause 4 of Proclamation 10064, President Trump directed that as soon as practicable, the Secretary shall issue procedures for the requests for relief described in clauses 2 and 3 of the proclamation, which BIS is doing on behalf of the Secretary with the publication of this temporary final rule. Lastly, clause 4 specified that CBP shall implement relief provided under clause 2 of this proclamation as soon as practicable.

Under clause 5 of Proclamation 10064, until the modified quantitative limitation provided under subheading 9903.80.57 of subchapter III of chapter 99 of the HTSUS from Brazil has been reached, CBP will count steel articles granted relief under clause 2 of Proclamation 10064 toward that modified quantitative limitation when the steel article is entered for consumption or withdrawn from warehouse for consumption. (Clause 5 also provides that steel articles for which relief is granted pursuant to clause 2 of Proclamation 10064 shall be subject to the duty treatment provided in subheading 9903.80.62 of subchapter III of chapter 99 of the HTSUS for Brazil, as established by the Annex to Proclamation 10064).

Changes Made in This Temporary Final Rule

In Supplement No. 1 to Part 705—Requirements for Submissions Requesting Exclusions from the Remedies Instituted in Presidential Proclamation 9705 of March 8, 2018 Adjusting Imports of Steel Articles into the United States, under new paragraph (j) (*Certification for requesting relief from quantitative limitation for Brazil*), this temporary final rule makes the following changes:

In Note to paragraph (c)(2), this temporary final rule adds one sentence to the end of this note to provide a cross

reference to new paragraph (j) which is added by this rule. The Note to paragraph (c)(2) provides guidance to directly affected individuals or organizations located in the United States seeking exclusions from quantitative limitations imposed on certain countries. The new sentence that this rule adds to the note specifies that directly affected individuals or organizations located in the United States and importing steel articles from Brazil, a country subject to quantitative limitations, should first review new paragraph (j) prior to submitting any exclusion requests.

This temporary final rule adds new paragraph (j) to describe the requirements to request relief from the quantitative limitations applicable to steel article imports from Brazil under the new process created by clause 2 of Proclamation 10064. The introductory text of paragraph (j) provides background on the quantitative limitations for steel articles for Brazil. This introductory text references Proclamation 9759 on May 31, 2018 and the most recent Proclamation 10064 of August 28, 2020. The introductory text explains that paragraph (j) provides a process for relief separate from the section 232 exclusions process as required by Proclamation 10064. Under this process a party may request relief from the quantitative limitation for certain steel articles from Brazil, which will be approved by the Department of Commerce (the ''Department'') under stated criteria.

Paragraph (j) describes the requirements for a party to obtain this relief, how the Department reviews these requests for relief, the administration and use of granted requests of relief, and when revocation of grants of relief may occur. These procedures are all contained in paragraph (j), which unless extended on or before December 31, 2020, will be removed from the regulations on January 1, 2021. This process of requesting grants for relief from the quantitative limitations for Brazil is a separate process from the 232 exclusions process described elsewhere in supplement no. 1 to part 705.

New paragraph (j) consists of five paragraphs: (j)(1) (*Sworn statement required to grant relief*); (j)(2) (*Where to submit requests for grants of relief?*); (j)(3) (*Disposition of requests for grants of relief*); (j)(4) (*Administration and use of granted requests of relief*); and (j)(5) (*Revocation of grants of relief*).

New paragraph (j)(1) specifies that pursuant to clause 3 of Proclamation 10064, the Secretary will grant relief from the lowered quantitative limitation for steel articles under subheading 9903.80.57 of subchapter III of chapter 99 of the HTSUS for Brazil only upon receipt of a sworn statement signed by the chief executive officer and the chief legal officer of the party requesting relief. The sworn statement made under new paragraph (j)(1) must attest to the criteria specified in paragraphs (j)(1)(i) to (iii). These criteria are required in order to determine whether the steel article for which relief is sought and the associated contract or other written agreement meet the criteria for relief set forth in clause 2(i) through (iv) of Proclamation 10064.

The party requesting relief must certify under paragraph (j)(1)(i)(A) that they entered into a contract or other written agreement for the production and shipment of such steel article before August 28, 2020. The party requesting relief must also include in the certification a description of the steel article by HTS classification and Chapter 99 quota category HTS classification. The certification must also specify under paragraph (j)(1)(i)(B) that the associated contract or other written agreement states the quantity of such steel article that is to be produced and shipped to the United States prior to December 31, 2020. The party requesting relief must certify under paragraph (j)(1)(i)(C) that such steel article is to be used in production activities in the United States. This includes certifying that such steel article cannot be procured from another supplier to meet the delivery schedule and specifications contained in such agreement. Lastly, under the certification requirement under paragraph (j)(1)(i)(D), the party requesting relief must certify that lack of relief from the quantitative limitation on such steel article would significantly disrupt the production activity in the United States for which the steel article specified in such agreement is intended.

Requesters are required to comply with the certification requirement under paragraph (j)(1)(ii) in order to ensure that if approved, the relief provided can be properly administered and enforced by CBP. Specifically, the party requesting relief must accurately report to CBP, in the manner that CBP prescribes, the quantity of steel articles entered for consumption, or withdrawn from warehouse for consumption, pursuant to any grant of relief. The last requirement of the certification under paragraph (j)(1)(iii) is to acknowledge that the requester will not, in entering steel articles pursuant to any grant of relief, exceed the quantity for which the Secretary grants relief.

Under new paragraph (j)(2), this temporary final rule specifies where to submit requests for grants of relief. This paragraph specifies that all requests for grants of relief pursuant to paragraph (j) must be in electronic form and submitted by email to *steel232-exp@bis.doc.gov.* This paragraph specifies that in order to submit a request for a grant of relief under paragraph (j), the request must be submitted as an attachment to the email sent to *steel232-exp@bis.doc.gov.* Paragraph (j)(2) specifies the only information required to be submitted for these requests is the sworn statement under paragraph (j)(1).

New paragraph (j)(3) describes how the Department will dispose of requests for grants of relief. Paragraph (j)(3) specifies that the Department will grant requests for relief that meet the criteria specified in paragraphs (j)(1) and (2) until such time as the maximum quantity under this relief program is met. Paragraph (j)(3) specifies that pursuant to Proclamation 10064, the volume of imports for which the Secretary grants relief under this paragraph shall not exceed 60,000,000 kilograms in the aggregate. The Department will use a ''first submitted, first approved'' process until such time as the maximum aggregate limit has been approved and will not accept submissions after this limit is reached.

This rule also adds a Note to paragraph (j)(3) to provide guidance on when the Department will deny a requested grant for relief. This note specifies that denials will occur if the sworn statement does not meet the requirements specified in paragraphs (j)(1) and (2). It also specifies that requests for relief will be denied to the extent granting the request would result in the aggregate amount of imports for which relief is granted under paragraph (j) exceeding 60,000,000 kilograms. This note also clarifies that once the aggregate amount of approved grants for relief reaches 60,000,000 kilograms, the Department will post a statement on the BIS website under *www.bis.doc.gov/232-steel-Brazil* to alert requesters that the aggregate limit has been reached, so that they are informed that they may no longer submit requests for grants of relief. This statement will save time for requesters, as well as the Department.

This temporary final rule adds new paragraph (j)(4) to specify how granted requests for relief will be administered and the validity periods for these granted requests for relief. Any relief granted under paragraph (j) will only be valid if the subject steel article is entered for consumption, or withdrawn from warehouse for consumption, on or before December 31, 2020. Paragraph

(j)(4) also specifies that further relief may not be granted for such article by the Secretary under clause 1 of Proclamation 9777.

This temporary final rule adds new paragraph (j)(5) to specify when the Secretary may revoke grants of relief made pursuant to paragraph (j). Paragraph (j)(5) specifies that the Secretary will revoke any such grant of relief if the Secretary determines at any time after relief is granted that the criteria for relief have not been met. Paragraph (j) also specifies that if the Secretary deems it appropriate, he may notify the Attorney General of the facts that led to such revocation.

Rulemaking Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been determined to be a ''significant regulatory action,'' although not economically significant, under section 3(f) of Executive Order 12866. Pursuant to clause 4 of Proclamation 10064 of August 28, 2020, this rule is exempt from Executive Order 13771 (85 FR 54877, September 2, 2020).

2. The Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA) provides that an agency generally cannot conduct or sponsor a collection of information, and no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information, unless that collection has obtained Office of Management and Budget (OMB) approval and displays a currently valid OMB Control Number.

This temporary final regulation involves one collection currently approved by OMB with the following control number: Procedures for Submitting Requests for Expedited Relief from Quantitative Limits—Existing Contract: Section 232 National Security Investigations of Steel Imports (OMB control number 0694–0140).

BIS is making a change to this collection for OMB control number 0694–0140 to account for the certification in the form of a sworn statement that needs to be made and submitted to the Department by requesters via email to *steel232-exp@bis.doc.gov* under Supplement No. 1 to 15 CFR part 705, paragraphs (j)(1) and (2), when requesting relief from the quantitative limitation applicable to Brazil for certain steel articles. Any comments regarding the collection of information associated with this rule, including suggestions for reducing the burden, may be sent to Jasmeet K. Seehra, Office of Management and Budget (OMB), by email to *Jasmeet_K._Seehra@omb.eop.gov,* or online at *https://www.reginfo.gov/public/do/PRAMain*.

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

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public comment, and a delay in effective date are inapplicable because this regulation involves a military or foreign affairs function of the United States. (*See* 5 U.S.C. 553(a)(1)). The reduction in the quantitative limitation for certain steel articles from Brazil is needed to protect U.S. national security interests in light of recent deterioration in the U.S. steel industry that was being further harmed by steel imports from Brazil, as described further below. This needed measure to protect U.S. national security could also result in adverse impacts on certain parties in the United States that import steel articles from Brazil, so this rule creates a process to allow those parties to request relief that meet specified criteria. Creating this process to allow parties to request relief is needed to ensure that the required actions needed to protect U.S. national security can be taken without doing unintended harm to other parts of the U.S. economy and national security.

As explained in the report submitted by the Secretary to the President on January 11, 2018, steel is being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security of the United States and therefore the President has implemented these remedial adjustments of imports (as described in in Proclamation 9705 of March 8, 2018, as amended) to protect U.S. national security interests.

In Proclamation 9759, President Trump directed the Secretary to monitor implementation of quantitative limitations applicable to steel article imports from Brazil and inform him of any circumstance that in the Secretary's opinion might indicate that an adjustment of the quantitative limitation is necessary. The Secretary has advised President Trump that there have been significant changes in the United States steel market since the time President Trump decided to exclude, on a long-term basis, Brazil from the tariff proclaimed in Proclamation 9705.

The United States steel market has contracted in 2020. After increasing in 2018 and 2019, steel shipments by domestic producers through June of this year are approximately 15 percent lower than shipments for the same time period in 2019, with shipments in April and May of this year more than 30 percent lower than the shipments in the same months in 2019. The Secretary has further advised President Trump that domestic producers' adjusted year-to-date capacity utilization rate through August 15, 2020 is below 70 percent and that the current rate has been near or below 60 percent since the second week of April. Brazil is also the second largest source of steel imports to the United States and the largest source of imports of semi-finished steel products. Moreover, imports from most countries have declined this year in a manner commensurate with this contraction, whereas imports from Brazil have decreased only slightly.

In light of these significantly changed market conditions, President Trump determined in Proclamation 10064 that the alternative measures regarding Brazilian steel imports, without any modifications, would be ineffective in eliminating the threat to the national security posed by imports of such articles in the current environment. The United States and Brazil have held consultations regarding Brazil's steel exports to the United States. As a result of these discussions, the United States will lower, for the remainder of 2020, one of the quantitative limitations set forth in Proclamation 9759 applicable to steel articles imported from Brazil. In President Trump's judgment, this modification will preserve the effectiveness of the alternative means to address the threatened impairment to U.S. national security by further restraining steel article exports to the United States from Brazil during this period of market contraction. In light of this modification, President Trump has determined that steel article imports from Brazil will not threaten to impair the national security and thus has decided to continue to exclude Brazil from the tariff proclaimed in Proclamation 9705, as amended.

President Trump in Proclamation 10064 noted that he has been informed that a reduction in this quantitative limitation set forth in Proclamation 9759 applicable to steel article imports from Brazil may delay or disrupt specific production activities in the

United States for which imports of steel articles covered by the quantitative limitation have already been contracted for delivery in the fourth quarter of this year. In light of these circumstances, and after considering the impact on the economy and the national security objectives of section 232, President Trump directed the Secretary in Proclamation 10064 to provide relief from the modified quantitative limitations in certain limited circumstances specified in paragraph (j) of this rule.

The implementation of the President's directive includes the creation of a process by which domestic parties can submit a certification requesting relief from this modified quantitative limitation for Brazil. Establishing these procedures in this temporary final rule are needed to ensure that the reduction in this quantitative limitation for Brazil can occur as needed to protect U.S. national security interests while not causing unintended economic harm for those affected parties in the U.S. with existing contracts that meet the specified criteria in this rule.

In addition, the Department finds that there is good cause under 5 U.S.C. 553(b)(B) to waive the provisions of the Administrative Procedure Act requiring prior notice and the opportunity for public comment and under 5 U.S.C. 553(d)(1) and (d)(3) to waive the delay in effective date because this rule is a substantive rule which grants or recognizes an exemption and such delays would be either impracticable or contrary to the public interest.

Under clause 4 of Proclamation 10064, President Trump directed that as soon as practicable, the Secretary shall issue procedures for the requests for relief described in clauses 2 and 3 of this proclamation, which BIS is doing on behalf of the Secretary with the publication of this temporary final rule. Clause 4 also specified that CBP shall implement relief provided under clause 2 of this proclamation as soon as practicable, which is also contingent on the publication of this temporary final rule. If this rule was delayed for public comment, those impacted parties that are intended to benefit from this relief would not be allowed to benefit from this exemption and may not be able to import steel articles from Brazil when above the reduced quantitative limitations.

The provisions of new paragraph (j) are of a temporary nature. As directed by President Trump, any steel article for which relief is granted under clause 2 of Proclamation 10064 must be entered for consumption, or withdrawn from warehouse for consumption, on or before December 31, 2020. Because of the immediate need for these provisions and the short term during which these provisions will be effective (*i.e.,* from October 13, 2020 through December 31, 2020), it would be impractical to allow for public comments or a delay in effective date because by the time the changes became effective the public would have very little time to benefit from these changes.

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

List of Subjects in 15 CFR Part 705

Administrative practice and procedure, Business and industry, Classified information, Confidential business information, Imports, Investigations, National security.

For the reasons set forth in the preamble, part 705 of subchapter A of 15 CFR chapter VII is amended as follows:

PART 705—[AMENDED]

■ 1. The authority citation for part 705 continues to read as follows:

Authority: Section 232 of the Trade Expansion Act of 1962, as amended (19 U.S.C. 1862) and Reorg. Plan No. 3 of 1979 (44 FR 69273, December 3, 1979).

■ 2. Supplement No. 1 to part 705 is amended:

■ a. By revising the heading;

■ b. By adding one sentence to the end of Note to Paragraph (c)(2); and

■ c. By adding paragraph (j).

The additions and revision read as follows:

Supplement No. 1 to Part 705—Requirements for Submissions Requesting Exclusions From the Remedies Instituted in Presidential Proclamations Adjusting Imports of Steel Articles Into the United States

* * * * *

(c) * * *

(2) * * *

Note to paragraph (c)(2): * * * Parties intending to request an exclusion from quantitative limitations applicable to imports of items classified under subheading 9903.80.57 of subchapter III of chapter 99 of the HTSUS for Brazil should consult paragraph (j) of this supplement prior to submitting an exclusion request.

* * * * *

(j) *Certification for requesting relief from quantitative limitation for Brazil.* Brazil is a country subject to quantitative limitations for steel articles. Pursuant to Proclamation 10064 of August 28, 2020, the United States will lower, for the remainder of 2020, one of the quantitative limitations set forth in Proclamation 9759 of May 31, 2018 (Adjusting Imports of Steel Into the United States) applicable to certain steel articles imported from Brazil in order to protect U.S. national security interests. President Trump in Proclamation 10064 noted that he has been informed that a reduction in this quantitative limitation set forth in Proclamation 9759 applicable to steel article imports from Brazil may delay or disrupt specific production activities in the United States for which imports of steel articles covered by this quantitative limitation have already been contracted for delivery in the fourth quarter of 2020. In light of these circumstances, and after considering the impact on the economy and the national security objectives of section 232 of the Trade Expansion Act of 1962, as amended, President Trump in Proclamation 10064 directed the Secretary to provide relief from this modified quantitative limitation in certain limited circumstances that are specified in Proclamation 10064 and repeated in this paragraph (j). This authority is in addition to the relief from the quantitative limitations that the Secretary is already authorized to provide pursuant to clause 1 of Proclamation 9777 of August 29, 2018 (Adjusting Imports of Steel Into the United States), and involves different exclusion criteria and procedures. This paragraph (j) describes what must be done to obtain this relief, how the U.S. Department of Commerce reviews these requests for relief, the administration and use of granted requests of relief, and when revocation of grants of relief may occur.

(1) *Sworn statement required to grant relief.* The Secretary will grant relief from the modified quantitative limitation applicable to imports of steel articles classified under subheading 9903.80.57 of subchapter III of chapter 99 of the HTSUS from Brazil only upon receipt of a sworn statement signed by the chief executive officer and the chief legal officer of the party requesting relief, attesting to the following criteria:

(i) The steel article for which relief is sought, (insert description here of the steel article by HTS classification and Chapter 99 quota category HTS classification), and the associated contract or other written agreement meet the criteria for relief set forth in clause 2(i) through (iv) of Proclamation 10064, described here under paragraphs

(j)(1)(i)(A) through (D) of this supplement:

(A) The party requesting relief entered into a contract or other written agreement for the production and shipment of such steel article before August 28, 2020;

(B) Such agreement specifies the quantity of such steel article that is to be produced and shipped to the United States prior to December 31, 2020;

(C) Such steel article is to be used in production activities in the United States and such steel article cannot be procured from another supplier to meet the delivery schedule and specifications contained in such agreement; and

(D) Lack of relief from the quantitative limitation on such steel article would significantly disrupt the production activity in the United States for which the steel article specified in such agreement is intended;

(ii) The party requesting relief will accurately report to U.S. Customs and Border Protection (CBP), in the manner that CBP prescribes, the quantity of steel articles entered for consumption, or withdrawn from warehouse for consumption, pursuant to any grant of relief; and

(iii) The quantity of steel articles entered pursuant to a grant of relief will not exceed the quantity for which the Secretary has granted relief.

(2) *Where to submit requests for grants of relief?* All exclusion requests for grants of relief pursuant to this paragraph (j) must be in electronic form and submitted to BIS by email: *steel232-exp@bis.doc.gov.* In order to submit a request for a grant of relief, you must submit your request for a grant of relief as an attachment to the email sent to *steel232-exp@bis.doc.gov.* The only documentation required for a request for a grant of relief is the sworn statement required under paragraph (j)(1) of this supplement. There are no objection, rebuttal, or surrebuttal submissions or review periods, and no provisions of the exclusion request process specified in this supplement apply except those provided in this paragraph (j).

(3) *Disposition of requests for grants of relief.* The U.S. Department of Commerce will grant requests for relief that meet the criteria specified in paragraphs (j)(1) and (2) of this supplement until such time as the maximum quantity under this relief program is met, and will post granted requests publicly on the BIS website as described below. In Proclamation 10064 under clause 2, President Trump specified that the volume of imports for which the Secretary grants relief under this clause shall not exceed 60,000,000 kilograms in the aggregate and this paragraph (j)(3) imposes this same limitation. The Department will use a ''first submitted, first approved'' process until such time as the maximum aggregate limit has been approved and will not accept submissions after this limit is reached. The Secretary will notify CBP of any grant of relief made pursuant to this proclamation.

Note to paragraph (j)(3): Denials will occur if the sworn statement does not meet all of the requirements specified in paragraphs (j)(1) and (2) of this supplement, or will be denied to the extent the amount of imports for which the Secretary has granted relief under this paragraph (j)(3) would exceed 60,000,000 kilograms in the aggregate. Once the aggregate amount of approved grants for relief reaches 60,000,000 kilograms, the U.S. Department of Commerce will post a statement on the BIS website under *www.bis.doc.gov/232-steel-Brazil* to alert other requesters that the aggregate limit has been reached, and no more requests will be approved.

(4) *Administration and use of granted requests of relief.* Any relief granted under paragraph (j)(3) of this supplement will only be valid if the subject steel article is entered for consumption, or withdrawn from warehouse for consumption, on or before December 31, 2020. Where a party has received relief under the provisions of this paragraph (j), they are not eligible for further relief under clause 1 of Proclamation 9777 prior to January 1, 2021, for the same steel article pursuant to an exclusion request submitted under paragraph (c) of this supplement.

(5) *Revocation of grants of relief.* The Secretary of Commerce will revoke any grant of relief under paragraph (j)(3) of this supplement if the Secretary determines at any time after such grant that the criteria for relief to which the party must attest under paragraphs (j)(1)(i) through (iii) of this supplement have not been met and may, if the Secretary deems it appropriate, notify the Attorney General of the facts that led to such revocation.

Matthew S. Borman,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 2020–22608 Filed 10–8–20; 11:15 am]

BILLING CODE 3510–33–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9913]

RIN 1545–BP52

Dependent Defined

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that clarify the definition of a ''qualifying relative'' for purposes of various provisions of the Internal Revenue Code (Code) for taxable years 2018 through 2025. These regulations generally affect taxpayers who claim Federal income tax benefits that require a taxpayer to have a qualifying relative.

DATES:

Effective Date: These regulations are effective on October 13, 2020.

Applicability Date: Sections 1.24–1 and 1.152–2(b) of these regulations apply to taxable years beginning on or after October 13, 2020. Section 1.152–2(e) of these regulations applies to taxable years ending after August 28, 2018, the date the Department of the Treasury (Treasury Department) and the IRS issued Notice 2018–70, 2018–38 I.R.B. 441.

FOR FURTHER INFORMATION CONTACT: Victoria J. Driscoll at (202) 317–4718 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) under sections 24 and 152 of the Code relating to statutory amendments enacted in Public Law 115–97, 131 Stat. 2054 (2017), commonly referred to as the Tax Cuts and Jobs Act (TCJA).

Section 152(a) generally defines a ''dependent'' as a ''qualifying child'' or a ''qualifying relative.'' The definition of a qualifying relative in section 152(d)(1) includes the requirement that the individual have gross income for the calendar year that is less than the ''exemption amount'' as defined in section 151(d) (exemption amount). Such an individual also must satisfy the requirement of section 152(d)(1)(C) that the individual receive more than one-half of his or her support from the taxpayer claiming the individual as a qualifying relative (support test). As described in parts I through IV of this Background, these final regulations provide that, in determining whether an individual is a qualifying relative for

purposes of various provisions of the Code that refer to section 152 in years in which the exemption amount is zero, the section 151(d) exemption amount will be the inflation-adjusted section 152(d)(1)(B) exemption amount in the annual revenue procedure setting forth inflation-adjusted items that is published in the Internal Revenue Bulletin.

I. Exemption Amount

Generally, section 151 allows a taxpayer to claim a deduction equal to the exemption amount for each of the taxpayer and his or her spouse, and for any dependents. Prior to the TCJA, section 151(d) provided for an exemption amount of $2,000 that was adjusted annually for inflation beginning with calendar year 1990. Before the enactment of the TCJA, the IRS had determined that the exemption amount for taxable year 2018 was $4,150. Rev. Proc. 2017–58, 2017–45 I.R.B. 489, modified and superseded by Rev. Proc. 2018–18, 2018–10 I.R.B. 392.

Section 11041(a)(2) of the TCJA added section 151(d)(5) to provide special rules for taxable years 2018 through 2025 regarding the exemption amount. Section 151(d)(5)(A) provides that, for a taxable year beginning after December 31, 2017, and before January 1, 2026, the exemption amount is zero, thereby suspending the deductions for personal exemptions and the dependency exemption. H.R. Rep. No. 115–466, at 202–204 (2017) (Conference Report). However, section 151(d)(5)(B) provides that the reduction of the exemption amount to zero is not taken into account in determining whether a deduction under section 151 is allowed or allowable to a taxpayer, or whether a taxpayer is entitled to a deduction under section 151, for purposes of any other provision of the Code. The Conference Report states that this provision clarifies that the reduction of the personal exemption to zero ''should not alter the operation of those provisions of the Code which refer to a taxpayer allowed a deduction . . . under section 151,'' including the child tax credit in section 24(a). *Id.* at 203 n.16. For example, the definition of head of household in section 2(b)(1)(A) includes the requirement that the taxpayer maintain as his or her home a household for a qualifying individual for a specified period of time. A qualifying individual under section 2(b)(1)(A)(ii) includes a person who is a qualifying relative under section 152(d) if the taxpayer is entitled to a deduction under section 151 for the person for the taxable year.

II. Support Test

The section 152(d)(1)(C) support test requires that an individual receive more than one-half of his or her support from the taxpayer to be claimed as a qualifying relative of that taxpayer. Prior to the TCJA, payments of alimony or separate maintenance paid to a spouse or former spouse were not treated as support of a dependent provided by the payor spouse. Additionally, alimony and separate maintenance payments were deductible by the payor spouse and includible in income by the recipient spouse under sections 61(a)(8), 71(a), and 215(a) of the Code. Under section 71(c), child support payments were not treated as alimony includible in income.

Section 11051 of the TCJA repealed sections 61(a)(8), 71 and 215, and, in a conforming change, also repealed section 682 of the Code for any divorce or separation instrument executed after 2018, and for any instrument executed before 2019 and later modified to apply the provisions of the TCJA. Consistent with prior law, the TCJA provides that payments of alimony or separate maintenance paid to a spouse or former spouse are not treated as support of a dependent provided by the payor spouse. To conform with the repeal of sections 71 and 682 by the TCJA, section 11051(b)(3)(B) of the TCJA amended section 152(d)(5) of the Code regarding the source of a qualifying relative's support by revising the language of section 152(d)(5) to eliminate references to former sections 71 and 682.

III. Credit for Other Dependents

Section 11022(a) of the TCJA amended section 24 of the Code to create a $500 credit for certain dependents of a taxpayer other than a qualifying child described in section 24(c) for whom the child tax credit is allowed. The $500 credit applies to two categories of dependents: (1) Qualifying children for whom a child tax credit is not allowed, and (2) qualifying relatives as defined in section 152(d). Section 24(h)(4)(A) and (C). Like the amendment to section 151(d) reducing the exemption amount to zero, this new credit applies for taxable years 2018 through 2025. The Conference Report explains that ''[t]he credit is further modified to temporarily provide for a $500 nonrefundable credit for qualifying dependents other than qualifying children. The provision generally retains the present-law definition of dependent.'' H.R. Rep. No. 115–466, at 227.

IV. Administrative Action

On August 28, 2018, the Treasury Department and the IRS issued Notice 2018–70. This notice announced the intent to issue proposed regulations providing that the reduction of the exemption amount to zero under section 151(d)(5)(A) for taxable years 2018 through 2025 will not be taken into account in determining whether an individual meets the requirement of section 152(d)(1)(B) to be a qualifying relative. Notice 2018–70 also stated that, before the issuance of the proposed regulations described in the notice, a taxpayer may rely on the rules described in the notice.

On June 9, 2020, the Treasury Department and the IRS published a notice of proposed rulemaking (REG–118997–19) in the **Federal Register** (85 FR 35233) proposing regulations under sections 24 and 152 (proposed regulations). Consistent with Notice 2018–70, the proposed regulations provide that, in determining whether an individual is a qualifying relative for purposes of various provisions of the Code that refer to section 152 in taxable years in which the exemption amount is zero, the section 151(d) exemption amount will be the inflation-adjusted section 152(d)(1)(B) exemption amount in the annual revenue procedure setting forth inflation-adjusted items that is published in the Internal Revenue Bulletin. Thus, the exemption amount to be used for this purpose is $4,150 for taxable year 2018 (section 3.24 of Rev. Proc. 2017–58, 2017–45 I.R.B. 489, modified and superseded by Rev. Proc. 2018–18, 2018–10 I.R.B. 392); $4,200 for taxable year 2019 (section 3.25 of Rev. Proc. 2018–57, 2018–49 I.R.B. 827); and $4,300 for taxable year 2020 (section 3.25 of Rev. Proc. 2019–44, 2019–47 I.R.B. 1093).

Section 1.152–3(c)(3) and (d)(2) of the proposed regulations were proposed as changes to an earlier notice of proposed rulemaking (REG–137604–07) also providing rules regarding the definition of a dependent under section 152, which was published in the **Federal Register** (82 FR 6370) on January 19, 2017 (January 2017 Proposed Regulations). Section 1.152–3(d)(2) of the January 2017 Proposed Regulations, which have not yet been finalized, originally included references to sections 71 and 682. Accordingly, the proposed regulations withdrew § 1.152–3(d)(2) of the January 2017 Proposed Regulations and replaced it with a proposed rule to reflect the amendments to section 152(d)(5) discussed in part II of this Background.

Summary of Comments and Explanation of Provisions

The Treasury Department and the IRS received three comments in response to the proposed regulations through the Federal eRulemaking Portal. As no request for a public hearing was received, no hearing was held.

Although two of the comments received did not relate to the proposed regulations, the third comment generally asked for additional clarity regarding the definition of a qualifying relative. As described in the Background, these regulations implement specific changes to the law enacted in the TCJA, which did not modify the definition of qualifying relative in section 152(d) other than to make conforming changes to section 152(d)(5) to account for the repeal of sections 71 and 682. When the January 2017 Proposed Regulations are finalized, they will provide additional clarity to the regulations under section 152 and related provisions.

The third comment also suggested that, because the final regulations would not be published earlier than 2020, it was not necessary to reference the exemption amount for purposes of section 152 for taxable years 2018 and 2019. Although these final regulations are being published in 2020, § 1.152–2(e) of these final regulations applies to taxable years ending after August 28, 2018, the date the Treasury Department and the IRS issued Notice 2018–70, pursuant to section 7805(b)(1)(C). Further, the Treasury Department and the IRS determined it appropriate to clarify that, in defining qualifying relative for purposes other than determining the amount allowable as a deduction under section 151(a), the exemption amount is not zero, but is the inflation-adjusted section 152(d)(1)(B) exemption amount in the annual revenue procedure setting forth inflation-adjusted items that is published in the Internal Revenue Bulletin.

This document adopts the proposed regulations as final regulations with no substantive change. However, because § 1.152–3(c)(3) and 1.152–3(d)(2) of the proposed regulations originally were proposed as changes to provisions of the January 2017 Proposed Regulations, which have not yet been finalized, the proposed regulations have been redesignated in the final regulations to coordinate with the existing regulations. Specifically, proposed § 1.152–3(c)(3)(i) and (ii) is finalized as new § 1.152–2(e)(1) and (2) and proposed § 1.152–3(d)(2) is finalized as § 1.152–2(b). When the January 2017 Proposed Regulations are finalized, the provisions again will be appropriately redesignated.

Therefore, the provisions of the proposed regulations are adopted without substantive change to: (1) Provide that the exemption amount, for purposes other than a deduction for a personal or dependency exemption under section 151, is $4,150 for taxable year 2018, and for taxable years 2019 through 2025, the exemption amount, as adjusted for inflation, is the section 152(d)(1)(B) exemption amount, as set forth in guidance published in the Internal Revenue Bulletin; and (2) describe certain payments to a payee spouse for purposes of the support test without references to repealed sections 71 and 682.

Finally, these regulations clarify an issue raised regarding a statutory cross reference in section 24(h)(4) to ''a qualifying child described in subsection (c).'' As was proposed in the proposed regulations, these regulations clarify in § 1.24–1 that the statutory cross reference is a reference to section 24(c), rather than to section 152(c).

Applicability Date

Section 7805(b)(1) of the Code generally provides that no temporary, proposed, or final regulation relating to the internal revenue laws may apply to any taxable period ending before the earliest of (A) the date on which the regulation is filed with the **Federal Register**, or (B) in the case of a final regulation, the date on which a proposed or temporary regulation to which the final regulation relates was filed with the **Federal Register**. However, section 7805(b)(1)(C) provides that a regulation may apply to a taxable period ending after the date on which any notice substantially describing the expected contents of a regulation is issued to the public.

Accordingly, §§ 1.24–1 and 1.152–2(b) of these regulations apply to taxable years beginning on or after October 13, 2020. Section 1.152–2(e) of these regulations applies to taxable years ending after August 28, 2018, the date the Treasury Department and the IRS issued Notice 2018–70.

Special Analyses

These regulations are not subject to review under section 6(b) of Executive Order 12866, pursuant to the Memorandum of Agreement (April 11, 2018) between the Treasury Department and the Office of Management and Budget, regarding the review of tax regulations.

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is certified that these regulations will not have a significant economic impact on a substantial number of small entities. These regulations primarily affect individuals and therefore will not have a significant economic impact on a substantial number of small entities. Accordingly, the Secretary of the Treasury's delegate certifies that the rule will not have a significant economic impact on a substantial number of small entities.

Pursuant to section 7805(f), the proposed regulations preceding these regulations were submitted to the Office of the Chief Counsel for the Office of Advocacy of the Small Business Administration for comment on its impact on small business, and no comments were received.

Drafting Information

The principal author of the final regulations is Victoria Driscoll of the Office of Associate Chief Counsel (Income Tax and Accounting). However, other personnel from the Treasury Department and the IRS participated in their development.

Statement of Availability of IRS Documents

IRS notices and other guidance cited in this preamble are published in the Internal Revenue Bulletin (or Cumulative Bulletin) and are available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at *http://www.irs.gov.*

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

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 1.24–1 is added to read as follows:

§ 1.24–1 Partial credit allowed for certain other dependents.

(a) *In general.* For purposes of section 24(h)(4)(A), a taxpayer may be eligible to increase the credit determined under section 24(a) by $500 for a dependent of the taxpayer, as defined in section 152, other than a qualifying child described in section 24(c).

(b) *Applicability date.* This section applies to taxable years beginning on or after October 13, 2020.

■ **Par. 3.** Section 1.152–2, is amended by:

■ 1. Revising paragraph (b); and

■ 2. Adding paragraph (e).

The revision and addition read as follows:

§ 1.152–2 Rules relating to general definition of dependent.

* * * * *

(b)(1) A payment to a spouse (payee spouse) of alimony or separate maintenance is not treated as a payment by the payor spouse for the support of any dependent. Similarly, the distribution of income of an estate or trust to a divorced or legally separated payee spouse is not treated as a payment by the payor spouse for the support of any dependent. The preceding sentence will not apply, however, to the extent that such a distribution is in satisfaction of the amount or portion of income that, by the terms of a divorce decree, a written separation agreement, or the trust instrument is fixed as payable for the support of the minor children of the payor spouse.

(2) Paragraph (b)(1) of this section applies to taxable years beginning on or after October 13, 2020.

* * * * *

(e)(1) In defining a qualifying relative for taxable year 2018, the exemption amount in section 152(d)(1)(B) is $4,150. For taxable years 2019 through 2025, the exemption amount, as adjusted for inflation, is set forth in annual guidance published in the Internal Revenue Bulletin. *See* § 601.601(d)(2) of this chapter.

(2) Paragraph (e)(1) of this section applies to taxable years ending after August 28, 2018.

Sunita Lough,

Deputy Commissioner for Services and Enforcement.

Approved: September 8, 2020.

David J. Kautter,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2020–20746 Filed 10–9–20; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 301

[TD 9911]

RIN 1545–BO13

Computation and Reporting of Reserves for Life Insurance Companies

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that provide guidance on the computation of life insurance reserves and the change in basis of computing certain reserves of insurance companies. These final regulations implement recent legislative changes to the Internal Revenue Code. This document affects entities taxable as insurance companies.

DATES:

Effective date: These regulations are effective *October 13, 2020.*

Applicability dates: For dates of applicability, see §§ 1.338–11(d)(7)(iii), 1.807–1(c), 1.807–3(b), 1.807–4(e), 1.816–1(b), 1.817A–1(c), and 1.6012–2(l).

FOR FURTHER INFORMATION CONTACT: Ian Follansbee at (202) 317–4453 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to 26 CFR part 1 under sections 807 and 816 of the Internal Revenue Code (Code). Sections 807 and 816 were added to the Code by section 211(a) of the Deficit Reduction Act of 1984, Public Law 98–369, 98 Stat. 494. Section 807 was amended by sections 13513 and 13517 of Public Law 115–97, 131 Stat. 2054, 2143, 2144 (2017), commonly referred to as the Tax Cuts and Jobs Act (TCJA). These amendments by the TCJA apply to taxable years beginning after December 31, 2017.

This document also amends or removes the following regulations in 26 CFR: §§ 1.338–11, 1.381(c)(22)–1, 1.801–2, 1.801–5, 1.801–7, 1.801–8, 1.806–4, 1.807–1, 1.809–2, 1.809–5, 1.810–3, 1.817A–0, 1.817A–1, 1.818–2, 1.818–4, 1.848–1, 1.6012–2, and 301.9100–6T. These changes are conforming changes to regulations that (i) relate to repealed or amended law, (ii) reference regulations that are being removed, (iii) have no future application, or (iv) relate to other regulations made final by this document.

The Department of the Treasury (Treasury Department) and the IRS published proposed regulations (REG–132529–17) in the **Federal Register** (85 FR 18496) on April 2, 2020 (proposed regulations). A correction to the proposed regulations was published in the **Federal Register** (85 FR 21129) on April 16, 2020. The Treasury Department and the IRS received six public comments on the proposed regulations. Copies of the comments received are available for public inspection at *https://www.regulations.gov* or upon request. No public hearing was requested, and none was held.

After consideration of all of the comments received on the proposed regulations, the proposed regulations are adopted as amended by this Treasury decision (final regulations).

Summary of Comments and Explanation of Revisions

This section discusses the public comments received on the proposed regulations, explains the revisions adopted in the final regulations in response to those comments, and describes guidance the Treasury Department and the IRS are providing contemporaneously with publication of the final regulations in the **Federal Register**.

1. Comments and Changes Relating to § 1.807–1 of the Proposed Regulations

Section 807(d) of the Code provides the method of computing life insurance reserves for purposes of determining the income of an insurance company subject to Federal income tax under subchapter L of chapter 1 of the Code (subchapter L). Section 807(d)(1)(A) provides generally that the amount of life insurance reserves for a life insurance contract (other than a variable contract subject to section 807(d)(1)(B)) is the greater of (i) the net surrender value of such contract, or (ii) 92.81 percent of the reserve determined under the tax-reserve method applicable to the contract under section 807(d)(3).

Section 1.807–1(a) of the proposed regulations (proposed § 1.807–1(a)) provides that no asset adequacy reserve may be included in the amount of life insurance reserves under section 807(d). Proposed § 1.807–1(a) describes an asset adequacy reserve as ''includ[ing] any reserve that is established as an additional reserve based upon an analysis of the adequacy of reserves that would otherwise be established or any reserve that is not held with respect to a particular contract.'' Further, proposed § 1.807–1(a) provides that an asset adequacy reserve is ''any reserve or

portion of a reserve that would have been established pursuant to an asset adequacy analysis required by the National Association of Insurance Commissioner's Valuation Manual 30 as it existed on December 22, 2017, the date of enactment of Public Law 115–97 . . . .''

Two commenters requested that the first quoted provision be changed to provide that asset adequacy reserves are those reserves established pursuant to an analysis of the adequacy of reserves only if that analysis is pursuant to the requirements of the National Association of Insurance Commissioners' (NAIC) Valuation Manual 30. Both commenters suggested the final regulations state what an asset adequacy reserve ''is'' as opposed to what it ''includes.'' Moreover, both commenters would remove the language that includes within the definition of ''asset adequacy reserve'' any reserve that is not held with respect to a particular contract.

The final regulations generally incorporate these comments. The final regulations, however, also incorporate in the definition of asset adequacy reserves any reserve that is similar to an asset adequacy reserve that is determined under the NAIC's requirements as of the date the reserve is determined.

With respect to the second provision previously quoted, one commenter proposed removing the December 22, 2017, fixed date and replacing it with a reference to ''the date the reserve is determined.'' The commenter believed that such a change would make the provision more consistent with section 807(d)(3), which generally requires using the tax reserve method that is applicable as of the date the reserve is determined.

The final regulations do not adopt this suggestion. Section 807(d)(3) specifically provides that the tax reserve method (for example, the Commissioners' Reserve Valuation Method (CRVM) or Commissioners' Annuity Reserve Valuation Method (CARVM)) to be used in determining a reserve is the tax reserve method that is applicable when the reserve is determined. No such rule exists with respect to asset adequacy reserves.

The reserves determined based on the application of those parts of the NAIC Valuation Manual, as it existed when the TCJA was enacted, that implement and define CRVM and CARVM are not asset adequacy reserves. *See* Staff of the Joint Committee on Taxation, 115th Cong., General Explanation of Public Law 115–97, 235 (Comm. Print 2018) (Bluebook) (''Under NAIC-prescribed principle-based reserve methodology in effect at the time of the enactment of the provision, principle-base[d] reserves for any contract do not include any asset adequacy reserve component.'') (citation omitted). On the other hand, any additional reserve required to be set aside under Valuation Manual 30, as it existed when the TCJA was enacted, based on an analysis of the adequacy of the reserves otherwise determined, constitutes an asset adequacy reserve under § 1.807–1 of the final regulations.

One commenter proposed the addition of a general provision explaining the significance and selection of the tax reserve method for a contract. The final regulations include such a provision.

The commenter also proposed the addition of an example illustrating the determination of life insurance reserves under section 807(d)(1) and the exclusion of asset adequacy reserves from life insurance reserves. The Treasury Department and the IRS did not include the example in the final regulations, but the principles illustrated by the example are explained in this preamble.

2. Comments and Changes Relating to § 1.807–4 of the Proposed Regulations

Section 807(f)(1) of the Code provides that if the basis for determining any item referred to in section 807(c) as of the close of any taxable year differs from the basis for such determination as of the close of the preceding taxable year, then so much of the difference between (A) the amount of the item at the close of the taxable year, computed on the new basis, and (B) the amount of the item at the close of the taxable year, computed on the old basis, as is attributable to contracts issued before the taxable year must be taken into account under section 481 as adjustments attributable to a change in method of accounting initiated by the taxpayer and made with the consent of the Secretary.

Section 1.807–4 of the proposed regulations (proposed § 1.807–4) provides guidance relating to both the change in basis of computing reserves of a life insurance company and the change in basis of computing life insurance reserves of an insurance company other than a life insurance company (a nonlife insurance company). Under proposed § 1.807–4(a), a change in basis of computing an item referred to in section 807(c) is a change in method of accounting for purposes of § 1.446–1(e), unless § 1.446–1(e) provides otherwise. Accordingly, under proposed § 1.807–4(a), both a life insurance company changing the basis of computing an item referred to in section 807(c) and a nonlife insurance company changing the basis of computing life insurance reserves must follow the administrative procedures prescribed by the Commissioner of Internal Revenue or his delegate (Commissioner) to obtain the consent of the Commissioner to such a change.

A. Relationship Between Section 446 and Subchapter L

One commenter suggested that § 1.807–4(a) state at the outset that section 807(f) treats a change in basis of computing reserves as a change in method of accounting. The commenter thought this would better establish why § 1.446–1(e) applies to the change in basis of computing reserves. The final regulations incorporate this suggestion. The amendment of section 807(f) by the TCJA led to the requirement in § 1.807–4(a) that changes in basis of computing an item referred to in section 807(c) must follow the same administrative procedures as other changes in method of accounting. Accordingly, this Treasury decision removes or obsoletes contrary guidance (for example, § 1.806–4 and Rev. Rul. 94–74, 1994–2 C.B. 157).

Another commenter took the position that a change in basis of computing an item referred to in section 807(c) is not a change in method of accounting that should require consent under section 446(e). The commenter believed that the IRS's consent should be needed under section 481(c) only to reflect a multi-year spread of a section 481(a) adjustment that may result from a change in basis of computing reserves. The Treasury Department and the IRS do not agree with this position. The computation of reserves has always been a method of accounting. *See Am. Gen. Life & Accident Ins. Co.* v. *United States,* 90–1 USTC (CCH) ¶ 50,010 (M.D. Tenn. 1989) (''[W]hile the government is correct in classifying the change at issue as a change in method of accounting, it is also more specifically a change in the method of computing reserves.''); Rev. Rul. 94–74 (stating that ''§ 807(f) is a more specific application of the general tax rules governing a change in method of accounting''). Under the specific provisions of former section 807(f), the general change in method of accounting procedures did not apply to a change in basis of computing reserves. With the TCJA's amendment to section 807(f), the procedures generally applicable to a change in method of accounting apply to a change in basis of computing reserves under section 807(c). *See* Bluebook at 228 (stating that a company that changes its method of computing

reserves must comply with applicable IRS procedures).

The same commenter recommended that if the final regulations do not remove the requirement that a change in basis of computing reserves under section 807(f) requires consent under section 446(e), then the preamble to the final regulations should clarify that section 446(b) does not apply to the determination of insurance reserves. This recommendation is similar to another commenter's recommendation that the preamble should acknowledge that the application of the consent provisions of section 446(e) and § 1.446–1(e) does not affect the role of sections 811(a) and 807(d) with respect to the determination of section 807(c) reserves.

Except in extraordinary circumstances, section 446(b) does not affect the requirement that a life insurance company compute its reserves for Federal income tax purposes as required by subchapter L. Similarly, subchapter L does not affect the requirement under section 446(e) that an insurance company secure the consent of the Commissioner before changing its basis of computing reserves.

B. Examples in § 1.807–4(d)

Proposed § 1.807–4 contains four examples illustrating the principles of proposed § 1.807–4(a) through (c). One commenter suggested several clarifications to Example 1 and Example 2 in proposed § 1.807–4(d). Additionally, the commenter requested additional guidance on how the standard for what constitutes a change in basis of computing reserves applies to frequently-encountered fact patterns involving life insurance reserves, such as under principle-based reserve methodologies.

The final regulations do not include what had been Example 1 and Example 2 in proposed § 1.807–4(d). The principles illustrated in these examples are sufficiently illustrated in the remaining examples. Moreover, the Treasury Department and the IRS are providing additional guidance on the fact patterns that constitute a change in basis of computing life insurance reserves in Rev. Rul. 2020–19, 2020–40 I.R.B. 611, released contemporaneously with publication of these final regulations in the **Federal Register**.

C. Automatic Consent Procedures for Reserves of Nonlife Insurance Companies

Currently, section 26.04 of Rev. Proc. 2019–43, 2019–48 I.R.B. 1107, provides for automatic consent to a change in method of accounting if that change relates to section 807(c) items (which include life insurance reserves for a nonlife insurance company). One commenter requested that the same treatment be extended to changes in method of accounting for the unearned premium reserves and the unpaid loss reserves of nonlife insurance companies.

The final regulations do not incorporate this request, and the Treasury Department and the IRS do not anticipate that Rev. Proc. 2019–43 will be amended to allow for the requested automatic consent. The automatic consent procedures provided in section 26.04 of Rev. Proc. 2019–43 to life insurance companies for a change in basis of computing reserves and to nonlife insurance companies for a change in basis of computing life insurance reserves were a response to the specific change in section 807(f) made by the TCJA. No such change was made by the TCJA for unearned premium reserves or unpaid loss reserves of nonlife insurance companies.

D. Obsoleting of Revenue Rulings and Notice

The preamble to the proposed regulations proposes obsoleting the following revenue rulings because they are inconsistent with section 807(f), as amended by the TCJA: Rev. Rul. 2002–6, 2002–1 C.B. 460, Rev. Rul. 94–74, 1994–2 C.B. 157, Rev. Rul. 80–117, 1980–1 C.B. 143, Rev. Rul. 80–116, 1980–1 C.B. 141, Rev. Rul. 78–354, 1978–2 C.B. 190, Rev. Rul. 77–198, 1977–1 C.B. 190, Rev. Rul. 75–308, 1975–2 C.B. 264, Rev. Rul. 74–57, 1974–1 C.B. 163, Rev. Rul. 70–568, 1970–2 C.B. 140, Rev. Rul. 70–192, 1970–1 C.B. 153, Rev. Rul. 69–444, 1969–2 C.B. 145, Rev. Rul. 65–240, 1965–2 C.B. 236, Rev. Rul. 65–233, 1965–2 C.B. 228, Rev. Rul. 65–143, 1965–1 C.B. 261.

One commenter believes Rev. Rul. 2002–6, Rev. Rul. 94–74, and Rev. Rul. 69–444 contain principles that provide guidance on what constitutes a change in basis of computing reserves and that additional guidance is needed if these revenue rulings are obsoleted. While this Treasury decision obsoletes those revenue rulings, the Treasury Department and the IRS are providing additional guidance on the fact patterns that constitute a change in basis of computing life insurance reserves contemporaneously with publication of the final regulations in the **Federal Register**. *See* Rev. Rul. 2020–19.

The preamble to the proposed regulations also proposes to obsolete Notice 2010–29, 2010–15 I.R.B. 547, which provided interim guidance relating to variable annuity contracts as a result of the adoption by the NAIC of Actuarial Guideline 43, which describes a principle-based reserve method. No comments were received regarding this proposed obsolescence, and this Treasury decision obsoletes Notice 2010–29.

E. Revising Section 26.04 of Rev. Proc. 2019–43

The preamble to the proposed regulations describes revisions that the Treasury Department and the IRS intend to make to section 26.04 of Rev. Proc. 2019–43. First, section 26.04(2)(b)(ii) of Rev. Proc. 2019–43 provides that multiple changes during the same taxable year for the same type of contract are considered a single change in basis and the effects of such changes are netted and treated as a single section 481(a) adjustment. Section 807(f)(1), however, provides that the section 481(a) adjustment is the difference between the amount of any item referred to in section 807(c) computed on the new basis and the amount of such item computed on the old basis. Accordingly, the Treasury Department and the IRS intend to revise section 26.04 of Rev. Proc. 2019–43 to require netting of the section 481(a) adjustments at the level of each item referred to in section 807(c) so there is a single section 481(a) adjustment for each of the items referred to in section 807(c).

Second, section 26.04(1) of Rev. Proc. 2019–43 provides that the automatic change procedures apply to a nonlife insurance company. The Treasury Department and the IRS intend to revise section 26.04 of Rev. Proc. 2019–43 to clarify the manner in which nonlife insurance companies implement changes to the basis of computing life insurance reserves (as defined in section 816(b)) during a taxable year (year of change). Specifically, the clarification would provide that, if a nonlife insurance company changes the basis of computing its life insurance reserves, then for purposes of applying section 832(b)(4), (i) for the year of change, life insurance reserves at the end of the year of change with respect to contracts issued before the year of change are determined on the old basis and (ii) for the year following the year of change, life insurance reserves at the end of the preceding taxable year with respect to contracts issued before the year of change are determined on the new basis. Life insurance reserves attributable to contracts issued during the year of change and thereafter must be computed on the new basis.

One commenter agreed with the intended revisions.

3. Comments and Changes Relating to § 1.807–3 of the Proposed Regulations

Section 13517 of the TCJA added section 807(e)(6) to the Code, which provides that the Secretary of the Treasury or his delegate (Secretary) ''shall require reporting (at such time and in such manner as the Secretary shall prescribe) with respect to the opening and closing balance of reserves and with respect to the method of computing reserves for purposes of determining income.'' In accordance with section 807(e)(6), § 1.807–3 of the proposed regulations (proposed § 1.807–3) provides that the IRS may require reporting on Form 1120–L with respect to the opening and closing balances of the items described in section 807(c) and with respect to the method of computing such items for the purposes of determining income.

One commenter requested further consultation with the life insurance industry before any additional reserve reporting requirements are implemented. According to the commenter, this consultation will be necessary to ensure that the information provided is useful to the government and that providing the information is not unduly burdensome to taxpayers relative to the information's utility.

The IRS understands the importance of obtaining the life insurance industry's input before changing the reporting requirements. Proposed § 1.807–3 is adopted as final by this Treasury decision, and the IRS expects to consult with the life insurance industry before making any changes to reporting requirements. Further, as discussed in the Special Analysis section of this preamble, any future changes to tax return form requirements stemming from this provision would be subject to burden analysis and public notice and comment under the Paperwork Reduction Act, which requirements the IRS is committed to follow.

4. Comments and Changes Relating to § 1.816–1 of the Proposed Regulations

Section 1.816–1(a) of the proposed regulations (proposed § 1.816–1(a)) provides that a reserve (other than an asset adequacy reserve) that is computed using a tax reserve method as defined in section 807(d)(3) and that meets the requirements of section 816(b)(1) and (b)(2) will not be disqualified as a life insurance reserve solely because the method used to calculate the reserve takes into account factors other than those prescribed by section 816(b)(1) and (b)(2). Thus, for instance, reserves calculated using principle-based reserve methodologies will not fail to qualify as life insurance reserves solely because the reserves might be calculated using certain factors in addition to assumed rates of interest and recognized mortality or morbidity tables.

One commenter requested the preamble for the final regulations state that in some cases the use of additional factors in computing reserves for taxable years prior to the effective date of these final regulations is not prohibited. The commenter did not want any negative inference that proposed § 1.816–1 is making permissible what was before impermissible (namely using certain additional factors in computing reserves).

The Treasury Department and the IRS agree that certain factors other than those prescribed by section 816(b)(1) and (b)(2) may be taken into account in determining life insurance reserves for taxable years prior to the effective date of these final regulations if the use of such factors would make the calculation of the reserve more accurate. *See, e.g., Mutual Benefit Life Insurance Co.* v. *Commissioner,* 488 F.2d 1101, 1106 (3d Cir. 1974).

5. Comments and Changes Relating to § 1.6012–2 of the Proposed Regulations

The Conference Report to the TCJA contemplates requiring the electronic filing of annual statements to improve reporting of insurance reserves, as necessary to carry out and enforce section 807. H.R. Rep. No. 115–466, at 478–79 (2017) (Conference Report). In response to the Conference Report, the proposed regulations propose to remove § 1.6012–2(c)(4), which prohibits an insurance company that files its Form 1120–L or Form 1120–PC electronically from attaching its annual statement (or pro forma annual statement) to its return.

One commenter stated that for some of the largest groups of companies, the size limits found in section 2.1.2 of IRS Publication 4164, *Modernized e-File (MeF) Guide to Software Developers and Transmitters, Processing Year 2020,* would likely be exceeded if the annual statement were to be filed electronically, and for other groups of companies, the size limit would likely be exceeded by the return and the annual statement when combined. The commenter suggested retaining the existing rule that electronic filers should not submit their annual statements with their returns, or alternatively, changing the requirement such that electronic filers must only submit limited parts of the annual statement.

The final regulations retain § 1.6012–2(c)(4), but it now provides that electronic filers must file their annual statement or a portion thereof in accordance with the applicable rules in the forms or instructions. The Treasury Department and the IRS anticipate that once the IRS has the capacity to accept the electronic filing of annual statements, the tax return forms and instructions will require electronic filing of all or portions of the annual statement. The IRS, however, expects to consult with the insurance industry before requiring such electronic filing.

6. Comments and Changes Relating to § 1.817A–1 of the Proposed Regulations

The proposed regulations propose to remove parts of § 1.817A–1 that pertain to sections 807(d)(2)(B) and 812(b)(2)(A). Those sections were removed by the TCJA. The notice of proposed rulemaking requested comments on whether § 1.817A–1 should continue to provide a current market interest rate to be used in computing reserves under section 807(c)(3) during the temporary guarantee period of a modified guaranteed contract (MGC) given that the TCJA modified the flush language of section 807(c) to provide a specific interest rate to be used in making section 807(c)(3) computations.

One commenter recommended that § 1.817A–1 be removed in its entirety. The final regulations remove provisions relating to section 807(c)(3) but retain the provision (and related definitions) that waives section 811(d) for non-equity indexed MGCs during the temporary guarantee period, because these rules continue to remain relevant.

7. Conforming Changes to Regulations

The proposed regulations also propose to remove or amend the following regulatory provisions: §§ 1.338–11, 1.381(c)(22)–1, 1.801–2, 1.801–5, 1.801–7, 1.801–8, 1.806–4, 1.809–2, 1.809–5, 1.810–3, 1.817A–0, 1.818–2, 1.818–4, 1.848–1, and 301.9100–6T. These provisions were proposed to be removed or amended because they related to repealed or amended law or to regulations that were proposed to be removed or amended or they had no future application.

One commenter suggested that parts of paragraph (a) of § 1.801–7, a provision proposed to be removed in its entirety, continue to remain relevant under section 817. By its terms, § 1.801–7 is not applicable to any taxable year beginning after 1962. *See* § 1.801–7(d). Because § 1.801–7 is not applicable to any taxable year after 1962, the commenter's suggestion is not adopted.

More generally, the commenter requested removal of more ''deadwood'' provisions than provided for in the notice of proposed rulemaking. The removal of additional ''deadwood'' provisions is beyond the scope of this rulemaking. No other specific comments were received with respect to these proposed conforming changes.

8. Comments Regarding Foreign-Issued Life Insurance and Annuity Contracts

The Code contains a statutory definition of a life insurance contract under section 7702, rules applicable to certain flexible premium contracts under section 101(f), distribution on death requirements under section 72(s), and diversification requirements under section 817(h). These statutory requirements, which reflect Congress's concern that the tax-favored treatment generally accorded life insurance and annuity contracts was available to contracts that were too investment oriented or provided for undue tax deferral, are relevant to the tax treatment of a policyholder, annuitant, or beneficiary as well as the entity that issues or reinsures a life insurance or annuity contract.

In response to a request to promulgate regulations that exempt certain contracts from the statutory requirements of sections 72(s), 101(f), 817(h), and 7702, the preamble to the proposed regulations asks for comments on whether such regulations should be promulgated. As described in the preamble to the proposed regulations, the requested exemption would apply to contracts issued by a non-U.S. insurance company and reinsured by a U.S. insurance company if (i) no policyholder, insured, annuitant, or beneficiary with respect to the contract is a U.S. person and (ii) such contract is regulated as a life insurance or annuity contract by a foreign regulator. The preamble to the proposed regulations states that the Treasury Department and the IRS are evaluating the request, including whether to address it as part of this rulemaking, and requests comments including in respect of statutory interpretation and implications in various contexts and provisions outside of subchapter L.

Three comments were received. One commenter (whose comment was endorsed by another commenter) generally repeated the original request (but narrowed the requested exemptions to only sections 7702 and 72(s)) and stated that such regulations would assist U.S. reinsurers of exempted contracts to qualify as life insurance companies under section 816. The commenter asserted that the proposal would (i) align with domestic and U.S. international tax policy considerations because they would be applicable only to contracts owned by and benefitting persons not subject to Federal income tax and (ii) support policy goals of the TCJA to bring profitable business operations into the United States. The commenter further asserted that such regulations would not (i) affect the character, source, or separate category basket in which income derived from the reinsurance is included for U.S. withholding tax or foreign tax credit purposes, (ii) alter the application of any applicable U.S. withholding tax on income from sources within the United States paid by a domestic insurance company to any foreign corporation, or (iii) affect the treatment under section 59A of any claims and benefits or any other amounts paid by a domestic insurance company to a foreign related party under a reinsurance contract. The commenter acknowledged that it may not be possible for a U.S. insurance company to know the identity of a contract's underlying beneficial owners unless the beneficial owner and the policyholder were the same person and requested that U.S. insurance companies be able to rely upon the Foreign Account Tax Compliance Act beneficial ownership rules to determine if a contract has a U.S. person as a beneficial owner.

Another commenter stated that tax reserve deductions are already available for failed life insurance contracts under other provisions of section 807(c), just in a different amount than would be the case with life insurance reserve treatment. The commenter stated that there could nevertheless be benefits of conformity and suggested an alternative proposal. The commenter recommended that the Treasury Department and the IRS use their authority under sections 811(a) and 7805(a) to issue regulations that provide that reserves held by a U.S. reinsurer relating to indemnity reinsurance of contracts issued by a foreign insurance company be treated as life insurance reserves for purposes of subchapter L if: (i) The underlying contracts are issued by a foreign insurer, (ii) such contracts are regulated as life insurance or annuity contracts both under the applicable law in the foreign jurisdiction and by the regulator of the reinsuring domestic insurance company, (iii) the NAIC prescribes reserves for such contracts that are computed as reserves applicable to life insurance or annuity contracts, and (iv) the initial issuance of the insurance contract to the policyholder was not through the conduct of a trade or business within the United States.

The considerations surrounding the issuance of the requested regulations are complex and require further study. Accordingly, the Treasury Department and the IRS have decided not to issue the requested regulations as part of this rulemaking and will continue to carefully consider these comments.

Applicability Dates

The rules in the final regulations apply to taxable years beginning after *October 13, 2020.*

A taxpayer may rely on § 1.807–4 or 1.816–1 of the proposed regulations for a taxable year beginning after December 31, 2017, and on or before *October 13, 2020.* Alternatively, a taxpayer may choose to apply § 1.807–4, 1.816–1, or 1.817A–1(b) of the final regulations to a taxable year beginning after December 31, 2017, the effective date of the revision of section 807 made by the TCJA, and on or before *October 13, 2020,* provided the taxpayer consistently applies the relevant regulation to that taxable year and all subsequent taxable years. See section 7805(b)(7).

Effect on Other Documents

The following revenue rulings are obsoleted for taxable years beginning after *October 13, 2020:* Rev. Rul. 2002–6, 2002–1 C.B. 460, Rev. Rul. 94–74, 1994–2 C.B. 157, Rev. Rul. 80–117, 1980–1 C.B. 143, Rev. Rul. 80–116, 1980–1 C.B. 141, Rev. Rul. 78–354, 1978–2 C.B. 190, Rev. Rul. 77–198, 1977–1 C.B. 190, Rev. Rul. 75–308, 1975–2 C.B. 264, Rev. Rul. 74–57, 1974–1 C.B. 163, Rev. Rul. 70–568, 1970–2 C.B. 140, Rev. Rul. 70–192, 1970–1 C.B. 153, Rev. Rul. 69–444, 1969–2 C.B. 145, Rev. Rul. 65–240, 1965–2 C.B. 236, Rev. Rul. 65–233, 1965–2 C.B. 228, and Rev. Rul. 65–143, 1965–1 C.B. 261.

Notice 2010–29 is obsoleted for taxable years beginning after December 31, 2017.

Special Analyses

This regulation is not subject to review under section 6(b) of Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Treasury Department and the Office of Management and Budget regarding review of tax regulations.

Paperwork Reduction Act

The collection of information relating to the final regulations was submitted to the Office of Management and Budget for review under OMB Control Number 1545–0123 in accordance with the

Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)).

In response to the Conference Report and comments on the proposed regulations, § 1.6012–2(c)(4), as revised by the final regulations, provides that an insurance company should include the insurance company's annual statement (as defined in § 1.6012–2(c)(5)), or a portion thereof, with an electronically filed Federal income tax return (Form 1120–L for a life insurance company and Form 1120–PC for a nonlife insurance company) as required by the applicable forms or instructions. Federal income tax items of an insurance company are determined in part based upon the insurance company's annual statement. Providing the annual statement, or a portion thereof, to the IRS with an electronically filed Federal income tax return will allow the IRS to better and more efficiently examine an insurance company's Federal income tax return. However, until the applicable forms or instructions are revised, the current rules for including the annual statement with an electronically filed Federal income tax return continue to apply.

For purposes of the Paperwork Reduction Act, the burden for the collection of information associated with § 1.6012–2 of the final regulations will be reflected in the burden on the Form 1120–L and in the burden on the Form 1120–PC (OMB Control Number 1545–0123) when the burden for each is revised to reflect the collection of information associated with § 1.6012–2 of the final regulations. The respondents to the collection of information are life insurance companies that file the Form 1120–L electronically and nonlife insurance companies that file the Form 1120–PC electronically. The Treasury Department and the IRS expect to consult with the life insurance industry before making any changes to these reporting requirements.

In accordance with section 807(e)(6), as added by the TCJA, § 1.807–3 of the final regulations provides that the IRS may require reporting on Form 1120–L of the opening balance and closing balance of items described in section 807(c) (for example, life insurance reserves) and the method of computing such items for purposes of determining income. Providing this information will allow the IRS to better examine an insurance company's Federal income tax return. However, under § 1.807–3 of the final regulations, this information is not required to be provided on any prescribed forms, such as the Form 1120–L, until the relevant prescribed forms or instructions are revised to require the reporting of such information.

For purposes of the Paperwork Reduction Act, the burden for the collection of information associated with § 1.807–3 of the final regulations will be reflected in the burden on the Form 1120–L (OMB Control Number 1545–0123) when the burden is revised to reflect the collection of information associated with § 1.807–3 of the final regulations. The respondents to the collection of information are life insurance companies that file a Form 1120–L. The Treasury Department and the IRS expect to consult with the life insurance industry before making any changes to these reporting requirements.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Regulatory Flexibility Act

It is hereby certified that the final regulations will not have a significant economic impact on a substantial number of small entities pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Section 13517 of the TCJA added section 807(e)(6) to the Code. Under section 807(e)(6), the Secretary may require reporting (at such time and in such manner as the Secretary shall prescribe) with respect to the opening balances and the closing balances of reserves and with respect to the method of computing reserves for purposes of determining income. Section 1.807–3 of the final regulations allows the IRS to require the reporting of this information on any prescribed forms, such as the Form 1120–L.

The Conference Report provides that, under existing authority, the Secretary may require an insurance company to provide its annual statement via a link, electronic copy, or other similar means. *See* Conference Report at 478–79. Section 1.6012–2(c)(4) of the final regulations provides that an insurance company should include the insurance company's annual statement, or a portion thereof, with an electronically filed Federal income tax return (Form 1120–L for a life insurance company and Form 1120–PC for a nonlife insurance company) as required by the applicable forms or instructions. Under current procedures, an insurance company can only electronically file a Form 1120–L or Form 1120–PC if the insurance company is part of an affiliated group filing a consolidated return, the parent of which files a Form 1120. Although data are not readily available, the Treasury Department and the IRS expect that any reporting burden associated with § 1.6012–2(c) will fall primarily on financial and insurance firms with annual receipts greater than $41.5 million and, therefore, will not affect a substantial number of small entities. *See* 13 CFR 121.201, sector 52 (finance and insurance).

As stated in the preceding paragraph, the rule is not expected to affect a substantial number of small entities; however, even if a substantial number of small entities were affected, the economic impact of the regulation is not likely to be significant. Section 1.807–3 of the final regulations is limited in scope to time and manner of information reporting, and any economic impact associated with this regulation is expected to be minimal. Further, the information reported to the IRS is information that the insurance company has readily available and the Treasury Department and the IRS expect to consult with the life insurance industry before making any changes to the reporting requirements. Accordingly, the Secretary certifies that the final regulations will not have a significant economic impact on a substantial number of small entities.

Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding the Final Regulations was submitted to the Chief Counsel for the Office of Advocacy of the Small Business Administration for comment on its impact on small business, and no comments were received from the Chief Counsel for the Office of Advocacy of the Small Business Administration.

Drafting Information

The principal author of these regulations is Ian Follansbee, Office of Associate Chief Counsel (Financial Institutions and Products), IRS. However, other personnel from the Treasury Department and the IRS participated in their development.

Statement of Availability of IRS Documents

The IRS notices, revenue procedures, and revenue rulings cited in this preamble are published in the Internal Revenue Bulletin (or Cumulative Bulletin) and are available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at *http://www.irs.gov.*

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 301 are amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by adding a sectional authority for § 1.807–3 in numerical order to read in part as follows:

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

* * * * *

Section 1.807–3 also issued under 26 U.S.C. 807(e)(6).

* * * * *

■ **Par. 2.** Section 1.338–11 is amended by:

■ 1. Revising paragraph (d)(2).

■ 2. In paragraph (d)(3)(i), removing the language ''and (d)(3)(iii)'' and adding ''through (iv)'' in its place.

■ 3. Redesignating paragraph (d)(3)(iii) as paragraph (d)(3)(iv).

■ 4. Adding a new paragraph (d)(3)(iii).

■ 5. Revising newly redesignated paragraph (d)(3)(iv).

■ 6. Adding paragraph (d)(7)(iii).

The revisions and additions read as follows:

§ 1.338–11 Effect of section 338 election on insurance company targets.

* * * * *

(d) * * *

(2) *Exception.* New target is not treated as receiving additional premium under paragraph (d)(1) of this section if it is under state receivership as of the close of the taxable year for which the increase in reserves occurs.

(3) * * *

(iii) *Increases in section 807(c) reserves.* The positive amount with respect to the items referred to in section 807(c) other than discounted unpaid loss reserves is the sum of the net increases in such items that are required to be taken into account under section 807(f).

(iv) *Increases in other reserves.* The positive amount with respect to reserves other than discounted unpaid loss reserves and other items referred to in section 807(c) is the net increase of those reserves due to changes in estimate, methodology, or other assumptions used to compute the reserves (including the adoption by new target of a methodology or assumptions different from those used by old target).

* * * * *

(7) * * *

(iii) *Application of paragraphs (d)(2) and (3) of this section.* Paragraphs (d)(2) and (3) of this section apply to taxable years beginning after *October 13, 2020.* For taxable years beginning on or before such date, see paragraph (d) of this section as contained in 26 CFR part 1 revised as of April 1, 2020.

* * * * *

§ 1.381(c)(22)–1 [Amended]

■ **Par. 3.** In § 1.381(c)(22)–1, paragraph (b)(6) is removed and reserved.

§ 1.801–2 [Amended]

■ **Par. 4.** Section 1.801–2 is amended in the second sentence by removing the language ''1.801–7'' and adding ''1.801–6'' in its place.

§ 1.801–5 [Amended]

■ **Par. 5.** In § 1.801–5, paragraph (c) is removed and reserved.

§ 1.801–7 [Removed and reserved]

■ **Par. 6.** Section 1.801–7 is removed and reserved.

§ 1.801–8 [Amended]

■ **Par. 7.** In § 1.801–8, paragraph (e) is removed and reserved.

§ 1.806–4 [Removed]

■ **Par. 8.** Section 1.806–4 is removed.

■ **Par. 9.** Section 1.807–1 is revised to read as follows:

§ 1.807–1 Computation of life insurance reserves.

(a) *Tax reserve method.* For purposes of determining the amount of life insurance reserves for a contract under section 807(d)(1), section 807(d)(2) requires the determination of the amount of the reserve for a contract using the tax reserve method applicable to the contract. Under section 807(d)(3), the tax reserve method applicable to the contract is the Commissioners' Reserve Valuation Method (CRVM), the Commissioners' Annuities Reserve Valuation Method (CARVM), or other reserve method prescribed by the National Association of Insurance Commissioners (NAIC) that applies to the contract as of the date the reserve is determined. If the NAIC has not prescribed a reserve method that covers the contract, a reserve method that is consistent with the CRVM, the CARVM, or other NAIC-prescribed method as of the date the reserve is determined (whichever is most appropriate) must be used.

(b) *No asset adequacy reserve.* The life insurance reserve determined under section 807(d)(1) does not include any asset adequacy reserve.

(1) An asset adequacy reserve is—

(i) Any reserve that is established as an additional reserve based upon an analysis of the adequacy of reserves that would otherwise be established in accordance with the requirements set forth in the NAIC Valuation Manual, such as the CRVM or CARVM as applicable, or

(ii) Any similar reserve.

(2) In determining whether a reserve is a life insurance reserve, the label placed on such reserve is not determinative, provided, however, any reserve or portion of a reserve that would have been established pursuant to an asset adequacy analysis required by the NAIC's Valuation Manual 30 as it existed on December 22, 2017, the date of enactment of Public Law 115–97, is an asset adequacy reserve.

(c) *Applicability date.* The rules of this section apply to taxable years beginning after *October 13, 2020.*

■ **Par. 10.** Sections 1.807–3 and 1.807–4 are added before the undesignated center heading ''Gain and Loss From Operations'' to read as follows:

§ 1.807–3 Reporting of reserves.

(a) *Reserve reporting.* A life insurance company subject to tax under section 801 is required to make a return on Form 1120–L, *U.S. Life Insurance Company Income Tax Return.* The Internal Revenue Service may require reporting with respect to the opening balance and closing balance of items described in section 807(c) and with respect to the method of computing such items for purposes of determining income. Such reporting may provide for the manner in which separate account items are reported. (See section 6011 and § 301.6011–1 of this chapter.)

(b) *Applicability date.* The rules of this section apply to taxable years beginning after *October 13, 2020.*

§ 1.807–4 Adjustment for change in computing reserves.

(a) *Requirement to follow administrative procedures.* Under section 807(f), a change in basis of computing an item referred to in section 807(c) is a change in method of accounting. Accordingly, except as provided in § 1.446–1(e), a change in basis of computing an item referred to in section 807(c) is a change in method of accounting for purposes of § 1.446–1(e). Before computing such item under a new basis, a life insurance company must obtain the consent of the Commissioner of Internal Revenue or his delegate (Commissioner) pursuant to administrative procedures prescribed by the Commissioner. Similarly, an insurance company other than a life

insurance company (a nonlife insurance company) that changes its basis of computing life insurance reserves must obtain the consent of the Commissioner pursuant to administrative procedures prescribed by the Commissioner.

(b) *Section 481 adjustment*—(1) *In general.* If the basis of computing any item referred to in section 807(c) as of the close of any taxable year (the year of change) differs from the basis of computing such item at the close of the preceding taxable year, then the difference between the amount of the item at the close of the taxable year computed on the new basis and the amount of the item at the close of the taxable year computed on the old basis that is attributable to contracts issued before the taxable year, is taken into account under section 481 and §§ 1.481–1 through 1.481–5 as an adjustment attributable to a change in method of accounting.

(2) *Loss of company status.* If for any taxable year a taxpayer that was an insurance company for the year of change is no longer an insurance company, then the taxpayer must take into account in the preceding taxable year (that is, the last taxable year it was an insurance company) the balance of any section 481(a) adjustment determined under paragraph (b)(1) of this section. A taxpayer that was an insurance company for the year of change does not accelerate the balance of any section 481(a) adjustment determined under paragraph (b)(1) of this section merely because it changes from a life insurance company to a nonlife insurance company or because it changes from a nonlife insurance company to a life insurance company.

(c) *Effect on determining increase or decrease in reserves*—(1) *Effect under section 807(a) and (b).* If there is a change in basis of computing any item referred to in section 807(c) for a taxable year, then, for purposes of section 807(a) and (b), the closing balance for such item for the year of change with respect to contracts issued before the year of change is determined on the old basis and the opening balance for such item for the next taxable year for such contracts is computed on the new basis.

(2) *Effect under section 832.* The following rules apply for purposes of section 832(b)(4):

(i) For the year of change, life insurance reserves at the end of the year of change with respect to contracts issued before the year of change are determined on the old basis.

(ii) For the taxable year following the year of change, life insurance reserves at the end of the preceding taxable year (that is, the year of change) with respect to contracts issued before the year of change are determined on the new basis.

(d) *Examples.* The principles of paragraphs (a) through (c) of this section are illustrated by the following examples. For purposes of these examples and except as otherwise provided, IC is a life insurance company within the meaning of section 816(a) that issues life insurance and annuity contracts. IC is required to determine the amount of life insurance reserves under section 807(d) and to take net increases or decreases in the reserves into account in computing life insurance company taxable income. IC's reserve for each insurance contract at issue exceeds the net surrender value for such contract and does not exceed the statutory reserve for such contract. IC is on an accrual method and uses a calendar year as its taxable year.

(1) *Example 1*—(i) *Facts.* In 2021, IC changed the basis of computing the amount of life insurance reserves for a certain type of life insurance contract as described in section 807(f). Both the basis used for computing the reserves for the relevant contracts at the close of the 2020 taxable year (old basis) and the basis of computing the reserves for the relevant type of contract at the close of the 2021 taxable year (new basis) are consistent with the applicable Commissioners' Reserve Valuation Method. IC followed the administrative procedures prescribed by the Commissioner to obtain consent to change the basis of computing these reserves. IC determined that the life insurance reserves as of December 31, 2021, for the relevant contracts issued prior to 2021 were $110x if computed using the old method and $120x if computed using the new method. IC also determined that the life insurance reserves as of December 31, 2021, for the relevant contracts issued during 2021 were $15x using the new basis.

(ii) *Analysis.* IC must take into account under section 481 and the administrative procedures prescribed by the Commissioner the $10x difference between the reserves for the relevant contracts issued prior to 2021 computed under the old basis ($110x) and the reserves for such contracts computed under the new basis ($120x). For purposes of determining any net increase or net decrease in reserves in taxable year 2021 under section 807(a) or (b), IC's closing balance of life insurance reserves computed under section 807(d) with respect to the relevant contracts is $110x for contracts issued prior to 2021 (computed on the old basis) and $15x for contracts issued during 2021 (computed on the new basis). IC's opening balance in 2022 for life insurance reserves for the relevant contracts is $135x (computed on the new basis).

(2) *Example 2*—(i) *Facts.* The facts are the same as in paragraph (d)(1) of this section (the facts in *Example 1*), except that IC is an insurance company that is not a life insurance company. IC is required to compute taxable income under section 832.

(ii) *Analysis.* IC must take into account under section 481 and the administrative procedures prescribed by the Commissioner the $10x difference between the reserves for the relevant contracts issued prior to 2021 computed under the old basis ($110x) and the reserves for such contracts computed under the new basis ($120x). For purposes of determining the premiums earned on insurance contracts during the taxable year as described in section 832(b)(4) for the year of change, the life insurance reserves at the end of the taxable year are $110x for contracts issued prior to 2021 (computed on the old basis) and $15x for contracts issued during 2021 (computed on the new basis). For purposes of determining the premiums earned on insurance contracts during the taxable year as described in section 832(b)(4) for the taxable year following the year of change, the life insurance reserves at the end of the preceding taxable year (the year of change) with respect to relevant contracts are $135x (computed on the new basis).

(e) *Applicability date.* The rules of this section apply to taxable years beginning after *October 13, 2020.* However, a taxpayer may choose to apply the rules of this section for a taxable year beginning after December 31, 2017, the effective date of the revision of section 807 by Public Law 115–97, and on or before *October 13, 2020,* provided the taxpayer consistently applies the rules of this section to that taxable year and all subsequent taxable years. See section 7805(b)(7).

§ 1.809–2 [Removed and reserved]

■ **Par. 11.** Section 1.809–2 is removed and reserved.

§ 1.809–5 [Amended]

■ **Par. 12.** Section 1.809–5 is amended by removing the language ''and § 1.810–3'' from the last sentence of paragraph (a)(5)(iii).

§ 1.810–3 [Removed]

■ **Par. 13.** Section 1.810–3 is removed.

■ **Par. 14.** Section 1.816–1 is added before the undesignated center heading ''Miscellaneous Provisions'' to read as follows:

§ 1.816–1 Life insurance reserves.

(a) *Definition of life insurance reserves.* Except as provided in section 816(h), a reserve that meets the requirements of section 816(b)(1) and (2) will not be disqualified as a life insurance reserve solely because the method used to compute the reserve takes into account other factors, provided that the method used to compute the reserve is a tax reserve method as defined in section 807(d)(3) and that such reserve is not an asset adequacy reserve as described in § 1.807–1(b).

(b) *Applicability date.* The section applies to taxable years beginning after *October 13, 2020.*

However, a taxpayer may choose to apply the rules of this section for a taxable year beginning after December 31, 2017, the effective date of the revision of section 807 by Public Law 115–97, and on or before *October 13, 2020,* provided the taxpayer consistently applies the rules of this section to that taxable year and all subsequent taxable years. See section 7805(b)(7).

§ 1.817A–0 [Removed]

■ **Par. 15.** Section 1.817A–0 is removed.

■ **Par. 16.** Section 1.817A–1 is amended by:

■ 1. Removing paragraphs (a)(5) and (6).
■ 2. Revising paragraph (b).
■ 3. Removing paragraph (c).
■ 4. Redesignating paragraph (d) as paragraph (c).
■ 5. Revising newly designated paragraph (c).

The revisions read as follows:

§ 1.817A–1 Certain modified guaranteed contracts.

* * * * *

(b) *Waiver of section 811(d) for certain non-equity-indexed modified guaranteed contracts.* Section 811(d) is waived during the temporary guarantee period when applied to non-equity-indexed MGCs.

(c) *Applicability dates.* Paragraph (b) of this section applies to taxable years beginning after *October 13, 2020.* However, a taxpayer may choose to apply the rules of paragraph (b) of this section for a taxable year beginning after December 31, 2017, the effective date of the revision of section 807 by Public Law 115–97, and on or before *October 13, 2020,* provided the taxpayer consistently applies the rules of paragraph (b) of this section to that taxable year and all subsequent taxable years. See section 7805(b)(7). For taxable years beginning on or before *October 13, 2020,* see paragraph (b) of this section as contained in 26 CFR part 1 revised as of April 1, 2020.

§ 1.818–2 [Amended]

■ **Par. 17.** Section 1.818–2 is amended by removing paragraph (c).

§ 1.818–4 [Removed and reserved]

■ **Par. 18.** Section 1.818–4 is removed and reserved.

§ 1.848–1 [Amended]

■ **Par. 19.** Section 1.848–1 is amended in paragraph (b)(2)(i) by removing the language ''section 807(e)(4)'' and adding the language ''section 807(e)(3)'' in its place.

■ **Par. 20.** Section 1.6012–2 is amended by:

■ 1. Revising paragraph (c)(4).
■ 2. Revising paragraph (l).

The revisions read as follows:

§ 1.6012–2 Corporations required to make returns of income.

* * * * *

(c) * * *

(4) *Special rule for insurance companies filing their Federal income tax returns electronically.* If an insurance company described in paragraph (c)(1), (2), or (3) of this section files its Federal income tax return electronically, it must include on or with such return its annual statement (or pro forma annual statement), or a portion thereof, as and to the extent required by forms or instructions. If the full annual statement is not required to be included with the return, such statement must be available at all times for inspection by authorized Internal Revenue Service officers or employees and retained for so long as such statements may be material in the administration of any internal revenue law. See § 1.6001–1(e).

* * * * *

(l) *Applicability date.* Paragraph (c) of this section applies to any taxable year beginning after *October 13, 2020.* For taxable years beginning on or before *October 13, 2020,* see paragraph (c) of this section as contained in 26 CFR part 1 in effect on April 1, 2020.

PART 301—PROCEDURE AND ADMINISTRATION

■ **Par. 21.** The authority citation for part 301 continues to read in part as follows:

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

* * * * *

■ **Par. 22.** Section 301.9100–6T is amended by:

■ 1. Adding a title to the table in paragraph (a)(1).
■ 2. Removing from the table in paragraph (a)(1) the three entries for ''211'' and the entries for ''216(c)(1),'' ''216(c)(2),'' ''217(i),'' and ''217(l)(2)(B).''
■ 3. Removing and reserving paragraph (a)(2)(iii).
■ 4. Removing paragraph (a)(3)(v).
■ 5. In paragraph (a)(4):
■ i. Removing ''211 (Code section 810(b)(3)), 216(c) (1) and (2), 217(l),'' from the first sentence.
■ ii. Removing ''211 (Code sections 806(d)(4), and 807(d)(4)(C)), 217(i),'' from the second sentence.
■ iii. Removing the last sentence.

The addition reads as follows:

§ 301.9100–6T Time and manner of making certain elections under the Deficit Reduction Act of 1984.

(a) * * *

(1) * * *

Table 1 to Paragraph (A)(1)

* * * * *

Sunita Lough,

Deputy Commissioner for Services and Enforcement.

Approved: September 1, 2020.

David J. Kautter,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2020–20144 Filed 10–9–20; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2020–0511]

RIN 1625–AA00

Safety Zone; Spa Creek, Annapolis, MD

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for certain waters of Spa Creek. This action is necessary to provide for the safety of life on these navigable waters within Market Slip (Ego Alley), Annapolis, MD, during a film project on October 22, 2020 (alternate date October 23, 2020). This regulation prohibits persons and vessels from being in the safety zone unless authorized by the Captain of the Port Maryland-National Capital Region or a designated representative.

DATES: This rule is effective from 5 a.m. on October 22, 2020 through noon on October 23, 2020.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://*

www.regulations.gov, type USCG–2020–0511 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mr. Ron Houck, U.S. Coast Guard Sector Maryland-National Capital Region; telephone 410–576–2674, email *Ronald.L.Houck@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

Hoonigan Industries, of Long Beach, CA, notified the Coast Guard that it will be conducting a film project using barges and other marine equipment positioned at two locations in Spa Creek, at Annapolis, MD. In response, on September 11, 2020, the Coast Guard published a notice of proposed rulemaking (NPRM) titled ''Safety Zones; Spa Creek, Annapolis, MD'' (85 FR 56186). In that NPRM we proposed to establish 2 security zones—the first within a portion of Market Slip (Ego Alley) and the second across the width of Annapolis Harbor. The first safety zone was to be enforced from 5 a.m. to noon on October 19, 2020, or if necessary due to inclement weather on October 19, 2020, from 5 a.m. to noon on October 20, 2020. The second safety zone was to be enforced from 7 a.m. on October 20, 2020, through noon on October 22, 2020, or if necessary due to inclement weather continued through noon on October 23, 2020.

After NPRM had been sent to the Office of the Federal Register and scheduled for publication, the Coast Guard was notified by the film company that they were making three changes to the project. First, the filming date at Spa Creek within Market Slip (Ego Alley) was rescheduled from October 19, 2020, to October 22, 2020 (additional rain date of October 23, 2020, if needed.) Second, the company also informed the Coast Guard that another vessel would be used during filming at this location. No changes to the filming hours at this location were made. Filming is scheduled to take place from 5 a.m. to noon on October 22nd (with additional filming on October 23rd if necessary due to inclement weather on the preceding dates). Finally, the film company notified the Coast Guard that the filming scheduled for the location across the width of Spa Creek between Annapolis City Dock and Eastport had been cancelled.

Due to the date of the scheduled event, the Coast Guard did not have time to publish a supplemental notice of proposed rulemaking (SNPRM). To the extent, if any, that the Coast Guard's inability to publish a supplemental notice of proposed rulemaking invalidates the notice requirement required by the Administrative Procedure Act, the Coast Guard issues this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable and contrary to the public interest to do so. Immediate action is needed to protect persons and vessels from the hazards associated with this event. It is impracticable and contrary to the public interest to publish an NPRM or SNPRM because a final rule needs to be in place by October 22, 2020, to minimize potential danger to the film crew and nearby public.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable and contrary to the public interest because immediate action is needed to restrict vessel traffic to protect life, property and the environment and respond to the potential safety hazards associated with the film project.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port Maryland-National Capital Region (COTP) has determined that potential hazards associated with the film project will be a safety concern for anyone within Market Slip (Ego Alley), Annapolis, MD, during filming. The purpose of this rule is to ensure safety of vessels and the navigable waters in the safety zone before, during, and after the scheduled event.

IV. Discussion of Comments

We received 7 comments on our NPRM published September 11, 2020. The comments are available for public inspection at *www.regulations.gov* under docket USCG–2020–0511. We address the commenter's concerns below.

1. Is it necessary for the Coast Guard to issue this rule?

A few commenters questioned whether it was necessary for the Coast Guard to issue a rule (create a safety zone) for this event. The Coast Guard has determined that access to the water, shoreline to shoreline, in the area near where filming will take place needs to be restricted to ensure the safety of those involved in the filming and the nearby public. Safety zones are only necessary under certain conditions. Not every event on the water requires access to be restricted. A safety zone for this event is needed because the project is likely to pose an extra or unusual hazard to the safety of human life on and near the navigable waters of the United States at Market Slip (Ego Alley), Annapolis MD. Hazardous activities associated with the project include aerial stunt car jumps with minimum heights across the entire width of the waterway. Filming and associated activities may be conducted on the water or shore area.[1] The Coast Guard is issuing this rule under the authority of 46 U.S.C. 70034.

2. Why didn't the Coast Guard provide specifics about the filming project, such as what the company is filming?

Some commenters expressed concern about a lack of specificity of the planned activities associated with the film project. Certain details of the planned event were still being developed at the time of publishing the proposed rule. The Coast Guard wanted to ensure the public was afforded an opportunity to comment on its proposal, even if final details had not yet been provided by the film company. The Coast Guard is focused on the importance of identifying and mitigating the potential hazards posed by the event, not on items such as what the film project is actually filming or who may be involved.

3. Will all of Spa Creek be blocked?

One commenter requested clarification about whether the entire width of Spa Creek could be covered by the safety zone and whether it would include navigable waters immediately adjacent to the Annapolis City Dock.

[1] *See* 33 CFR 165.20 (definition of ''safety zone'').

Yes, it would have. However, with the changes made by the film company, the safety zone no longer covers all of Spa Creek, but covers only all navigable waters of Spa Creek within Market Slip (Ego Alley), from shoreline to shoreline, within coordinates specified in the regulation. It includes navigable waters immediately adjacent to the Annapolis City Dock. Coast Guard vessels will be present to enforce this safety zone. No persons or vessels will be authorized to transit the area of the safety zone during actual filming, however, they may be allowed to do so immediately before and after, and at the discretion of the COTP or the COTP's representative, following consultation with on scene film project representatives. Waterway users can seek permission to enter the safety zone by contacting the COTP or the COTP's representative by telephone at 410–576–2693 or on Marine Band Radio VHF–FM channel 16. The Coast Guard vessels enforcing this safety zone can be contacted on Marine Band Radio VHF–FM channel 16.

5. Why was there a 15-day comment period rather than the normal 30 days?

One commenter asked why the Coast Guard only provided a 15-day comment period rather than the agency's normal 30 days. The Coast Guard considers public participation essential to effective rulemaking. However, the Administrative Procedure Act does not specify a minimum time for submission of written comments. And, while the Coast Guard normally tries to allow 30 days of comment, cases and circumstances may arise that make it prudent to have a shorter comment period.[2] It was not possible to publish the NPRM for this action sooner as the necessary details were not yet available to the Coast Guard. And, we were concerned that a 30-day comment period would not leave the agency enough time to review all comments, respond to any significant comments, and have a final rule drafted and published in the **Federal Register** in time for the scheduled event. Considering all the factors—the time frame before the event, the length of the NPRM, the relatively short proposed regulatory text, and the location of the event—we felt that 15 days allowed sufficient time for members of the interested public to review the notice and provide us with informed feedback on the proposal. This analysis in determining the sufficiency of a 15-day comment period is consistent with the legislative history of the Administrative Procedure Act, which indicates that an NPRM ''must be sufficient to fairly apprise interested parties of the issues involved, so that they may present responsive data or argument.'' [3]

6. Did the Coast Guard consider impacts to small business?

One commenter was concerned about whether or not their company would be allowed to conduct a planned sailing cruise for the affected area of Annaopolis Harbor and Spa Creek. The Coast Guard's rule allows vessels desiring to transit to or from local waterside businesses located within the safety zone during enforcement to seek permission to enter the zone. Such vessels can contact the Coast Guard vessels enforcing this safety zone on Marine Band Radio VHF–FM channel 16 (156.8 MHz).

V. Changes From the NPRM and This Final Rule

The Coast Guard amended the regulatory text from that proposed in the NPRM to account for the date change to the first safety zone and the removal of the second safety zone. Otherwise, this rule adopts the text of the NPRM without change.

This rule establishes a temporary safety zone from 5 a.m. on October 22, 2020, to noon on October 23, 2020. The safety zone will cover all navigable waters of Spa Creek, within Market Slip (Ego Alley), from shoreline to shoreline, bounded on the southeast by a line commencing at latitude 38°58′34.2″ N, longitude 076°29′05.6″ W, thence southwest to latitude 38°58′32.9″ N, longitude 076°29′06.4″ W, located at Annapolis, MD. The duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the scheduled 5 a.m. to noon film project. Except for vessels operated by Hoonigan Industries and marine equipment, which includes any vessel, barge or other equipment operated by Smith Marine Towing, Inc., or its subcontractors, no vessel or person will be permitted to enter this safety zone without obtaining permission from the COTP or a designated representative. The COTP will notify the public that the safety zone will be enforced by all appropriate means to the affected segments of the public, including publication in the **Federal Register**, as practicable, in accordance with 33 CFR 165.7(a). Such means of notification may also include, but are not limited to, Broadcast Notice to Mariners or Local Notice to Mariners. Vessels or persons violating this rule are subject to the penalties set forth in 46 U.S.C. 70036 (previously codified in 33 U.S.C. 1232) and 46 U.S.C. 70052 (previously codified in 50 U.S.C. 192).

VI. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, duration, and time-of-day, day-of-week and time-of-year of the safety zone. Vessel traffic will be able to safely transit around this safety zone which will impact a small designated area of the Spa Creek within Market Slip (Ego Alley) for 14 total enforcement hours. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone, and the rule will allow vessels to seek permission to enter the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety

[2] *See* 33 CFR 1.05–15.

[3] Jeffrey S. Lubbers, A Guide to Federal Agency Rulemaking 273 (5th ed.2012) (citing Administrative Procedure Act: Legislative History, S. Doc. No. 248 79–258 (1946)).

zone may be small entities, for the reasons stated in section V.A. above, this rule will not have a significant economic impact on any vessel owner or operator.

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

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting 14 total enforcement hours that will prohibit entry within a portion of Spa Creek within Market Slip (Ego Alley). It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T05–0511 to read as follows:

§ 165.T05–0511 Safety Zone; Spa Creek, Annapolis, MD.

(a) *Location.* The following area is a safety zone: All navigable waters of Spa Creek, within Market Slip (Ego Alley), from shoreline to shoreline, bounded on the southeast by a line commencing at latitude 38°58′34.2″ N, longitude 076°29′05.6″ W, thence southwest to latitude 38°58′32.9″ N, longitude 076°29′06.4″ W, located at Annapolis, MD. These coordinates are based on datum NAD 83.

(b) *Definitions.* As used in this section—

Captain of the Port (COTP) means the Commander, U.S. Coast Guard Sector Maryland-National Capital Region.

Designated representative means any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port Maryland-National Capital Region to assist in enforcing any safety zone described in paragraph (a) of this section.

Marine equipment means any vessel, barge or other equipment operated by Smith Marine Towing, Inc. or its subcontractors.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative. Except for vessels operated by Hoonigan Industries and marine equipment, all vessels underway within this safety zone at the time it is activated are to depart the zone.

(2) To seek permission to enter, contact the COTP or the COTP's representative by telephone at 410–576–2693 or on Marine Band Radio VHF–FM channel 16 (156.8 MHz). The Coast Guard vessels enforcing this section can be contacted on Marine Band Radio VHF–FM channel 16 (156.8 MHz).

(3) Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

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

(e) *Enforcement period.* This section will be enforced from 5 a.m. to noon on October 22, 2020, or if necessary due to inclement weather on October 22, 2020, from 5 a.m. to noon on October 23, 2020.

Dated: October 7, 2020.

Joseph B. Loring,

Captain, U.S. Coast Guard, Captain of the Port Maryland-National Capital Region.

[FR Doc. 2020–22562 Filed 10–9–20; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60 and 63

[EPA–HQ–OAR–2002–0047; FRL–10013–69–OAR]

RIN 2060–AU18

National Emission Standards for Hazardous Air Pollutants: Municipal Solid Waste Landfills Residual Risk and Technology Review; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correcting amendments.

SUMMARY: The Environmental Protection Agency (EPA) is correcting a final rule that appeared in the **Federal Register** on March 26, 2020. The EPA finalized the residual risk and technology review (RTR) conducted for the Municipal Solid Waste (MSW) Landfills source category regulated under national emission standards for hazardous air pollutants (NESHAP). This action corrects inadvertent errors in the cross-referencing and formatting in the **Federal Register**; as well as clarifies two operational and reporting requirements in the March 26, 2020, final rule. This action also revises the heading of 40 CFR part 60, subpart WWW as described in the March 26, 2020, **Federal Register** document. The corrections and clarifications described in this action do not affect the substantive requirements of the regulations or the results of the RTR conducted for the MSW Landfills source category.

DATES: This final rule is effective on November 12, 2020.

FOR FURTHER INFORMATION CONTACT: For questions about this final action, contact Andrew Sheppard, Natural Resources Group, Sector Policies and Programs Division (E143–03), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–4161; fax number: (919) 541–0516; and email address: *Sheppard.Andrew@epa.gov.*

SUPPLEMENTARY INFORMATION: The EPA is making the following corrections to the final MSW Landfills NESHAP (40 CFR part 63, subpart AAAA) as published in the **Federal Register** on March 26, 2020 (85 FR 17244).

The EPA is correcting cross-referencing errors that were the result of extensive changes to the structure and content of the MSW Landfills NESHAP during the RTR. The initial restructuring is described in the proposed RTR for the MSW Landfills NESHAP (84 FR 36670, July 29, 2019). Further changes to the MSW Landfills NESHAP occurred between proposal and promulgation and those changes are described in the final RTR for the MSW Landfills NESHAP (85 FR 17244, March 26, 2020). Operating facilities cannot comply with certain requirements of the rule as written because the requirements include citations to paragraphs in the rule that do not exist, do not contain the cited content, and/or are inconsistent with the same requirements as they were previously promulgated in section 111 of the Clean Air Act (CAA). As described in the preambles to the proposed and final MSW Landfills NESHAP rules, landfills are subject to regulations under CAA sections 111 (40 CFR part 60, subparts Cf and XXX) and 112 (40 CFR part 63, subpart AAAA). The rules were written to promote consistency among MSW Landfills regulations under the CAA. See section IV.D of the preamble to the proposed rule at 84 FR 36689 (July 29, 2019) and section III.D of the preamble to the final rule at 85 FR 17248 (March 26, 2020). Therefore, where requirements are the same, the regulatory text was copied from 40 CFR part 60, subpart XXX and adapted to cite corresponding references in 40 CFR part 63, subpart AAAA. During this process, some errors were made due to differences in the structures of the two rules. With this action, the EPA is correcting the following errors. These corrections do not change the requirements with which landfills must comply.

First, the EPA is correcting two formatting errors.

- 40 CFR part 60, subpart WWW. Revise the heading of subpart WWW to read: Subpart WWW—Standards of Performance for Municipal Solid Waste Landfills That Commenced Construction, Reconstruction, or Modification on or After May 30, 1991, but Before July 18, 2014. This change is consistent with the discussion in the preamble to the final rule (85 FR at 17248), but the change was inadvertently not made to the relevant title in the regulatory text. This action implements the revision.
- 40 CFR 63.1983(h)(2)(ii). Remove paragraph (ii). Paragraph (i) is not subordinate to 40 CFR 63.1983(h)(2); rather, it follows 40 CFR 63.1983(h) as 40 CFR 63.1983(i); therefore, there is no need to reserve a paragraph (ii). The proposed regulatory text was correctly printed in the proposed rule at 84 FR 36721 (July 29, 2019).

Additionally, the EPA is correcting the following cross-referencing errors.

- 40 CFR 63.1947(c)(2). Correct the reference from 40 CFR 63.1980(e) and (f) to 40 CFR 63.1982(c) and (d). The reference specifies procedures to use to determine bioreactor moisture content but refers to paragraphs that no longer exist. The requirements in 40 CFR 63.1947(c)(2) were originally promulgated in 40 CFR 63.1945(a)(2) in 2003 and referred to the requirements that are now found in 63.1982(c) and (d). The content of the requirements was not changed in the 2020 amendments to the MSW Landfills NESHAP and/or this correction.
- 40 CFR 63.1959(a)(3)(i), 40 CFR 63.1959(c)(3)(i), and 40 CFR 63.1959(e)(1). Correct the references from 40 CFR 63.1981(i) to 40 CFR 63.1981(l)(1). These three standards refer to procedures for the submittal of performance test reports, but the reference leads to requirements for an initial report instead of ongoing requirements to submit reports electronically. Section III.D.9 of the preamble to the final rule stated that performance tests must be submitted electronically using the requirements in 40 CFR 63.1981(l)(1). Additionally, matching requirements in 40 CFR 60.764(a)(3)(i), 40 CFR 60.764(b)(3)(i), and 40 CFR 60.764(e)(1), respectively, refer to the electronic reporting requirements of 40 CFR 60.767(i)(1), which match those of 40 CFR 63.1981(l)(1).
- 40 CFR 63.1959(a)(4)(i)(A). Correct the reference from 40 CFR 63.1981(e) to 40 CFR 63.1981(d). The standard discusses the procedures for submitting a gas collection and control system design plan if a landfill's emissions exceed the stated threshold according to one method of calculation, but the reference does not include the intended procedures. Corresponding requirements for plan submittal using different calculation methods in 40 CFR 63.1959(a)(2)(ii)(A), 40 CFR 63.1959(a)(3)(iv)(A), and 40 CFR 63.1959(b)(2)(i) all refer to 40 CFR 63.1981(d). Additionally, the requirements in 40 CFR 63.1959(a)(4)(i)(A) align with those of 40 CFR 60.764(a)(4)(i)(A), which refer to requirements that match those in 40 CFR 63.1981(d).
- 40 CFR 63.1959(b)(2)(iii)(A). Correct the reference from ''paragraph (f) of this section'' to ''paragraph (e) of

this section.'' The requirements reference an exception to the requirements of 40 CFR 63.11(b). This exception is stated explicitly in 40 CFR 63.1959(e), not (f). The text in 40 CFR 63.1959(b)(2)(iii)(A) mirrors that in 40 CFR 60.762(b)((2)(iii)(A), which references 40 CFR 60.764(e) for the exception. The requirements in 40 CFR 60.764(e) align with those in 40 CFR 63.1959(e).

• 40 CFR 63.1960(a). Correct the reference from ''paragraphs (a)(1) through (6) of this section,'' to ''paragraphs (a)(1) through (5) of this section.'' Paragraph (a)(6) does not exist. This reference was copied from corresponding text in 40 CFR 60.765(a). The requirements in 40 CFR 60.765(a) are found in paragraphs (a)(1) through (6), but paragraph (a)(4) is reserved. The reserved paragraph was removed from 40 CFR 63.1960(a) but the corresponding change in numbering for the reference was not made.

• 40 CFR 63.1960(a)(3)(i)(B). Correct the reference from 40 CFR 63.1983(e)(5) to 40 CFR 63.1983(e)(4). The reference refers to a specific report, whose requirements are included in 40 CFR 63.1983(e)(4). Additionally, the text in 40 CFR 63.1983(e)(4) refers back to 40 CFR 63.1960(a)(3)(i)(B). These requirements mirror those in 40 CFR 60.765(a)(3)(ii), which references 40 CFR 60.768(e)(4). The corresponding requirements for 40 CFR 60.768(e)(4) are found in 40 CFR 63.1983(e)(4).

• 40 CFR 63.1960(a)(5). Correct the reference from 40 CFR 63.1981(c)(3) to 40 CFR 63.1981(d)(3). These requirements discuss the need for alternative collection systems to demonstrate compliance with the MSW Landfills standards. The original reference is for a report on emissions, instead of the design plan that requires the demonstration of sufficiency of alternatives. The requirements in 40 CFR 63.1960(a)(5) mirror those in 40 CFR 60.765(a)(6), which refers to 40 CFR 60.767(c)(3). The requirements in 40 CFR 60.767(c)(3) match those in 40 CFR 63.1981(d)(3).

• 40 CFR 63.1960(b). Correct the reference from 40 CFR 63.1981(b) to 40 CFR 63.1981(d). The requirements discuss the timing of installation for system components included in the landfill's design plan, but the reference points to a report for landfill capacity instead of the design plan. The requirements in 40 CFR 63.1960(b) match those in 40 CFR 60.765(b), which refers to 40 CFR 60.767(c). The requirements corresponding to those in 40 CFR 60.767(c) are found in 40 CFR 63.1981(d).

• 40 CFR 63.1960(e)(2). Correct the reference from 40 CFR 63.1958(c)(1) to 40 CFR 63.1958(e)(1). The text in 40 CFR 63.1960(e) describes the requirements for MSW landfills during periods of start-up, shutdown, and malfunction (SSM). At proposal, the regulatory text incorrectly referenced operational standards for temperature instead of SSM events in two places. While one of the references was corrected in the final rule, the second was overlooked and is being corrected here. See Section IV.D.3 of the preamble to the final rule (at 85 FR 17255, March 26, 2020).

• 40 CFR 63.1961(f). Correct the reference from 40 CFR 63.1981(i) to 40 CFR 63.1981(h). The requirements for demonstrating compliance with the surface methane operational standard state that certain information must be included in the semi-annual report but cite the paragraph for the initial performance test report instead of the paragraph containing requirements for semi-annual reporting.

• 40 CFR 63.1983(g). Correct the reference from paragraphs 40 CFR 63.1961(a)(1) through (5) to 40 CFR 63.1961(a)(1) through (6). This section discusses the requirement to keep records of certain gas collection and control system parameters that are measured during system operation. While the requirements were revised from 40 CFR 63.1961(a)(1) through (5) in the proposal to 40 CFR 63.1961(a)(1) through (6) in the final, the corresponding reference was not updated. The changes to the requirements were discussed in section IV.D.1 of the preamble to the final rule at 85 FR 17253–17254 (March 26, 2020).

With this document, the EPA is also clarifying its intent on certain requirements in the March 26, 2020, final rule where questions have arisen on implementation.

• 40 CFR 63.1958(c). Add text to clarify when the revised wellhead interior operating standard applies. Prior to compliance with the amended standards, a landfill owner must operate each interior wellhead in the collection system as specified in 40 CFR 60.753(c) of 40 CFR part 60, subpart WWW. The requirements in 40 CFR 60.753(c) require landfill owners to operate each interior wellhead with landfill gas temperatures less than 55 degrees Celsius and with either a nitrogen level less than 20 percent or an oxygen level less than 5 percent. As explained in the preamble to the final rule at 85 FR 17248 (March 26, 2020), the amendments to the MSW Landfills NESHAP eliminated the operational standards for nitrogen and oxygen and increased the temperature operating standard. The final regulatory text was unclear as to whether or not the nitrogen and oxygen standards remained in effect after the compliance date of September 27, 2021. Thus, the correction clarifies that landfill owners do not need to comply with the provisions of 40 CFR 60.753(c) of 40 CFR part 60, subpart WWW once they comply with the amended standards.

• Table 1 to Subpart AAAA—Applicability of NESHAP General Provisions to Subpart AAAA. Revise Footnote 2 to clarify the intent that landfill owners or operators do not need to submit duplicate notifications under 40 CFR part 63, subpart AAAA if they have already submitted notifications under either 40 CFR part 60, subpart WWW or subpart XXX, or a state or federal plan implementing 40 CFR part Cc or Cf, that contain the same information as required by 40 CFR part 63, subpart AAAA. This clarification is consistent with the regulatory text in the introductory paragraph to 40 CFR 63.1981 that states that submission of parallel reports under 40 CFR part 60, subpart WWW; 40 CFR part XXX; or a state or federal plan implementing 40 CFR part 60, subpart Cc or 40 CFR part 60, subpart Cf constitutes compliance with parallel requirements in that section.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. The EPA has determined that there is good cause for making this rule final without prior proposal and opportunity for comment because, as explained here and in each bullet above, the changes to the rule are minor technical corrections, are noncontroversial in nature, and do not substantively change the requirements of the MSW Landfills NESHAP. Rather, the changes align the cross-references in the requirements of the MSW Landfills NESHAP with corresponding cross-references in the requirements of the Emission Guidelines and New Source Performance Standards for MSW Landfills in 40 CFR part 60, subparts Cf and XXX. Additionally, the revisions correct the regulatory text to match other intended minor revisions described in the preamble to the final rule. Thus, notice and opportunity for public comment are unnecessary. The EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(B).

List of Subjects

40 CFR Part 60

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: August 28, 2020.

Anne Austin,

Principal Deputy Assistant Administrator, Office of Air and Radiation.

For the reasons set forth in the preamble, the EPA amends 40 CFR parts 60 and 63 as follows:

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

■ 1. The authority citation for part 60 continues to read as follows:

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

Subpart WWW—Standards of Performance for Municipal Solid Waste Landfills That Commenced Construction, Reconstruction, or Modification on or After May 30, 1991, but Before July 18, 2014

■ 2. Revise the heading of subpart WWW to read as set forth above.

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

Subpart AAAA—National Emission Standards for Hazardous Air Pollutants: Municipal Solid Waste Landfills

■ 3. The authority citation for part 63 continues to read as follows:

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

■ 4. Section 63.1947 is amended by revising paragraph (c)(2) to read as follows:

§ 63.1947 When do I have to comply with this subpart if I own or operate a bioreactor?

* * * * *

(c) * * *

(2) Begin operating the gas collection and control system within 180 days after initiating liquids addition or within 180 days after achieving a moisture content of 40 percent by weight, whichever is later. If you choose to begin gas collection and control system operation 180 days after achieving a 40-percent moisture content instead of 180 days after liquids addition, use the procedures in §§ 63.1982(c) and (d) to determine when the bioreactor moisture content reaches 40 percent.

■ 5. Section 63.1958 is amended by revising paragraph (c) introductory text to read as follows:

§ 63.1958 Operational standards for collection and control systems.

* * * * *

(c) Operate each interior wellhead in the collection system as specified in 40 CFR 60.753(c), until the landfill owner or operator elects to meet the operational standard for temperature in paragraph (c)(1) of this section.

* * * * *

■ 6. Section 63.1959 is amended by revising paragraphs (a)(3)(i), (a)(4)(i)(A), (b)(2)(iii)(A), (c)(3)(i), and (e)(1) to read as follows:

§ 63.1959 NMOC calculation procedures.

(a) * * *

(3) * * *

(i) Within 60 days after the date of completing each performance test (as defined in § 63.7 of subpart A), the owner or operator must submit the results according to § 63.1981(l)(1).

* * * * *

(4) * * *

(i) * * *

(A) Submit a gas collection and control system design plan within 1 year as specified in § 63.1981(d) and install and operate a gas collection and control system within 30 months of the first annual report in which the NMOC emission rate equals or exceeds 50 Mg/yr, according to paragraphs (b)(2)(ii) and (iii) of this section.

* * * * *

(b) * * *

(2) * * *

(iii) * * *

(A) A non-enclosed flare designed and operated in accordance with the parameters established in § 63.11(b) except as noted in paragraph (e) of this section; or

* * * * *

(c) * * *

(3) * * *

(i) Within 60 days after the date of completing each performance test (as defined in § 63.7), the owner or operator must submit the results of the performance test, including any associated fuel analyses, according to § 63.1981(l)(1).

* * * * *

(e) * * *

(1) Within 60 days after the date of completing each performance test (as defined in § 63.7), the owner or operator must submit the results of the performance tests, including any associated fuel analyses, required by § 63.1959(c) or (e) according to § 63.1981(l)(1).

* * * * *

■ 7. Section 63.1960 is amended by revising paragraphs (a) introductory text, (a)(3)(i)(B), (a)(5), (b) introductory text, and (e)(2) to read as follows:

§ 63.1960 Compliance provisions.

(a) Except as provided in § 63.1981(d)(2), the specified methods in paragraphs (a)(1) through (5) of this section must be used to determine whether the gas collection system is in compliance with § 63.1959(b)(2)(ii).

* * * * *

(3) * * *

(i) * * *

(B) If corrective actions cannot be fully implemented within 60 days following the positive pressure measurement for which the root cause analysis was required, the owner or operator must also conduct a corrective action analysis and develop an implementation schedule to complete the corrective action(s) as soon as practicable, but no more than 120 days following the positive pressure measurement. The owner or operator must submit the items listed in § 63.1981(h)(7) as part of the next semi-annual report. The owner or operator must keep records according to § 63.1983(e)(4).

* * * * *

(5) An owner or operator seeking to demonstrate compliance with § 63.1959(b)(2)(ii)(B)(*4*) through the use of a collection system not conforming to the specifications provided in § 63.1962 must provide information satisfactory to the Administrator as specified in § 63.1981(d)(3) demonstrating that off-site migration is being controlled.

(b) For purposes of compliance with § 63.1958(a), each owner or operator of a controlled landfill must place each well or design component as specified in the approved design plan as provided in § 63.1981(d). Each well must be installed no later than 60 days after the date on which the initial solid waste has been in place for a period of:

* * * * *

(e) * * *

(2) Once an owner or operator subject to the provisions of this subpart seeks to demonstrate compliance with the operational standard in § 63.1958(e)(1), the provisions of this subpart apply at

all times, including periods of SSM. During periods of SSM, you must comply with the work practice requirement specified in § 63.1958(e) in lieu of the compliance provisions in § 63.1960.

■ 8. Section 63.1961 is amended by revising paragraph (f) to read as follows:

§ 63.1961 Monitoring of operations.

* * * * *

(f) Each owner or operator seeking to demonstrate compliance with the 500-ppm surface methane operational standard in § 63.1958(d) must monitor surface concentrations of methane according to the procedures in § 63.1960(c) and the instrument specifications in § 63.1960(d). If you are complying with the 500-ppm surface methane operational standard in § 63.1958(d)(2), for location, you must determine the latitude and longitude coordinates of each exceedance using an instrument with an accuracy of at least 4 meters and the coordinates must be in decimal degrees with at least five decimal places. In the semi-annual report in § 63.1981(h), you must report the location of each exceedance of the 500-ppm methane concentration as provided in § 63.1958(d) and the concentration recorded at each location for which an exceedance was recorded in the previous month. Any closed landfill that has no monitored exceedances of the operational standard in three consecutive quarterly monitoring periods may skip to annual monitoring. Any methane reading of 500 ppm or more above background detected during the annual monitoring returns the frequency for that landfill to quarterly monitoring.

* * * * *

■ 9. Section 63.1983 is amended by revising paragraph (g) to read as follows:

§ 63.1983 What records must I keep?

* * * * *

(g) Except as provided in § 63.1981(d)(2), each owner or operator subject to the provisions of this subpart must keep for at least 5 years up-to-date, readily accessible records of all collection and control system monitoring data for parameters measured in § 63.1961(a)(1) through (6).

* * * * *

■ 10. Amend Table 1 to subpart AAAA of part 63 by revising Footnote 2 to read as follows:

Table 1 to Subpart AAAA of Part 63

* * * * *

TABLE 1 TO SUBPART AAAA OF PART 63—APPLICABILITY OF NESHAP GENERAL PROVISIONS TO SUBPART AAAA

Part 63 citation	Description	Applicable to subpart AAAA before September 28, 2021	Applicable to subpart AAAA no later than September 27, 2021	Explanation
*	*	*	*	*	*	*
*	*	*	*	*	*	*

[2] If an owner or operator has complied with requirements that are parallel to the requirements of the part 63 citation of this table under 40 CFR part 60, subpart WWW or subpart XXX, or a state or federal plan that implements 40 CFR part 60, subpart Cc or Cf, then additional notification for that requirement is not required.

[FR Doc. 2020–19676 Filed 10–9–20; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 417, 422, and 423

[CMS–4190–CN]

RIN 0938–AT97

Medicare Program; Contract Year 2021 Policy and Technical Changes to the Medicare Advantage Program, Medicare Prescription Drug Benefit Program, and Medicare Cost Plan Program; Correction

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule; correction.

SUMMARY: This document corrects technical errors that appeared in the final rule published in the **Federal Register** on June 2, 2020 entitled ''Medicare Program; Contract Year 2021 Policy and Technical Changes to the Medicare Advantage Program, Medicare Prescription Drug Benefit Program, and Medicare Cost Plan Program.''

DATES: *Effective date:* This correcting document is effective on October 13, 2020.

FOR FURTHER INFORMATION CONTACT:

Cali Diehl, (410) 786–4053 or Christopher McClintick, (410) 786–4682—General Questions.

Kimberlee Levin, (410) 786–2549—Part C Issues.

Stacy Davis, (410) 786–7813—Part C and D Payment Issues.

Melissa Seeley, (212) 616–2329—D–SNP Issues.

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. 2020–11342 of June 2, 2020 (85 FR 33796), there were a number of technical errors that are identified and corrected in this correcting document. The provisions in this correction document are effective as if they had been included in the document published June 2, 2020. Accordingly, the corrections are effective August 3, 2020.

II. Summary of Errors

On page 33820, in our discussion of dual eligible special needs plans, we inadvertently included a disclaimer that was not applicable to the published final rule.

On pages 33876 and 33877, in our discussion of the information collection requirements regarding Special Supplemental Benefits for the Chronically Ill (SSBCI), we inadvertently identified the wrong Paperwork Reduction Act package in our narrative and omitted several Office of Management and Budget (OMB) control numbers from Table 3.

On page 33881, in our discussion of the information collection requirements regarding medical savings account (MSA) medical loss ratio (MLR), we made inadvertent errors the amount of time it would take beneficiaries to complete an enrollment form.

On page 33883, in the table that provides a summary of the annual information collection burden (Table 6), we made the following typographical errors:

- In the table title, we included the term ''requirements'' instead of ''burden''.

• In the SSBCI entries there were errors in the identification numbers in the ''OMB Control No.'' column.

• In the MSA MLR entries, there were errors in the values and numbers for the ''Regulatory citation'', ''OMB Control No.'', ''Total number of respondents'', and the ''Total number of responses''.

On pages 33889 and 33890, in the table that displays the per-year calculations regarding kidney acquisition costs (Table 11), we made inadvertent errors in the table title (we omitted ''s'' in the term ''costs''). Additionally, on page 33890, the column headings are listed for the years 2013 to 2020 instead of 2021 to 2030.

III. Waiver of Proposed Rulemaking

Under 5 U.S.C. 553(b) of the Administrative Procedure Act (APA), the agency is required to publish a notice of the proposed rule in the **Federal Register** before the provisions of a rule take effect. Similarly, section 1871(b)(1) of the Act requires the Secretary to provide for notice of the proposed rule in the **Federal Register** and provide a period of not less than 60 days for public comment. In addition, section 553(d) of the APA, and section 1871(e)(1)(B)(i) of the Act mandate a 30-day delay in effective date after issuance or publication of a rule. Sections 553(b)(B) and 553(d)(3) of the APA provide for exceptions from the notice and comment and delay in effective date APA requirements; in cases in which these exceptions apply, sections 1871(b)(2)(C) and 1871(e)(1)(B)(ii) of the Act provide exceptions from the notice and 60-day comment period and delay in effective date requirements of the Act as well. Section 553(b)(B) of the APA and section 1871(b)(2)(C) of the Act authorize an agency to dispense with normal rulemaking requirements for good cause if the agency makes a finding that the notice and comment process are impracticable, unnecessary, or contrary to the public interest. In addition, both section 553(d)(3) of the APA and section 1871(e)(1)(B)(ii) of the Act allow the agency to avoid the 30-day delay in effective date where such delay is contrary to the public interest and an agency includes a statement of support.

Section 553(d) of the APA ordinarily requires a 30-day delay in effective date of final rules after the date of their publication in the **Federal Register**. This 30-day delay in effective date can be waived, however, if an agency finds for good cause that the delay is impracticable, unnecessary, or contrary to the public interest, and the agency incorporates a statement of the findings and its reasons in the rule issued.

We believe that this correcting document does not constitute a rule that would be subject to the notice and comment or delayed effective date requirements of the APA or section 1871 of the Act. This correcting document corrects technical errors in the preamble and regulation text of the final rule but does not make substantive changes to the policies that were adopted in the final rule. As a result, this correcting document is intended to ensure that the information in the final rule accurately reflects the policies adopted in that final rule.

In addition, even if this were a rule to which the notice and comment procedures and delayed effective date requirements applied, we find that there is good cause to waive such requirements. Undertaking further notice and comment procedures to incorporate the corrections in this document into the final rule or delaying the effective date would be contrary to the public interest because it is in the public's interest to ensure that final rule accurately reflects our policies. Furthermore, such procedures would be unnecessary, as we are not altering payment eligibility or benefit methodologies or policies, but rather, simply implementing correctly the policies that we previously proposed, received comment on, and subsequently finalized. This correcting document is intended solely to ensure that the final rule accurately reflects these policies. Therefore, we believe we have good cause to waive the notice and comment and effective date requirements.

IV. Correction of Errors

In FR Doc. 2020–11342 of June 2, 2020 (85 FR 33796), make the following corrections:

1. On page 33820, lower third of the page, the text box that includes the phrase ''DISCLAIMER: Based on the tight time constraints and the need to expedite'' is corrected by removing the text box.

2. On page 33876, lower three-fourths of the page (after the table), second column, sixth full paragraph, lines 6 and 7, the reference to ''control number 0938–0763 (CMS–R–262)'' is corrected to read ''control number 0938–0753 (CMS–R–267)''.

3. On page 33877, lower third of the page, the table titled ''TABLE 3—SUMMARY OF BURDEN FOR SSBCI AT § 422.102'' is corrected by correcting the third column (OMB Control No.) for the listed entries (SSBCI provisions) to read as follows:

Provision	Regulatory citation	OMB Control No.	Subject	Number of respondents	Total number of responses	Time per response (hr)	Total time (hr)	Labor cost ($/hr)	Annual cost ($)
SSBCI	§ 422.102(f)(3)(i)	0938–0753	SSBCI: Criteria (Initial Software).	234	1	12	2808	103.33	96,717
SSBCI	§ 422.102(f)(3)(i)	0938–0753	SSBCI: Criteria (Physician review).	234	1	36	8424	193.7	1,631,729
SSBCI	§ 422.102(f)(3)(i)	0938–0753	SSBCI: Criteria (Software updates).	234	1	5	1170	85.26	99,754
SSBCI	§ 422.102(f)(3)(ii)	0938–0753	Written criteria	234	1	2	468	56.34	26,367
SSBCI	§ 422.102(f)(3)(iii)	0938–0753	Enrollee eligibility	234	1	9	2106	86.95	179,465

4. On page 33881, first column, fourth full paragraph, line 8, the phrase ''0.5 hours at $25.72/hr'' is corrected to read ''0.3333 hours at $25.72/hr''

5. On page 33883, in the table titled ''TABLE 6—ANNUAL INFORMATION COLLECTION REQUIREMENTS'' the table is corrected by—

a. Correcting the table title ''TABLE 6—ANNUAL INFORMATION COLLECTION REQUIREMENTS'' to read ''TABLE 6—ANNUAL INFORMATION COLLECTION BURDEN''.

b. Correcting the second (Regulatory citation), third (OMB Control No.), sixth (Total number of respondents), and seventh columns (Total number of responses) for the listed entry (third row the first MSA MLR provision) to read as follows:

Provision	Regulatory citation	OMB Control No.	Respondent type	Response summary	Total number of respondents	Total number of responses	Time per response (hr)	Total annual time (hr)	Labor cost ($/hr)	Total annual cost ($)
MSA MLR	§ 422.2440	0938–NEW	Enrollees	MSA MLR: Filling out enrollment forms..	2,765	2,765	0.3333	922	25.72	23,705

c. Correcting the identification numbers in third column (OMB Control No.) for the listed entries (SSBCI provisions) to read as follows:

Provision	Regulatory citation	OMB Control No.	Respondent type	Response summary	Total number of respondents	Total number of responses	Time per response (hr)	Total annual time (hr)	Labor cost ($/hr)	Total annual cost ($)
SSCBI	§ 422.102(f)(3)(i)	0938–0753	MA Plans	SSBCI: Criteria (initial software update).	234	1	12	2808	103.33	96,717
SSCBI	§ 422.102(f)(3)(i)	0938–0753	MA Plans	SSBCI: Criteria (Annual physician review).	234	1	36	8424	193.7	1,631,729
SSCBI	§ 422.102(f)(3)(i)	0938–0753	MA Plans	SSBCI: Criteria (Software updates).	234	1	5	1170	85.26	99,754
SSCBI	§ 422.102(f)(3)(ii)	0938–0753	MA Plans	SSBCI: Documentation.	234	1	2	468	56.34	26,367
SSCBI	§ 422.102(f)(3)(iii)	0938–0753	MA Plans	SSBCI: Enrollee records.	234	1	9	702	86.95	61,039

d. Correcting the second (Regulatory citation) and seventh columns (Total number of responses) for the listed entries (the specified MSA MLR provisions) to read as follows:

Provision	Regulatory citation	OMB Control No.	Respondent type	Response summary	Total number of respondents	Total number of responses	Time per response (hr)	Total annual time (hr)	Labor cost ($/hr)	Total annual cost ($)
MSA MLR	§ 422.2440	0938–0753	MA Plans	MSA MLR: Notify enrollees.	8	2,765	0.0167	46	77.14	3,548
MSA MLR	§ 422.2440	0938–0753	MA Plans	MSA MLR: Submit to CMS.	8	2,765	0.0167	46	77.14	3,548
MSA MLR	§ 422.2440	0938–0753	MA Plans	MSA MLR: Archive	8	2,765	0.0833	230	36.82	8,481

e. Correcting column 2 (Regulatory citation) for the listed entry (the specified MSA MLR provision) to read as follows:

Provision	Regulatory citation	OMB Control No.	Respondent type	Response summary	Total number of respondents	Total number of responses	Time per response (hr)	Total annual time (hr)	Labor cost ($/hr)	Total annual cost ($)
MSA MLR	§ 422.2440	0938–1252	MA Plans	MSA MLR: Calculation of the deductible factor.	8	8	0.0833	0.6664	116.32	78

6. On pages 33889 and 33890, in the table titled ''Table 11, Per-Year Calculations, Representing the Pre-Statute Baseline Based on Medicare FFS Coverage of Kidney Acquisition Cost'', the table title and table are corrected to read as follows:

TABLE 11—PER-YEAR CALCULATIONS, REPRESENTING THE PRE-STATUTE BASELINE BASED ON MEDICARE FFS COVERAGE OF KIDNEY ACQUISITION COSTS

	2013	2014	2015	2016	2017	2018	2019	2020			
Kidney Acquisition Costs (PMPM):	1.72	1.82	1.95	2.08	2.20	2.34	2.49	2.65			
	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2021–2030
Kidney Acquisition Costs (PMPM):	2.82	3.00	3.20	3.40	3.62	3.85	4.10	4.36	4.64	4.94	
Medicare Advantage Enrollment Projection (000's):	24,690	25,624	26,508	27,380	28,237	29,070	29,861	30,607	31,313	32,035	
Gross Savings ($Millions):	836.2	923.5	1,016.6	1,117.4	1,226.3	1,343.4	1,468.4	1,601.7	1,743.7	1,898.4	13,175.6
Average government share of Gross Savings:	83.0%	83.0%	83.0%	83.1%	83.2%	83.2%	83.2%	83.4%	83.4%	83.4%	
Net of Part B Premium:	85.6%	85.6%	85.5%	85.4%	85.3%	85.2%	85.0%	84.9%	84.9%	84.9%	
Net Savings ($Millions):	594.1	655.7	721.5	792.3	869.5	951.7	1,038.9	1,134.1	1,235.9	1,345.6	9,339.3

Dated: October 1, 2020.

Wilma M. Robinson,

Deputy Executive Secretary to the Department, Department of Health and Human Services.

[FR Doc. 2020–22481 Filed 10–8–20; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0, 1, 2, 3, 11, 15, 20, 24, 25, 27, 52, 64, 67, 68, 73, 74, 76, 79, 80, 87, 90, 95, and 101

[DA 20–718; FRS 17030]

Rule Modifications Reflecting New Address Location of Commission Headquarters

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Office of Managing Director of the Federal Communications Commission (Commission) adopts an Order that amends the Commission's rules to reflect the upcoming new address of the Commission's headquarters, 45 L Street NE, Washington, DC 20554. It also makes changes to clarify that certain documents are now available for inspection through the Commission's website, removes references to a Commission copy contractor, and performs minor formatting corrections.

DATES: Effective October 13, 2020.

FOR FURTHER INFORMATION CONTACT: Warren Firschein, Office of Managing Director at (202) 418–2653 or Mindy Ginsburg, Office of Managing Director at (202) 418–0983.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order, DA 20–718, adopted and released on August 5, 2020. The full text of this document is available by downloading the text from the Commission's website at *https://docs.fcc.gov/public/attachments/DA-20-718A1.pdf.*

Synopsis

I. Administrative Matters

A. Final Regulatory Flexibility Analysis

1. Section 603 of the Regulatory Flexibility Act, as amended, requires a regulatory flexibility analysis in notice and comment rulemaking proceedings. See 5 U.S.C. 603(a). As we are adopting these rules without notice and comment, no regulatory flexibility analysis is required.

B. Final Paperwork Reduction Act of 1995 Analysis

2. This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4).

C. Congressional Review Act

3. The Commission will not send a copy of the Order pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A), because the adopted rules are rules of agency organization, procedure, or practice that do not ''substantially affect the rights or obligations of non-agency parties.'' See 5 U.S.C. 804(3)(C).

II. Introduction

4. In the Order, the Office of Managing Director of the Federal Communications Commission amends the Commission's rules to reflect the upcoming new address for the Commission's headquarters, 45 L Street NE, Washington, DC 20554 in light of the Commission's upcoming move to a new headquarters building.[1] In addition, the Order clarifies that certain documents are now available for inspection through the Commission's website, removes references to a Commission copy contractor, and performs minor formatting corrections. Finally, the Order notes that in a separate order released on May 28, 2020, the Commission's rules were amended to reflect the new address for filing hand-carried documents at the FCC's headquarters and establish a new closing time for accepting such filings. Those changes remain in effect and are not impacted by the actions here.

5. This action is taken pursuant to the authority delegated by §§ 0.11 and 0.231 of the Commission's rules, 47 CFR 0.11 and 0.231.

III. Ordering CLAUSES

6. *Accordingly,* pursuant to sections 4(e) and 5(e) of the Communications Act of 1934, as amended, 47 U.S.C. 154(e) and 155(d), *it is ordered* that the respective parts of the Commission's rules are *amended* in the manner indicated in the Appendix of the Order, to be effective 30 days after publication in the **Federal Register**.

[1] The Commission's new headquarters is still under construction. Neither the Order, this summary, nor the rules amended constitute acceptance by the Commission or GSA of the new headquarters building.

List of Subjects in 47 CFR Parts 0, 1, 2, 3, 11, 15, 20, 24, 25, 27, 52, 64, 67, 68, 73, 74, 76, 79, 80, 87, 90, 95, and 101

Administrative practice and procedure.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 0, 1, 2, 3, 11, 15, 20, 24, 25, 27, 52, 64, 67, 68, 73, 74, 76, 79, 80, 87, 90, 95, and 101 as follows:

PART 0—COMMISSION ORGANIZATION

■ 1. The authority citation for part 0 continues to read as follows:

Authority: 47 U.S.C. 155, 225, unless otherwise noted.

■ 2. Amend § 0.401 by revising paragraphs (a)(1) introductory text, (a)(1)(i), and (a)(5) to read as follows:

§ 0.401 Location of Commission offices.

* * * * *

(a) * * *

(1) The main office of the Commission is located at 45 L Street NE, Washington, DC 20554.

(i) Documents submitted by mail to this office should be addressed to: Federal Communications Commission, Washington, DC 20554.

* * * * *

(5) The location of the Office of General Counsel is 45 L Street NE, Washington, DC 20554.

* * * * *

■ 3. Amend § 0.434 by revising the third sentence to read as follows:

§ 0.434 Data bases and lists of authorized broadcast stations and pending broadcast applications.

* * * The lists are available for public inspection at the FCC's main office, located at the address indicated in § 0.401(a). * * *

■ 4. Amend § 0.441 by revising paragraphs (a)(4) and (5) to read as follows:

§ 0.441 General.

(a) * * *

(4) Correspondence to: Consumer and Governmental Affairs Bureau at the FCC's main office, located at the address indicated in § 0.401(a).

(5) Visiting the Reference Information Center of the Consumer and

Governmental Affairs Bureau, located at the address indicated in § 0.401(a).

* * * * *

■ 5. Amend § 0.461 by adding a colon at the end of paragraph (d)(1) introductory text and revising paragraphs (d)(1)(i) and (ii) to read as follows:

§ 0.461 Requests for inspection of materials not routinely available for public inspection.

* * * * *

(d)(1) * * *

(i) Filed electronically through the internet at *http://foiaonline.regulations.gov/;* or

(ii) Delivered or mailed to the Managing Director at the address indicated in § 0.401(a), Attn: FOIA Request.

* * * * *

■ 6. Amend § 0.556 in paragraph (a) introductory text by removing ''this paragraph'' and adding ''this paragraph (a)'' in its place and revising the third sentence to read as follows:

§ 0.556 Request to correct or amend records.

(a) * * * Requests to amend the official personnel records of active FCC employees should be submitted to the Associate Managing Director—Human Resources Management, at the address indicated in § 0.401(a). * * *

* * * * *

■ 7. Revise § 0.558 to read as follows:

§ 0.558 Advice and assistance.

(a) Individuals who have questions regarding the procedures contained in this subpart for gaining access to a particular system of records or for contesting the contents of a record, either administratively or judicially, should write or call the Privacy Liaison Officer located at the address indicated in § 0.401(a), Attn: Office of General Counsel.

(b) Individuals who request clarification of the Notice described in § 0.552 or who have questions concerning the characterization of specific systems of records as set forth in § 0.552, should write or call the Privacy Liaison Officer at the address indicated in § 0.401(a), directed to the Performance Evaluation and Records Management.

PART 1—PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. chs. 2, 5, 9, 13; 28 U.S.C. 2461, unless otherwise noted.

■ 9. Amend § 1.13 by revising the first sentence of paragraph (a)(2) to read as follows:

§ 1.13 Filing of petitions for review and notices of appeals of Commission orders.

(a) * * *

(2) If a party wishes to avail itself of procedures established for selection of a court in the case of multiple petitions for review of the same Commission action, pursuant to 28 U.S.C. 2112(a), but is unable to use email to effect service as described in paragraph (a)(1) of this section, it shall instead, within ten days after the issuance of the order on appeal, serve a copy of its petition for review in person on the General Counsel in the Office of General Counsel, located at the FCC's main office address indicated in 47 CFR 0.401(a). * * *

* * * * *

■ 10. Revise § 1.403 to read as follows:

§ 1.403 Notice and availability.

All petitions for rulemaking (other than petitions to amend the FM, Television, and Air-Ground Tables of Assignments) meeting the requirements of § 1.401 will be given a file number and, promptly thereafter, a ''Public Notice'' will be issued (by means of a Commission release entitled ''Petitions for Rule Making Filed'') as to the petition, file number, nature of the proposal, and date of filing. Petitions for rulemaking are available at the Commission's Reference Information Center at the FCC's main office, located at the address indicated in 47 CFR 0.401(a), and may also be available electronically over the internet at *http://www.fcc.gov/.*

■ 11. Amend § 1.773 by revising the first sentence of paragraphs (a)(4) and (b)(3) to read as follows:

§ 1.773 Petitions for suspension or rejection of new tariff filings.

(a) * * *

(4) * * * An original and four copies of each petition shall be filed with the Commission as follows: the original and three copies of each petition shall be filed with the Secretary at the FCC's main office, located at the address indicated in 47 CFR 0.401(a). * * *

(b) * * *

(3) * * * An original and four copies of each reply shall be filed with the Commission as follows: the original and three copies must be filed with the Secretary at the FCC's main office, located at the address indicated in 47 CFR 0.401(a). * * *

■ 12. Amend § 1.939 by revising the second sentence of paragraph (b) to read as follows:

§ 1.939 Petitions to deny.

* * * * *

(b) * * * Manually filed petitions to deny must be filed with the Office of the Secretary at the FCC's main office, located at the address indicated in 47 CFR 0.401(a). * * *

* * * * *

■ 13. Amend § 1.1120 in paragraph (a) by removing '') of this subpart'' and revising the last sentence to read as follows:

§ 1.1120 Error claims.

(a) * * * These claims should be addressed to the Federal Communications Commission at the address indicated in 47 CFR 0.401(a), Attention: Financial Operations, or emailed to *ARINQUIRIES@fcc.gov.*

* * * * *

■ 14. Amend § 1.1705 by revising paragraph (c)(4) to read as follows:

§ 1.1705 Forms; electronic and manual filing.

* * * * *

(c) * * *

(4) Manual filings that do not require fees must be addressed and sent to the Media Bureau at the FCC's main office, located at the address indicated in 47 CFR 0.401(a).

* * * * *

■ 15. Amend § 1.1870 by revising paragraphs (c) and (i) to read as follows:

§ 1.1870 Compliance procedures.

* * * * *

(c) *Address for filing complaints.* Complaints alleging violation of section 504 with respect to the Commission's programs and activities shall be addressed to the Managing Director and filed with the Office of the Secretary at the FCC's main office, located at the address indicated in 47 CFR 0.401(a).

* * * * *

(i) *Address for filing appeals.* Timely appeals shall be accepted and processed by the Office of the Secretary at the FCC's main office, located at the address indicated in 47 CFR 0.401(a).

* * * * *

■ 16. Amend § 1.1953 by revising paragraph (a) to read as follows:

§ 1.1953 Interagency requests.

(a) Requests to the Commission by other Federal agencies for administrative or salary offset shall be in writing and forwarded to the Financial Operations Center at the FCC's main office, located at the address indicated in 47 CFR 0.401(a).

* * * * *

■ 17. Amend § 1.4000 by revising paragraph (h) to read as follows:

§ 1.4000 Restrictions impairing reception of television broadcast signals, direct broadcast satellite services or multichannel multipoint distribution services.

* * * * *

(h) All allegations of fact contained in petitions and related pleadings before the Commission must be supported by affidavit of a person or persons with actual knowledge thereof. An original and two copies of all petitions and pleadings should be addressed to the Secretary at the FCC's main office, located at the address indicated in 47 CFR 0.401(a). Copies of the petitions and related pleadings will be available for public inspection in the Reference Information Center, Consumer and Governmental Affairs Bureau, located at the address of the FCC's main office indicated in 47 CFR 0.401(a).

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

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

Authority: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

■ 19. Amend § 2.910 by revising the fourth sentence of paragraph (a) to read as follows:

§ 2.910 Incorporation by reference.

(a) * * * All approved material is available for inspection at the Federal Communications Commission, located at the address indicated in 47 CFR 0.401(a), Tel: (202) 418–0270, and is available from the sources listed in this section. * * *

* * * * *

PART 3—AUTHORIZATION AND ADMINISTRATION OF ACCOUNTING AUTHORITIES IN MARITIME AND MARITIME MOBILE-SATELLITE RADIO SERVICES

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

Authority: 47 U.S.C. 154(i), 154(j) and 303(r).

■ 21. Revise § 3.61 to read as follows:

§ 3.61 Reporting address.

All reports must be received at the following address no later than the required reporting date: Accounting Authority Certification Officer, Financial Operations Center, Federal Communications Commission, at the address indicated in 47 CFR 0.401(a).

PART 11—EMERGENCY ALERT SYSTEM (EAS)

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

Authority: 47 U.S.C. 151, 154 (i) and (o), 303(r), 544(g) and 606.

■ 23. Amend § 11.51 by revising the third sentence of paragraph (p) introductory text and adding a reserved paragraph (p)(2) to read as follows:

§ 11.51 EAS code and Attention Signal Transmission requirements.

* * * * *

(p) * * * All approved material is available for inspection at the Federal Communications Commission, located at the address indicated in 47 CFR 0.401(a) (Reference Information Center), and is available from the source indicated in this paragraph (p). * * *

* * * * *

■ 24. Amend § 11.56 by revising the third sentence of paragraph (d) introductory text to read as follows:

§ 11.56 Obligation to process CAP-formatted EAS messages.

* * * * *

(d) * * * All approved material is available for inspection at the Federal Communications Commission, located at the address indicated in 47 CFR 0.401(a) (Reference Information Center), and is available from the sources indicated in this paragraph (d). * * *

* * * * *

PART 15—RADIO FREQUENCY DEVICES

■ 25. The authority citation for part 15 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, 304, 307, 336, 544a, and 549.

■ 26. Amend § 15.38 by revising the fourth sentence of paragraph (a) to read as follows:

§ 15.38 Incorporation by reference.

(a) * * * The materials are available for purchase at the corresponding addresses as noted, and all are available for inspection at the Federal Communications Commission, located at the address indicated in 47 CFR 0.401(a), Tel: (202) 418–0270, and at the National Archives and Records Administration (NARA). * * *

* * * * *

■ 27. Amend § 15.240 by revising the sixth sentence of paragraph (f) to read as follows:

§ 15.240 Operation in the band 433.5–434.5 MHz.

* * * * *

(f) * * * The material shall be submitted to the following address: Experimental Licensing Branch, OET, Federal Communications Commission, at the address of the FCC's main office indicated in 47 CFR 0.401(a), ATTN: RFID Registration.

■ 28. Amend § 15.525 by revising the fifth sentence of paragraph (b) to read as follows:

§ 15.525 Coordination requirements.

* * * * *

(b) * * * This material shall be submitted to Frequency Coordination Branch, OET, Federal Communications Commission, at the address of the FCC's main office indicated in 47 CFR 0.401(a), ATTN: UWB Coordination.

* * * * *

PART 20—COMMERCIAL MOBILE SERVICES

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

Authority: 47 U.S.C. 151, 152(a) 154(i), 157, 160, 201, 214, 222, 251(e), 301, 302, 303, 303(b), 303(r), 307, 307(a), 309, 309(j)(3), 316, 316(a), 332, 610, 615, 615a, 615b, 615c, unless otherwise noted.

■ 30. Amend § 20.19 by:

■ a. Revising paragraph (b)(4);

■ b. Adding a heading for paragraph (l); and

■ c. Revising the second sentence of paragraph (l) introductory text.

The revisions and addition read as follows:

§ 20.19 Hearing aid-compatible mobile handsets.

* * * * *

(b) * * *

(4) *Questions of fact.* All factual questions of whether a wireless handset meets the technical standard(s) of this paragraph (b) shall be referred for resolution to the Chief, Office of Engineering and Technology, Federal Communications Commission, at the address of the FCC's main office indicated in 47 CFR 0.401(a).

* * * * *

(l) *Incorporation by reference.* * * * All approved material is available for inspection at the Federal Communications Commission (FCC), Reference Information Center, Room CY–A257, at the address of the FCC's main office indicated in 47 CFR 0.401(a), Tel: (202) 418–0270, and is available from the source indicated in this paragraph (l). * * *

* * * * *

PART 24—PERSONAL COMMUNICATIONS SERVICES

■ 31. The authority citation for part 24 continues to read as follows:

Authority: 47 U.S.C. 154, 301, 302, 303, 309 and 332.

■ 32. Amend § 24.102 by revising the fourth sentence of the introductory text to read as follows:

§ 24.102 Service areas.

* * * The MTA Map is available on the FCC's website at *www.fcc.gov/auctions* through the ''Maps'' submenu.

* * * * *

■ 33. Amend § 24.202 by revising the fourth sentence of the introductory text to read as follows:

§ 24.202 Service areas.

* * * The BTA/MTA Map is available is available on the FCC's website at *www.fcc.gov/auctions* through the ''Maps'' submenu.

* * * * *

PART 25—SATELLITE COMMUNICATIONS

■ 34. The authority citation for part 25 continues to read as follows:

Authority: 47 U.S.C. 154, 301, 302, 303, 307, 309, 310, 319, 332, 605, and 721, unless otherwise noted.

■ 35. Amend § 25.108 by revising the second sentence of paragraph (a) to read as follows:

§ 25.108 Incorporation by reference.

(a) * * * All approved material is available for inspection at the Federal Communications Commission's Reference Information Center, located at the address of the FCC's main office indicated in 47 CFR 0.401(a), and is available from the sources listed in this paragraph (a). * * *

* * * * *

■ 36. Amend § 25.254 by revising the fourth sentence of paragraph (c) to read as follows:

§ 25.254 Special requirements for ancillary terrestrial components operating in the 1610–1626.5 MHz/2483.5–2500 MHz bands.

* * * * *

(c) * * * Copies of this standard can be inspected at the Federal Communications Commission's Reference Information Center, located at the address of the FCC's main office indicated in 47 CFR 0.401(a), Tel: (202) 418–0270, or at the National Archives and Records Administration (NARA). * * *

* * * * *

■ 37. Amend § 25.301 by revising the third sentence to read as follows:

§ 25.301 Satellite Emergency Notification Devices (SENDs).

* * * The document is available for inspection at the Federal Communications Commission's Reference Information Center, located at the address of the FCC's main office indicated in 47 CFR 0.401(a), Tel: (202) 418–0270. * * *

PART 27—MISCELLANEOUS WIRELESS COMMUNICATIONS SERVICES

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

Authority: 47 U.S.C. 154, 301, 302a, 303, 307, 309, 332, 336, 337, 1403, 1404, 1451, and 1452, unless otherwise noted.

■ 39. Amend § 27.6 by adding a heading for paragraph (a) and revising the seventh sentence of paragraph (a) introductory text and the fourth sentence of paragraph (c)(3) introductory text to read as follows:

§ 27.6 Service areas.

(a) *Composition of service areas.* * * * Maps of the EAs, MEAs, MSAs, RSAs, and REAGs are available on the FCC's website at *www.fcc.gov/auctions* through the ''Maps'' submenu.

* * * * *

(c) * * *

(3) * * * Maps of the EAGs and the **Federal Register** Notice that established the 172 Economic Areas (EAs) are available for public inspection and copying at the Federal Communications Commission's Reference Information Center, located at the address of the FCC's main office indicated in 47 CFR 0.401(a). * * *

* * * * *

■ 40. Amend § 27.73 by revising the seventh sentence of paragraph (a) to read as follows:

§ 27.73 WCS, AMT, and Goldstone coordination requirements.

* * * * *

(a) * * * You may inspect a copy at the Federal Communications Commission's Reference Information Center, located at the address of the FCC's main office indicated in 47 CFR 0.401(a), Tel: (202) 418–0270, or at the National Archives and Records Administration (NARA). * * *

* * * * *

■ 41. Amend § 27.1310 by revising the second and third sentences of paragraph (a)(1) to read as follows:

§ 27.1310 Protection of Broadcast Television Service in the 600 MHz band from wireless operations.

(a) * * *

(1) * * * Copies of this document are available on the FCC's website. See *https://www.fcc.gov/general/oet-bulletins-line.*

* * * * *

PART 52—NUMBERING

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

Authority: 47 U.S.C. 151, 152, 153, 154, 155, 201–205, 207–209, 218, 225–227, 251–252, 271, 332, unless otherwise noted.

■ 43. Amend § 52.26 by revising the second sentence of paragraph (c) to read as follows:

§ 52.26 NANC Recommendations on Local Number Portability Administration.

* * * * *

(c) * * * Copies of the Working Group Report and its appendices can be inspected during normal business hours at the Federal Communications Commission's Reference Information Center, located at the address of the FCC's main office indicated in 47 CFR 0.401(a), or at the National Archives and Records Administration (NARA). * * *

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

■ 44. The authority citation for part 64 continues to read as follows:

Authority: 47 U.S.C. 154, 201, 202, 217, 218, 220, 222, 225, 226, 227, 227b, 228, 251(a), 251(e), 254(k), 262, 403(b)(2)(B), (c), 616, 620, 1401–1473, unless otherwise noted; Pub. L. 115–141, Div. P, sec. 503, 132 Stat. 348, 1091.

■ 45. Amend § 64.621 by revising the second sentence of paragraph (c) introductory text and paragraph (c)(1) introductory text to read as follows:

§ 64.621 Interoperability and portability.

* * * * *

(c) * * * All approved material is available for inspection at the Federal Communications Commission's Reference Information Center, located at the address of the FCC's main office indicated in 47 CFR 0.401(a), Tel: (202) 418–0270, and is available from the sources indicated in this paragraph (c). * * *

(1) FCC (on behalf of SIP Forum), located at the address indicated in 47 CFR 0.401(a), Tel: (888) 225–5322 (voice), (844) 432–2275 (videophone), (888) 835–5322 (TTY).

* * * * *

■ 46. Amend § 64.3100 by revising the third sentence of paragraph (c)(7) to read as follows:

§ 64.3100 Restrictions on mobile service commercial messages.

* * * * *

(c) * * *

(7) * * * The FCC's wireless domain names list will be available on the FCC's website and at the Commission

headquarters, located at the address indicated in 47 CFR 0.401(a).

* * * * *

PART 67—REAL-TIME TEXT

■ 47. The authority citation for part 67 continues to read as follows:

Authority: 47 U.S.C. 151–154, 225, 251, 255, 301, 303, 307, 309, 316, 615c, 616, 617.

■ 48. Amend § 67.3 by revising the second sentence of paragraph (a) to read as follows:

§ 67.3 Incorporation by Reference.

(a) * * * All approved material is available for inspection at the Federal Communications Commission's Reference Information Center, located at the address of the FCC's main office indicated in 47 CFR 0.401(a), Tel: (202) 418–0270, and is available from the sources listed in this section. * * *

* * * * *

PART 68—CONNECTION OF TERMINAL EQUIPMENT TO THE TELEPHONE NETWORK

■ 49. The authority citation for part 68 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 610.

■ 50. Amend § 68.160 by revising the fourth sentence of paragraph (d)(1) to read as follows:

§ 68.160 Designation of Telecommunication Certification Bodies (TCBs).

* * * * *

(d) * * *

(1) * * * All approved material is available for inspection at the Federal Communications Commission's Reference Information Center, located at the address of the FCC's main office indicated in 47 CFR 0.401(a), Tel: (202) 418–0270, and is available from the sources in this paragraph (d). * * *

* * * * *

■ 51. Amend § 68.162 by revising the fourth sentence of paragraph (i) introductory text to read as follows:

§ 68.162 Requirements for Telecommunication Certification Bodies.

* * * * *

(i) * * * All approved material is available for inspection at the Federal Communications Commission's Reference Information Center, located at the address of the FCC's main office indicated in 47 CFR 0.401(a), Tel: (202) 418–0270, and is available from the sources in this paragraph (i). * * *

* * * * *

■ 52. Amend § 68.317 by revising the second sentence of paragraph (i) introductory text to read as follows:

§ 68.317 Hearing aid compatibility volume control: technical standards.

* * * * *

(i) * * * All approved material is available for inspection at the Federal Communications Commission's Reference Information Center, located at the address of the FCC's main office indicated in 47 CFR 0.401(a), Tel: (202) 418–0270, and is available from the source indicated in this paragraph (i). * * *

* * * * *

PART 73—RADIO BROADCAST SERVICES

■ 53. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, 339.

■ 54. Amend § 73.622 by revising the fifth sentence of paragraph (c)(1) and the third and fourth sentences of paragraph (e)(2) to read as follows:

§ 73.622 Digital television table of allotments.

* * * * *

(c)(1) * * * Copies of the Memorandum Opinion and Order may be inspected during normal business hours at the Federal Communications Commission's Reference Information Center, located at the address of the FCC's main office indicated in 47 CFR 0.401(a). * * *

* * * * *

(e) * * *

(2) * * * Copies of this document are available on the FCC's website. See *https://www.fcc.gov/general/oet-bulletins-line.*

* * * * *

■ 55. Amend § 73.623 in paragraph (c)(2) introductory text by:

■ a. Removing ''this paragraph'' and adding ''this paragraph (c)'' in its place;

■ b. Removing ''section 73.622(e)'' and adding ''§ 73.622(e)'' in its place; and

■ c. Revising the fourth sentence of the paragraph.

The revision reads as follows:

§ 73.623 DTV applications and changes to DTV allotments.

* * * * *

(c) * * *

(2) * * * Copies of OET Bulletin No. 69 may be inspected during normal business hours at the Federal Communications Commission's Reference Information Center, located at the address of the FCC's main office indicated in 47 CFR 0.401(a). * * *

* * * * *

■ 56. Amend § 73.683 in paragraph (d) by removing ''Part 74'' and adding ''part 74'' in its place and revising the fifth sentence to read as follows:

§ 73.683 Field strength contours and presumptive determination of field strength at individual locations.

* * * * *

(d) * * * OET Bulletin No. 72 and OET Bulletin No. 73 are available at the Federal Communications Commission's Reference Information Center, located at the address of the FCC's main office indicated in 47 CFR 0.401(a), or at the FCC's Office of Engineering and Technology (OET) website: *http://www.fcc.gov/oet/info/documents/bulletins/.*

* * * * *

■ 57. Amend § 73.8000 by revising the fourth sentence of paragraph (a) and the introductory text of paragraph (d) to read as follows:

§ 73.8000 Incorporation by reference.

(a) * * * The materials are available for inspection at the Federal Communications Commission's Reference Information Center, located at the address of the FCC's main office indicated in 47 CFR 0.401(a), and at the National Archives and Records Administration (NARA). * * *

* * * * *

(d) The following materials are available at the Federal Communications Commission's Reference Information Center, located at the address of the FCC's main office indicated in 47 CFR 0.401(a), or at the FCC's Office of Engineering and Technology (OET) website: *http://www.fcc.gov/oet/info/documents/bulletins/.*

* * * * *

PART 74—EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

■ 58. The authority citation for part 74 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, 307, 309, 310, 336 and 554.

■ 59. Amend § 74.703 by revising the fifth sentence of paragraph (a) to read as follows:

§ 74.703 Interference.

(a) * * * Copies of OET Bulletin No. 69 may be inspected during normal business hours at the Federal Communications Commission's Reference Information Center, located at the address of the FCC's main office indicated in 47 CFR 0.401(a). * * *

* * * * *

■ 60. Amend § 74.707 by revising the third sentence of paragraph (e) to read as follows:

§ 74.707 Low power TV and TV translator station protection.

* * * * *

(e) * * * Copies of OET Bulletin No. 69 may be inspected during normal business hours at the Federal Communications Commission's Reference Information Center, located at the address of the FCC's main office indicated in 47 CFR 0.401(a). * * *

■ 61. Amend § 74.861 by revising the fourth sentence of paragraph (i) introductory text and removing the parenthetical authority citation at the end of the section to read as follows:

§ 74.861 Technical requirements.

* * * * *

(i) * * * All approved material is available for inspection at the Federal Communications Commission's Reference Information Center, located at the address of the FCC's main office indicated in 47 CFR 0.401(a), Tel: (202) 418–0270, and is available from the sources in this paragraph (i). * * *

* * * * *

PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

■ 62. The authority citation for part 76 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302, 302a, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 338, 339, 340, 341, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

■ 63. Amend § 76.501 by revising Note 5 to § 76.501 to read as follows:

§ 76.501 Cross-ownership.

* * * * *

Note 5 to § 76.501: Certifications pursuant to this section and these notes shall be sent to the attention of the Media Bureau, Federal Communications Commission, located at the address of the FCC's main office indicated in 47 CFR 0.401(a).

* * * * *

■ 64. Amend § 76.503 by revising Note 1 to § 76.503 to read as follows:

§ 76.503 National subscriber limits.

* * * * *

Note 1 to § 76.503: Certifications made under this section shall be sent to the attention of the Media Bureau, Federal Communications Commission, located at the address of the FCC's main office indicated in 47 CFR 0.401(a).

* * * * *

■ 65. Amend § 76.602 by revising the fourth sentence of paragraph (a) to read as follows:

§ 76.602 Incorporation by reference.

(a) * * * The materials are available for inspection at the Federal Communications Commission's Reference Information Center, located at the address of the FCC's main office indicated in 47 CFR 0.401(a), and at the National Archives and Records Administration (NARA). * * *

* * * * *

PART 79—ACCESSIBILITY OF VIDEO PROGRAMMING

■ 66. The authority citation for part 79 continues to read as follows:

Authority: 47 U.S.C. 151, 152(a), 154(i), 303, 307, 309, 310, 330, 544a, 613, 617.

■ 67. Amend § 79.3 by revising the second sentence of paragraph (e)(1) introductory text to read as follows:

§ 79.3 Video description of video programming.

* * * * *

(e) * * *

(1) * * * Complaints should be addressed to: Consumer and Governmental Affairs Bureau, located at the address of the FCC's main office indicated in 47 CFR 0.401(a). * * *

* * * * *

■ 68. Amend § 79.100 by revising the fourth sentence of paragraph (a) to read as follows:

§ 79.100 Incorporation by reference.

(a) * * * The materials are available for purchase at the corresponding addresses as noted, and all are available for inspection at the Federal Communications Commission's Reference Information Center, located at the address of the FCC's main office indicated in 47 CFR 0.401(a), Tel: (202) 418–0270, and at the National Archives and Records Administration (NARA). * * *

* * * * *

PART 80—STATIONS IN THE MARITIME SERVICES

■ 69. The authority citation for part 80 continues to read as follows:

Authority: 47 U.S.C. 151–155, 301–609; 3 U.S.T. 3450, 3 U.S.T. 4726, 12 U.S.T. 2377.

■ 70. Amend § 80.7 by revising the fifth sentence of paragraph (a) to read as follows:

§ 80.7 Incorporation by reference.

(a) * * * Also it is available for inspection at the Federal Communications Commission's Reference Information Center, located at the address of the FCC's main office indicated in 47 CFR 0.401(a), and is available from the sources listed in this section.

* * * * *

■ 71. Amend § 80.59 in paragraph (c)(2) by adding ''of this chapter'' at the end of the first sentence and revising the second sentence to read as follows:

§ 80.59 Compulsory ship inspections.

* * * * *

(c) * * *

(2) * * * Emergency requests must be filed with the Federal Communications Commission, Office of the Secretary, located at the address of the FCC's main office indicated in 47 CFR 0.401(a).

* * * * *

■ 72. Amend § 80.371 in paragraph (c)(1)(ii) introductory text by:

■ a. Removing ''this paragraph'' and adding ''this paragraph (c)(1)(ii)'' in its place each time it appears;

■ b. Revising the fifth sentence of the paragraph; and

■ c. Removing ''part 80'' and adding ''this part'' in its place.

The revision reads as follows:

§ 80.371 Public correspondence frequencies.

* * * * *

(c) * * *

(1) * * *

(ii) * * * Maps of the EAs and VPCSAs are available for public inspection and copying at the Federal Communications Commission's Reference Information Center, located at the address of the FCC's main office indicated in 47 CFR 0.401(a), Tel: 1–888–225–5322. * * *

* * * * *

■ 73. Amend § 80.385 in paragraph (a)(3) introductory text by removing ''this paragraph'' and adding ''this paragraph (a)(3)'' in its place each time it appears and revising the sixth sentence to read as follows:

§ 80.385 Frequencies for automated systems.

* * * * *

(a) * * *

(3) * * * Maps of the EAs and AMTSAs are available for public inspection and copying at the Federal Communications Commission's Reference Information Center, located at the address of the FCC's main office indicated in 47 CFR 0.401(a). * * *

* * * * *

PART 87—AVIATION SERVICES

■ 74. The authority citation for part 87 continues to read as follows:

Authority: 47 U.S.C. 154, 303 and 307(e), unless otherwise noted.

■ 75. Amend § 87.199 by revising the fourth sentence of paragraph (a) to read as follows:

§ 87.199 Special requirements for 406.0–406.1 MHz ELTs.

(a) * * * Copies of this standard can be inspected at the Federal Communications Commission's Reference Information Center, located at the address of the FCC's main office indicated in 47 CFR 0.401(a), Tel: (202) 418–0270, or at the National Archives and Records Administration (NARA). * * *

* * * * *

■ 76. Amend § 87.285 by removing ''of this chapter'' in the first sentence and revising the sixth sentence to read as follows:

§ 87.285 Scope of service.

* * * You may inspect a copy at the Federal Communications Commission's Reference Information Center, located at the address of the FCC's main office indicated in 47 CFR 0.401(a), or at the National Archives and Records Administration (NARA). * * *

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

■ 77. The authority citation for part 90 continues to read as follows:

Authority: 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7), 1401–1473.

■ 78. Amend § 90.7 by revising the definitions of ''900 MHz SMR MTA-based license or MTA license'' and ''EA-based or EA license'' to read as follows:

§ 90.7 Definitions.

* * * * *

900 MHz SMR MTA-based license or MTA license. (1) A license authorizing the right to use a specified block of 900 MHz SMR spectrum within one of the 47 Major Trading Areas (''MTAs''), as embodied in Rand McNally's Trading Areas System MTA Diskette and geographically represented in the map contained in Rand McNally's Commercial Atlas & Marketing Guide (the ''MTA Map''), with the following exceptions and additions:

(i) Alaska is separated from the Seattle MTA and is licensed separately.

(ii) Guam and the Northern Mariana Islands are licensed as a single MTA-like area.

(iii) Puerto Rico and the United States Virgin Islands are licensed as a single MTA-like area.

(iv) American Samoa is licensed as a single MTA-like area.

(2) The MTA map is available for public inspection at the Federal Communications Commission's Reference Information Center, located at the address of the FCC's main office indicated in 47 CFR 0.401(a).

* * * * *

EA-based or EA license. A license authorizing the right to use a specified block of SMR or LMS spectrum within one of the 175 Economic Areas (EAs) as defined by the Department of Commerce Bureau of Economic Analysis. The EA Listings and the EA Map are available for public inspection at the Federal Communications Commission's Reference Information Center, located at the address of the FCC's main office indicated in 47 CFR 0.401(a).

* * * * *

■ 79. Amend § 90.20 by revising the fifth sentence of paragraph (g)(1) to read as follows:

§ 90.20 Public Safety Pool.

* * * * *

(g) * * *

(1) * * * You may inspect and copy maps of the EAs and VPCSAs at the Federal Communications Commission's Reference Information Center, located at the address of the FCC's main office indicated in 47 CFR 0.401(a). * * *

* * * * *

■ 80. Amend § 90.265 by revising the fourth sentence of paragraph (f) introductory text and removing the parenthetical authority citation at the end of the section to read as follows:

§ 90.265 Assignment and use of frequencies in the bands allocated for Federal use.

* * * * *

(f) * * * All approved material is available for inspection at the Federal Communications Commission's Reference Information Center, located at the address of the FCC's main office indicated in 47 CFR 0.401(a), Tel: (202) 418–0270, and is available from the sources in this paragraph (f). * * *

* * * * *

■ 81. Amend § 90.375 by revising the second sentence of note 1 to the table in paragraph (c) to read as follows:

§ 90.375 RSU license areas, communication zones and registrations.

* * * * *

(c) * * *

[1] * * * Copies may be inspected at the Federal Communications Commission's Reference Information Center, located at the address of the FCC's main office indicated in 47 CFR 0.401(a), or at the National Archives and Records Administration (NARA). * * *

■ 82. Amend § 90.379 by revising the third sentence to read as follows:

§ 90.379 ASTM E2213–03 DSRC Standard (ASTM–DSRC Standard).

* * * Copies may be inspected at the Federal Communications Commission's Reference Information Center, located at the address of the FCC's main office indicated in 47 CFR 0.401(a), Tel: (202) 418–0270, or at the National Archives and Records Administration (NARA). * * *

■ 83. Amend § 90.548 by revising the second sentence of paragraph (b) introductory text to read as follows:

§ 90.548 Interoperability Technical Standards.

* * * * *

(b) * * * Material incorporated by reference may be inspected at the Federal Communications Commission's Reference Information Center, located at the address of the FCC's main office indicated in 47 CFR 0.401(a), Tel: (202) 418–0270, or at the National Archives and Records Administration (NARA). * * *

* * * * *

■ 84. Amend § 90.553 by:

■ a. Adding a period after ''August 20, 2009'' and revising the fifth sentence of paragraph (b); and

■ b. Revising the second sentence of paragraph (c).

The revisions read as follows:

§ 90.553 Encryption.

* * * * *

(b) * * * Material incorporated by reference may be inspected at the Federal Communications Commission's Reference Information Center, located at the address of the FCC's main office indicated in 47 CFR 0.401(a), Tel: (202) 418–0270, or at the National Archives and Records Administration (NARA). * * *

(c) * * * Copies of the standards listed in this section that are incorporated by reference may be inspected at the Federal Communications Commission's Reference Information Center, located at the address of the FCC's main office indicated in 47 CFR 0.401(a), Tel: (202) 418–0270, or at the National Archives and Records Administration (NARA). * * *

PART 95—PERSONAL RADIO SERVICES

■ 85. The authority citation for part 95 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 307.

■ 86. Amend § 95.329 by revising the third sentence to read as follows:

§ 95.329 How to contact the FCC.

* * * To write the FCC about these services, address the Federal Communications Commission, Attention: Mobility Division, Wireless Telecommunications Bureau, at the address of the FCC's main office indicated in 47 CFR 0.401(a).

■ 87. Amend § 95.2509 by revising the sixth sentence of paragraph (e)(2) to read as follows:

§ 95.2509 MBAN registration and frequency coordination.

* * *

(e) * * *

(2) * * * You may inspect a copy at the Federal Communications Commission's Reference Information Center, located at the address of the FCC's main office indicated in 47 CFR 0.401(a), Tel: (202) 418–0270, or at the National Archives and Records Administration (NARA). * * *

* * * * *

■ 88. Amend § 95.2989 by revising the second sentence of paragraph (b) introductory text to read as follows:

§ 95.2989 PLB and MSLD technical standards.

* * * * *

(b) * * * All approved material is available for inspection at the Federal Communications Commission's Reference Information Center, located at the address of the FCC's main office indicated in 47 CFR 0.401(a), Tel: (202) 418–0270, and is available from the sources indicated in this paragraph (b). * * *

* * * * *

■ 89. Amend § 95.3189 by revising the fourth sentence to read as follows:

§ 95.3189 OBU technical standard.

* * * The material is available for inspection at the Federal Communications Commission's Reference Information Center, located at the address of the FCC's main office indicated in 47 CFR 0.401(a), Tel: (202) 418–0270, and may be obtained from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959. *http://www.astm.org.* * * *

PART 101—FIXED MICROWAVE SERVICES

■ 90. The authority citation for part 101 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

■ 91. Amend § 101.523 by revising the first and fourth sentences of paragraph (a)(4) to read as follows:

§ 101.523 Service areas.

(a) * * *

(4) The Gulf of Mexico. * * * Maps of the EAs and the **Federal Register** Notice that established the 172 Economic Areas (EAs) are available for public inspection and copying at the Federal Communications Commission's Reference Information Center, located at the address of the FCC's main office indicated in 47 CFR 0.401(a). * * *

* * * * *

■ 92. Amend § 101.705 by removing the second parenthetical sentence and adding a sentence in its place to read as follows:

§ 101.705 Special showing for renewal of common carrier station facilities using frequency diversity.

* * * This document is available at the library of the Federal Communications Commission, located at the address of the FCC's main office indicated in 47 CFR 0.401(a). * * *

[FR Doc. 2020–19544 Filed 10–9–20; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 180117042–8884–02; RTID 0648–XA544]

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries

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

ACTION: Temporary rule; quota transfer and closure.

SUMMARY: NMFS transfers 40 metric tons (mt) of Atlantic bluefin tuna (BFT) quota from the Reserve category to the October through November 2020 General category subquota period and closes the General category fishery until the General category reopens on December 1, 2020. The quota transfer is intended to provide additional fishing opportunities based on consideration of the regulatory determination criteria regarding inseason adjustments and applies to Atlantic tunas General category (commercial) permitted vessels and Highly Migratory Species (HMS) Charter/Headboat category permitted vessels with a commercial sale endorsement when fishing commercially for BFT. Given that the adjusted quota is projected to be caught quickly, the closure is being filed simultaneously to prevent overharvest of the adjusted General category October through November 2020 BFT subquota.

DATES: The quota transfer is effective October 8, 2020, through November 30, 2020. The closure is effective 11:30 p.m., local time, October 9, 2020, through November 30, 2020.

FOR FURTHER INFORMATION CONTACT: Sarah McLaughlin or Nicholas Velseboer, 978–281–9260, or Larry Redd, 301–427–8503.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27 subdivides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) and as implemented by the United States among the various domestic fishing categories, per the allocations established in the 2006 Consolidated Highly Migratory Species Fishery Management Plan (2006 Consolidated HMS FMP) (71 FR 58058, October 2, 2006) and amendments. NMFS is required under ATCA and the Magnuson-Stevens Act to provide U.S. fishing vessels with a reasonable opportunity to harvest the ICCAT-recommended quota.

Under § 635.28(a)(1), NMFS files a closure notice with the Office of the Federal Register for publication when a BFT quota (or subquota) is reached or is projected to be reached. Retaining, possessing, or landing BFT under that quota category is prohibited on or after the effective date and time of a closure notice for that category until the opening of the relevant subsequent quota period or until such date as specified.

The current baseline General and Reserve category quotas are 555.7 mt and 29.5 mt, respectively. See § 635.27(a). Each of the General category time periods (January, June through August, September, October through

November, and December) is allocated a ''subquota'' or portion of the annual General category quota. The baseline subquotas for each time period are as follows: 29.5 mt for January; 277.9 mt for June through August; 147.3 mt for September; 72.2 mt for October through November; and 28.9 mt for December. Any unused General category quota rolls forward from one time period to the next, and is available for use in subsequent time periods. To date, NMFS has taken several actions that resulted in adjustments to the General and Reserve category quotas, resulting in currently adjusted quotas of 128.7 mt of quota for the Reserve category, 100 mt for the General category January through March 2020 subquota period, and 9.4 mt for the December 2020 subquota period (85 FR 17, January 2, 2020; 85 FR 6828, February 6, 2020; 85 FR 43148, July 16, 2020; 85 FR 59445, September 22, 2020; and 85 FR 61872, October 1, 2020).

Transfer of 40 mt From the Reserve Category to the General Category

Under § 635.27(a)(9), NMFS has the authority to transfer quota among fishing categories or subcategories, after considering regulatory determination criteria provided under § 635.27(a)(8). NMFS has considered all of the relevant determination criteria and their applicability to this inseason quota transfer. These considerations include, but are not limited to, the following:

Regarding the usefulness of information obtained from catches in the particular category for biological sampling and monitoring of the status of the stock (§ 635.27(a)(8)(i)), biological samples collected from BFT landed by General category fishermen and provided by bluefin tuna dealers continue to provide valuable data for ongoing scientific studies of BFT age and growth, migration, and reproductive status. Additional opportunity to land BFT in the General category would support the continued collection of a broad range of data for these studies and for stock monitoring purposes.

NMFS also considered the catches of the General category quota to date (including during the fall and winter fisheries in the last several years), and the likelihood of closure of that segment of the fishery if no adjustment is made (§ 635.27(a)(8)(ii) and (ix)). Preliminary landings data as of October 7, 2020, indicate that the General category landed 67.3 mt for the October through November period. This represents 93 percent of the baseline October through November subquota (72.2 mt). At the time of drafting of this inseason action, the General category subquota has not yet been exceeded, but without a quota transfer at this time, NMFS would likely close the General category fishery shortly, and participants would have to stop bluefin tuna fishing activities while commercial-sized bluefin tuna remain available in the areas where General category permitted vessels operate at this time of year. Transferring 40 mt of quota from the Reserve category would result in 112.2 mt being available for the October through November 2020 subquota period, thus effectively providing limited additional opportunities to harvest the U.S. bluefin tuna quota while avoiding exceeding it. Given the lag between initiation of an inseason action and its implementation, however, this notice also closes the fishery, as NMFS anticipates the transferred quota will be caught quickly. NMFS plans to account for General category overharvest from the September 2020 subquota period (preliminarily 43.5 mt as of October 7, 2020), as well as additional landings from the June through August period not previously accounted for in 85 FR 59445 (September 22, 2020), in a subsequent notice, such as the notice NMFS would prepare to announce a quota transfer from the Reserve to the General category December subquota period.

Regarding the projected ability of the vessels fishing under the particular category quota (here, the General category) to harvest the additional amount of BFT quota transferred before the end of the fishing year (§ 635.27(a)(8)(iii)), NMFS anticipates that all of the 40 mt of transferred quota will be used by October 9, based on current figures and the amount of quota being transferred, but this is also subject to weather conditions and BFT availability. In the unlikely event that any of this quota is unused by November 30, such quota will roll forward to the next subperiod within the calendar year (*i.e.,* the December period), and NMFS anticipates that it would be used before the end of the fishing year. Thus, this quota transfer would allow fishermen to take advantage of the availability of fish on the fishing grounds, and provide a reasonable opportunity to harvest the full U.S. BFT quota.

NMFS also considered the estimated amounts by which quotas for other gear categories of the fishery might be exceeded (§ 635.27(a)(8)(iv)) and the ability to account for all 2020 landings and dead discards. In the last several years, total U.S. BFT landings have been below the available U.S. quota such that the United States has carried forward the maximum amount of underharvest allowed by ICCAT from one year to the next. NMFS will need to account for 2020 landings and dead discards within the adjusted U.S. quota, consistent with ICCAT recommendations, and anticipates having sufficient quota to do that, even with the 40-mt transfer to the General category for the October through November fishery. NMFS anticipates that General category participants in all areas and time periods will have opportunities to harvest the General category quota in 2020, through active inseason management such as the timing of quota transfers, as practicable. Thus, this quota transfer would allow fishermen to take advantage of the availability of fish on the fishing grounds to the extent consistent with the available amount of transferrable quota and other management objectives, while avoiding quota exceedance.

NMFS also considered the effects of the adjustment on the BFT stock and the effects of the transfer on accomplishing the objectives of the FMP (§ 635.27(a)(8)(v) and (vi)). This transfer would be consistent with the current quotas, which were established and analyzed in the 2018 BFT quota final rule (83 FR 51391, October 11, 2018), and with objectives of the 2006 Consolidated HMS FMP and amendments and is not expected to negatively impact stock health or to affect the stock in ways not already analyzed in those documents. Another principal consideration is the objective of providing opportunities to harvest the full annual U.S. BFT quota without exceeding it based on the goals of the 2006 Consolidated HMS FMP and amendments, including to achieve optimum yield on a continuing basis and to optimize the ability of all permit categories to harvest their full BFT quota allocations (related to § 635.27(a)(8)(x)). Specific to the General category, this includes providing opportunity equitably across all time periods.

Based on the considerations above, NMFS is transferring 40 mt of the available 128.7 mt of Reserve category quota to the General category for the October through November 2020 fishery, resulting in a subquota of 112.2 mt for the October through November 2020 fishery and 88.7 mt in the Reserve category.

Closure of the October Through November 2020 General Category Fishery

Based on the best available landings information for the General category BFT fishery, NMFS has determined that the adjusted October through November subquota of 112.2 mt, adjusted in this

action, is projected to be reached shortly (*i.e.,* as of October 7, reported landings total approximately 67.3 mt) and that the General category should be closed. Therefore, retaining, possessing, or landing large medium or giant BFT by persons aboard vessels permitted in the Atlantic tunas General category and HMS Charter/Headboat category (while fishing commercially) must cease at 11:30 p.m. local time on October 9, 2020. The General category will automatically reopen December 1, 2020, for the December 2020 subquota time period. This action applies to Atlantic tunas General category (commercial) permitted vessels and HMS Charter/Headboat category permitted vessels with a commercial sale endorsement when fishing commercially for BFT, and is taken consistent with the regulations at § 635.28(a)(1). The intent of this closure is to prevent overharvest of the available adjusted October through November subquota.

Fishermen may catch and release (or tag and release) BFT of all sizes, subject to the requirements of the catch-and-release and tag-and-release programs at § 635.26. All BFT that are released must be handled in a manner that will maximize their survival, and without removing the fish from the water, consistent with requirements at § 635.21(a)(1). For additional information on safe handling, see the ''Careful Catch and Release'' brochure available at *https://www.fisheries.noaa.gov/resource/outreach-and-education/careful-catch-and-release-brochure/.*

Monitoring and Reporting

NMFS will continue to monitor the BFT fisheries closely. Dealers are required to submit landing reports within 24 hours of a dealer receiving BFT. Late reporting by dealers compromises NMFS' ability to timely implement actions such as quota and retention limit adjustment, as well as closures, and may result in enforcement actions. Additionally, and separate from the dealer reporting requirement, General and HMS Charter/Headboat category vessel owners are required to report the catch of all BFT retained or discarded dead within 24 hours of the landing(s) or end of each trip, by accessing *hmspermits.noaa.gov,* using the HMS Catch Reporting app, or calling (888) 872–8862 (Monday through Friday from 8 a.m. until 4:30 p.m.).

After the fishery reopens on December 1, depending on the level of fishing effort and catch rates of BFT, NMFS may determine that additional adjustments are necessary to ensure available subquotas are not exceeded or to enhance scientific data collection from, and fishing opportunities in, all geographic areas. If needed, subsequent adjustments will be published in the **Federal Register**. In addition, fishermen may call the Atlantic Tunas Information Line at (978) 281–9260, or access *hmspermits.noaa.gov,* for updates on quota monitoring and inseason adjustments.

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR part 635, which was issued pursuant to section 304(c), and is exempt from review under Executive Order 12866.

The Assistant Administrator for NMFS finds that pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice of, and an opportunity for public comment on, for the following reasons: The regulations implementing the 2006 Consolidated HMS FMP and amendments provide for inseason retention limit adjustments to respond to the unpredictable nature of BFT availability on the fishing grounds, the migratory nature of this species, and the regional variations in the BFT fishery. This fishery is currently underway and delaying this action would be contrary to the public interest as it could result in BFT landings exceeding the adjusted October through November 2020 General category quota. Affording prior notice and opportunity for public comment to implement the quota transfer is impracticable and contrary to the public interest as such a delay would likely result in exceedance of the General category October through November fishery subquota or earlier closure of the fishery while fish are available on the fishing grounds. Subquota exceedance may result in the need to reduce quota for the General category later in the year and thus could affect later fishing opportunities. This action does not raise conservation and management concerns. Transferring quota from the Reserve category to the General category does not affect the overall U.S. BFT quota, and available data shows the adjustment would have a minimal risk of exceeding the ICCAT-allocated quota. NMFS notes that the public had an opportunity to comment on the underlying rulemakings that established the U.S. BFT quota and the inseason adjustment criteria. For all of the above reasons, there is good cause under 5 U.S.C. 553(d) to waive the 30-day delay in effectiveness.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: October 8, 2020.

Jennifer M. Wallace,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2020–22659 Filed 10–8–20; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 200227–0066; RTID 0648–XA553]

Fisheries of the Exclusive Economic Zone Off Alaska; Exchange of Flatfish in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; reallocation.

SUMMARY: NMFS is exchanging unused rock sole Community Development Quota (CDQ) for yellowfin sole CDQ acceptable biological catch (ABC) reserves in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to allow the 2020 total allowable catch (TAC) of yellowfin sole in the BSAI to be harvested.

DATES: Effective October 9, 2020 through December 31, 2020.

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

In the BSAI, the 2020 rock sole and yellowfin sole CDQ reserves are 4,915 metric tons (mt) and 16,425 mt, respectively, as established by the final 2020 and 2021 harvest specifications for groundfish in the BSAI (85 FR 13553, March 9, 2020) and as revised (85 FR 61875, October 1, 2020). The 2020 rock sole and yellowfin sole CDQ ABC reserves are 11,538 mt and 11,493 mt, respectively, as established by the final 2020 and 2021 harvest specifications for groundfish in the BSAI (85 FR 13553,

March 9, 2020) and as revised (85 FR 61875, October 1, 2020).

The Aleutian Pribilof Island Community Development Association has requested that NMFS exchange 300 mt of rock sole CDQ reserves for 300 mt of yellowfin sole CDQ ABC reserves under § 679.31(d). Therefore, in accordance with § 679.31(d), NMFS exchanges 300 mt of rock sole CDQ reserves for 300 mt of yellowfin sole CDQ ABC reserves in the BSAI. This action also decreases and increases the TACs and CDQ ABC reserves by the corresponding amounts. Tables 11 and 13 of the final 2020 and 2021 harvest specifications for groundfish in the BSAI (85 FR 13553, March 9, 2020 and 85 FR 61875, October 1, 2020) are further revised as follows:

TABLE 11—FINAL 2020 COMMUNITY DEVELOPMENT QUOTA (CDQ) RESERVES, INCIDENTAL CATCH AMOUNTS (ICAS), AND AMENDMENT 80 ALLOCATIONS OF THE ALEUTIAN ISLANDS PACIFIC OCEAN PERCH, AND BSAI FLATHEAD SOLE, ROCK SOLE, AND YELLOWFIN SOLE TACS

[Amounts are in metric tons]

Sector	Pacific ocean perch			Flathead sole	Rock sole	Yellowfin sole
	Eastern Aleutian district	Central Aleutian district	Western Aleutian district	BSAI	BSAI	BSAI
TAC	10,613	8,094	10,000	17,845	46,705	152,800
CDQ	1,136	866	1,070	1,962	4,615	16,725
ICA	100	60	10	3,000	6,000	4,000
BSAI trawl limited access	938	717	178	.....	.....	17,172
Amendment 80	8,440	6,451	8,742	12,884	36,090	114,903

Note: Sector apportionments may not total precisely due to rounding.

TABLE 13—FINAL 2020 AND 2021 ABC SURPLUS, ABC RESERVES, COMMUNITY DEVELOPMENT QUOTA (CDQ) ABC RESERVES, AND AMENDMENT 80 ABC RESERVES IN THE BSAI FOR FLATHEAD SOLE, ROCK SOLE, AND YELLOWFIN SOLE

[Amounts are in metric tons]

Sector	2020 Flathead sole	2020 Rock sole	2020 Yellowfin sole	2021 [1] Flathead sole	2021 [1] Rock sole	2021 [1] Yellowfin sole
ABC	68,134	153,300	260,918	71,079	230,700	261,497
TAC	17,845	46,655	152,830	24,000	49,000	168,900
ABC surplus	50,289	106,645	108,088	47,079	181,700	92,597
ABC reserve	50,289	106,645	108,088	47,079	181,700	92,597
CDQ ABC reserve	5,329	11,838	11,193	5,037	19,442	9,908
Amendment 80 ABC reserve	44,960	94,807	96,895	42,042	162,258	82,689

[1] The 2021 allocations for Amendment 80 species between Amendment 80 cooperatives and the Amendment 80 limited access sector will not be known until eligible participants apply for participation in the program by November 1, 2020.

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR part 679, which was issued pursuant to section 304(b), and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest, as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the flatfish exchange by the Aleutian Pribilof Island Community Development Association in the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of October 1, 2020.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 7, 2020.

Kelly Denit,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2020–22548 Filed 10–9–20; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 85, No. 198
Tuesday, October 13, 2020

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 946

[Doc. No. AMS–SC–20–0062; SC20–946–1 PR]

Irish Potatoes Grown in Washington; Suspension of Reporting and Assessment Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule invites comments on a recommendation from the State of Washington Potato Committee (Committee) to suspend the reporting and assessment requirements prescribed under the marketing order regulating Irish Potatoes grown in Washington (Order). In a separate action, the Committee also unanimously recommended terminating Marketing Order No. 946. This rule would indefinitely suspend the reporting and assessment requirements of the Order during the period that USDA is processing the termination request.

DATES: Comments must be received by December 14, 2020.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or internet: *https://www.regulations.gov.* All comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours or can be viewed at: *https://www.regulations.gov.* All comments submitted in response to this proposal will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Gregory A. Breasher, Marketing Specialist, or Gary Olson, Regional Director, Northwest Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; Telephone: (503) 326–2724 or Email: *Gregory.Breasher@usda.gov* or *GaryD.Olson@usda.gov.*

Small businesses may request information on complying with this regulation by contacting Richard Lower, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: *Richard.Lower@usda.gov.*

SUPPLEMENTARY INFORMATION: This action, pursuant to 5 U.S.C. 553, proposes an amendment to regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This proposed rule is issued under Marketing Order No. 946, as amended (7 CFR part 946), regulating the handling of Irish potatoes grown in Washington. Part 946 (referred to as the ''Order'') is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.'' The Committee locally administers the Order and is comprised of producers and handlers operating within the production area.

The Department of Agriculture (USDA) is issuing this proposed rule in conformance with Executive Orders 13563 and 13175. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review. Additionally, because this proposed rule does not meet the definition of a significant regulatory action, it does not trigger the requirements contained in Executive Order 13771. See OMB's Memorandum titled ''Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, titled 'Reducing Regulation and Controlling Regulatory Costs' '' (February 2, 2017).

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This proposed rule is not intended to have retroactive effect.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to a marketing order may file with USDA a petition stating that the marketing order, any provision of the marketing order, or any obligation imposed in connection with the marketing order is not in accordance with law and request a modification of the marketing order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

The Committee meets regularly to consider recommendations for modification, suspension, or termination of the Order's regulatory requirements. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA reviews Committee recommendations, including information provided by the Committee and from other available sources, and determines whether modification, suspension, or termination of the regulatory requirements would tend to effectuate the declared policy of the Act.

On June 11, 2020, the Committee met and, after much deliberation, unanimously recommended that USDA terminate the Order. Additionally, the Committee recommended that the Order's reporting and assessment requirements—the only regulatory activities of the Order currently in effect—be suspended while the recommendation for termination is being processed by USDA. The termination would be a separate regulatory action from the suspension of requirements as proposed herein.

Section 946.41 provides authority for the Committee to assess handlers for their pro rata share of the Committee expenses authorized each fiscal period. Section 946.70 authorizes the Committee to collect reports and other information necessary for the Committee to perform its duties under the Order. This proposed rule would

suspend § 946.248, which established a continuing assessment rate of $0.0025 per hundredweight, effective for the 2013–2014 and subsequent fiscal periods, and § 946.143, which requires monthly reporting of fresh potato shipments from the production area.

The Order has been in effect since 1949, providing the Washington potato industry authority for grade, size, quality, maturity, pack, and container requirements, as well as authority for inspection requirements. Based on the Committee's recommendation in 2010, USDA suspended the Order's handling requirements for Russet potatoes. The Committee believed that the costs of inspection outweighed the benefits provided from having the Order's regulatory requirements in effect for that type potato.

In 2013, also upon the recommendation of the Committee, USDA suspended handling requirements temporarily, through June 30, 2014, for all yellow flesh and white type potatoes. Again, the Committee believed that the costs of inspection outweighed the benefits provided from regulating these type potatoes.

In 2014, the handling requirements for red type potatoes were indefinitely suspended. Also in 2014, the temporary suspension for yellow flesh and white types was extended indefinitely. The sum of the previous actions effectively suspended the handling requirements for all types of Washington potatoes after the 2013–2014 marketing year. The Committee believed operating without handling regulation offered Washington potato handlers a cost savings through the elimination of mandatory inspection fees. Also, the Committee had determined that the potential negative market impact of operating without mandatory quality and inspection requirements was minimal.

Following the suspension of the handling requirements in 2014, the Committee continued to levy assessments and to maintain its administrative function. The Committee believed that it should continue to fund its full operational capability, collect industry statistics on an ongoing basis, and maintain the program in the event that regulating quality was again deemed necessary.

The Committee met on June 11, 2020, to discuss the current status of the Washington potato industry and the relevance of the Order. The Committee determined that the suspension of the Order's handling requirements has not negatively impacted the industry and that there is no longer a need for the Order. Also, the Committee concluded that the collection of information under the Order's authority is redundant, as the Washington Potato Commission has similar handler reporting requirements and that the statistical information collected by it is provided to the industry. Thus, the Committee unanimously recommended terminating the Order.

In addition, the Committee determined that there is no need to continue collecting assessments and requiring reports while USDA considers its termination recommendation. Therefore, the Committee also unanimously recommended that the assessment and reporting requirements of the Order be immediately suspended. This action would relieve handlers of the assessment and reporting burden during the pendency of the termination process.

At the June meeting, the Committee recommended a budget of $41,150 for the indefinite period leading up to the termination of the Order. The budgeted amount was established on the basis of the funds remaining in the Committee's monetary reserve and expected future expenses. The budget, in its entirety, would provide for such operating expenses as are necessary during the termination process, including a final financial review and management compensation.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 250 producers of Washington potatoes and approximately 26 fresh potato handlers in the production area subject to regulation by the Order.

Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $30,000,000, and small agricultural producers are defined as those having annual receipts of less than $1,000,000.

According to USDA Market News, the average shipping point price for fresh Washington potatoes during the 2019 shipping season was approximately $15.79 per hundredweight. The Committee reported 2019–2020 marketing year fresh potato shipments were 9,687,170 hundredweight. Given the number of handlers, average annual handler receipts are less than $30,000,000 ($15.79/hundredweight times 9,687,170 hundredweight equal $152,960,414, divided by 26 handlers equals $5,883,093 per handler).

In addition, USDA National Agricultural Statistics Service reported an average producer price of $8.20 per hundredweight for the 2019 crop. Given the number of Washington potato producers, average annual producer revenue is below $1,000,000 ($8.20/hundredweight times 9,687,170 hundredweight equal $79,434,794, divided by 250 producers equals $317,739 per producer). Therefore, most handlers and producers of fresh Washington potatoes may be classified as small agricultural businesses.

This proposed rule would suspend the reporting and assessment requirements of the Order. The handler reporting requirement that would be suspended is the monthly collection of Washington fresh potato shipment information. The assessment rate that would be suspended is the $0.0025 per hundredweight rate in effect for the 2013 fiscal period and continuing to the present day. The Committee also recommended a budget of expenditures of $41,150 for the period beginning July 1, 2020 and ending with termination of the Order. The budget was based on the Committee's estimated financial resources on June 30, 2020. Budgeted expenditures include administrative expenses and a final financial review.

The Committee made the recommendation to suspend the reporting and assessment requirements as an adjunct to the recommendation to terminate the Order. As such, the only other alternative discussed by the Committee was to maintain the status quo, continue to assess handlers, and to require monthly handling reports. After consideration, the Committee determined that the Order is no longer beneficial to the industry and that the best recourse was to cease operations and terminate the Order.

This action would suspend the reporting and assessment obligations imposed on handlers. When in effect, assessments are applied uniformly on all handlers, and some of those costs may be passed on to producers. The suspension of the reporting and assessment requirements would reduce the regulatory burden on handlers and

would also be expected to reduce the burden on producers.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Order's information collection requirements have been previously approved by OMB and assigned OMB No. 0581–0178 Vegetable and Specialty Crops. No changes are necessary in those requirements as a result of this proposed action. Should any changes become necessary, they would be submitted to OMB for approval.

This proposed rule would not impose any additional reporting or recordkeeping requirements on either small or large potato handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. In addition, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this proposed rule.

AMS 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.

The Committee's meeting was widely publicized throughout the Washington potato industry, and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the June 11, 2020, meeting was a public meeting, and all entities, both large and small, were able to express their views on these issues. Interested persons are invited to submit comments on this proposed rule, including the regulatory and information collection impacts of this proposed action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *https://www.ams.usda.gov/rules-regulations/moa/small-businesses.* Any questions about the compliance guide should be sent to Richard Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 60-day comment period is provided to allow interested persons to respond to this proposal. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 946

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Agriculture Marketing Services proposes to amend 7 CFR part 946 as follows:

PART 946—IRISH POTATOES GROWN IN WASHINGTON

■ 1. The authority citation for 7 CFR part 946 continues to read as follows:

Authority: 7 U.S.C. 601–674.

§§ 946.143 and 946.248 [Suspended]

■ 2. Suspend §§ 946.143 and 946.248 indefinately.

Bruce Summers,

Administrator, Agricultural Marketing Service.

[FR Doc. 2020–20787 Filed 10–9–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–0911; Product Identifier 2020–NM–075–AD]

RIN 2120–AA64

Airworthiness Directives; MHI RJ Aviation ULC (Type Certificate Previously Held by Bombardier, Inc.) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all MHI RJ Aviation ULC Model CL–600–2C10 (Regional Jet Series 700, 701 & 702) airplanes; Model CL–600–2C11 (Regional Jet Series 550) airplanes; Model CL–600–2D15 (Regional Jet Series 705) airplanes; Model CL–600–2D24 (Regional Jet Series 900) airplanes; and Model CL–600–2E25 (Regional Jet Series 1000) airplanes. This proposed AD was prompted by a determination that a new or more restrictive airworthiness limitation is necessary. This proposed AD would require revising the existing maintenance or inspection program, as applicable, to incorporate a new or more restrictive airworthiness limitation. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by November 27, 2020.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact MHI RJ Aviation ULC, 12655 Henri-Fabre Blvd., Mirabel, Québec J7N 1E1, Canada; Widebody Customer Response Center North America toll-free telephone +1–844–272–2720 or direct-dial telephone +1–514–855–8500; fax +1–514–855–8501; email *thd.crj@mhirj.com;* internet *https://mhirj.com.* You may view this service information 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.

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–2020–0911; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Siddeeq Bacchus, Aerospace Engineer, Mechanical Systems and Administrative Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7362; fax 516–794–5531; email *9-avs-nyaco-cos@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to participate in this rulemaking by submitting written comments, data, or views about this proposal. The most helpful comments reference a specific portion of the proposal, explain the reason for any

recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2020–0911; Product Identifier 2020–NM–075–AD'' at the beginning of your comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments received by the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The FAA may change this NPRM because of those comments.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to the person identified in the **FOR FURTHER INFORMATION CONTACT** section. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Discussion

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian AD CF–2020–08, dated April 6, 2020 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all MHI RJ Aviation ULC Model CL–600–2C10 (Regional Jet Series 700, 701 & 702) airplanes; Model CL–600–2C11 (Regional Jet Series 550) airplanes; Model CL–600–2D15 (Regional Jet Series 705) airplanes; Model CL–600–2D24 (Regional Jet Series 900) airplanes; and Model CL–600–2E25 (Regional Jet Series 1000) airplanes. You may examine the MCAI in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0911.

This proposed AD was prompted by a determination that a new or more restrictive airworthiness limitation is necessary. This determination follows a report that during maintenance, several telescopic ducts were found jammed, and, in some cases, disconnected. Some of the failures resulted in a slat fail message being posted on the engine indicating and crew alerting system (EICAS).The telescopic duct slat attachment movement during normal operation, combined with excessive friction within the duct sliding joints, contributes to increased stress loads on the duct, causing damage. The FAA is proposing this AD to address failed telescopic ducts in the wing anti-ice system, which could result in loss of the wing anti-ice system function, slat skew, slat jam, structural damage to the slat panel, and loss of the slat panel, possibly resulting in reduced control of the airplane. See the MCAI for additional background information.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Bombardier Temporary Revision ALI–0721, dated December 20, 2019. This service information describes safe life limitation task 30–11–10–701 that specifies the life limitation for the telescopic duct.

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

FAA's Determination

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the State of Design Authority, the FAA has been notified of the unsafe condition described in the MCAI and service information referenced above. The FAA is proposing this AD because the FAA evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Proposed Requirements of This NPRM

This proposed AD would require revising the existing maintenance or inspection program, as applicable, to incorporate a new or more restrictive airworthiness limitation.

This proposed AD would require revisions to certain operator maintenance documents to include new actions (*e.g.,* inspections). Compliance with these actions is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by this proposed AD, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (i)(1) of this proposed AD.

Explanation of Change to Manufacturer's Name Specified in This NPRM

The FAA has revised references to the manufacturer's name specified throughout this NPRM to identify the manufacturer name as published in the most recent type certificate data sheet for the affected models.

Costs of Compliance

The FAA estimates that this proposed AD affects 577 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD.

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. Therefore, the agency estimates the average total cost per operator 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

The FAA determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

MHI RJ Aviation ULC (Type Certificate Previously Held by Bombardier, Inc.): Docket No. FAA–2020–0911; Product Identifier 2020–NM–075–AD.

(a) Comments Due Date

The FAA must receive comments by November 27, 2020.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all MHI RJ Aviation ULC (type certificate previously held by Bombardier, Inc.) airplanes identified in paragraphs (c)(1) through (5) of this AD, certificated in any category.

(1) Model CL–600–2C10 (Regional Jet Series 700, 701 & 702) airplanes.

(2) Model CL–600–2C11 (Regional Jet Series 550) airplanes.

(3) Model CL–600–2D15 (Regional Jet Series 705) airplanes.

(4) Model CL–600–2D24 (Regional Jet Series 900) airplanes.

(5) Model CL–600–2E25 (Regional Jet Series 1000) airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 30, Rain and Ice Protection.

(e) Reason

This AD was prompted by a determination that a new or more restrictive airworthiness limitation is necessary. The FAA is issuing this AD to address failed telescopic ducts in the wing anti-ice system, which could result in loss of the wing anti-ice system function, slat skew, slat jam, structural damage to the slat panel, and loss of the slat panel, possibly resulting in reduced control of the airplane.

(f) Compliance

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

(g) Maintenance or Inspection Program Revision—Safe Life Limitation Task 30–11–10–701

Within 60 days after the effective date of this AD, revise the existing maintenance or inspection program, as applicable, to incorporate the information specified in Bombardier Temporary Revision ALI–0721, dated December 20, 2019, into Part 2 of the Bombardier CRJ700/900/1000 Maintenance Requirements Manual. The initial compliance time for doing the tasks is at the time specified in Bombardier Temporary Revision ALI–0721, dated December 20, 2019, or within 60 days after the effective date of this AD, whichever occurs later.

(h) No Alternative Actions or Intervals

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 and intervals are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (i)(1) of this AD.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, New York ACO Branch, FAA; or Transport Canada Civil Aviation (TCCA); or MHI RJ Aviation ULC's TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(j) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian AD CF–2020–08, dated April 6, 2020, for related information. This MCAI may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0911.

(2) For more information about this AD, contact Siddeeq Bacchus, Aerospace Engineer, Mechanical Systems and Administrative Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7362; fax 516–794–5531; email *9-avs-nyaco-cos@faa.gov.*

(3) For service information identified in this AD, contact MHI RJ Aviation ULC, 12655 Henri-Fabre Blvd., Mirabel, Québec J7N 1E1, Canada; Widebody Customer Response Center North America toll-free telephone +1–844–272–2720 or direct-dial telephone +1–514–855–8500; fax +1–514–855–8501; email *thd.crj@mhirj.com;* internet *https://mhirj.com.* You may view this service information 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.

Issued on October 5, 2020.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–22502 Filed 10–9–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–0903; Project Identifier AD–2020–00957–T]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2017–26–10 which applies to certain The Boeing Company Model 757 airplanes. AD 2017–26–10 requires deactivating the spoiler control module relays and capping and stowing the associated wiring on certain airplanes. Since the FAA issued AD 2017–26–10, Boeing has developed wiring changes for certain spoiler control modules (SCMs), which will improve the lateral handling qualities of the airplane during approach and landing. This proposed AD would require repetitive operational tests of the spoiler inhibit function. For certain airplanes, this proposed AD would require installing a new relay bracket assembly, making changes to the wire bundles for certain SCMs, installing new SCMs, measuring the clearance between a wire bundle and the top of the new relay bracket assembly, and applicable on-condition actions. For a certain other airplane, this proposed AD would require changing certain wire bundles. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by November 27, 2020.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.* You may view this service information 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 on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0903.

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–2020–0903; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Katherine Venegas, Aerospace Engineer, Cabin Safety and Environmental Systems Section, FAA, Los Angeles ACO Branch, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5353; fax: 562–627–5210; email: *Katherine.Venegas@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to participate in this rulemaking by submitting written comments, data, or views about this proposal. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should submit only one copy of the comments. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2020–0903; Project Identifier AD–2020–00957–T'' at the beginning of your comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments received by the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The FAA may change this NPRM because of those comments.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Katherine Venegas, Aerospace Engineer, Cabin Safety and Environmental Systems Section, FAA, Los Angeles ACO Branch, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5353; fax: 562–627–5210; email: *Katherine.Venegas@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Discussion

The FAA issued AD 2017–26–10, Amendment 39–19141 (82 FR 61675, December 29, 2017) (''AD 2017–26–10''), for certain The Boeing Company Model 757 airplanes. AD 2017–26–10 requires deactivating the spoiler control module relays and capping and stowing the associated wiring on certain airplanes. AD 2017–26–10 resulted from a report of an uncommanded spoiler movement during flap configuration just before landing. The FAA issued AD 2017–26–10 to address a failure condition that can cause an uncommanded spoiler movement resulting in loss of controllability of the airplane during the approach phase of flight.

Actions Since AD 2017–26–10 Was Issued

Since the FAA issued AD 2017–26–10, Boeing has developed wiring changes for SCMs M530 and M531. These wiring changes will prevent control wheel inputs to spoiler pairs 1 and 12 and 5 and 8 when the flaps are extended to a landing configuration position (flaps in the detent 25 or detent 30 position). The FAA has determined that this change will improve the lateral handling qualities of the airplane during approach and landing and it is considered the final action to address the identified unsafe condition.

Related IBR Under 1 CFR Part 51

The FAA reviewed Boeing Alert Requirements Bulletin 757–27A0158 RB, dated July 9, 2020. The service information describes procedures for installing a new relay bracket assembly,

making changes to the wire bundles for the SCMs, installing new SCMs, measuring the clearance between a wire bundle and the top of new relay bracket assembly, changing certain wire bundles, repetitive operational tests of the spoiler inhibit function, and applicable on-condition actions. On-condition actions include installing a new protective sleeve, heat shrinkable to the wire bundle, doing a landing configurations warning module landing flap tests, and doing a system test for the SCMs. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Minimum Equipment List (MEL) Provision

The FAA allows operators to utilize a MEL for time-limited operation with certain equipment inoperative, after which the system must be fully restored. (See 14 CFR 91.213, 121.628, 125.201, and 129.14.) This proposed AD would continue to allow use of an existing FAA-approved MEL even if the spoiler inhibit function (SIF) system is inoperable, so long as the operator's existing FAA-approved MEL has a provision to allow for this inoperability.

FAA's Determination

The FAA is proposing this AD because the agency evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would retain none of the requirements of AD 2017–26–10. This proposed AD would also require accomplishment of the actions identified in Boeing Alert Requirements Bulletin 757–27A0158 RB, dated July 9, 2020, described previously, except for any differences identified as exceptions in the regulatory text of this proposed AD.

For information on the procedures and compliance times, see this service information at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0903.

Explanation of Requirements Bulletin

The FAA worked in conjunction with industry, under the Airworthiness Directive Implementation Aviation Rulemaking Committee (AD ARC), to enhance the AD system. One enhancement is a process for annotating which steps in the service information are ''required for compliance'' (RC) with an AD. Boeing has implemented this RC concept into Boeing service bulletins.

In an effort to further improve the quality of ADs and AD-related Boeing service information, a joint process improvement initiative was worked between the FAA and Boeing. The initiative resulted in the development of a new process in which the service information more clearly identifies the actions needed to address the unsafe condition in the ''Accomplishment Instructions.'' The new process results in a Boeing Requirements Bulletin, which contains only the actions needed to address the unsafe condition (*i.e.,* only the RC actions).

Costs of Compliance

The FAA estimates that this proposed AD affects 626 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Installations, measurement, and wire bundle changes (groups 1–22; 625 airplanes).	105 work-hours × $85 per hour = $8,925.	Up to $7,230	Up to $16,155	Up to $10,096,875.
Wire bundle change (group 23; 1 airplane).	9 work-hours × $85 per hour = $765.	$160	$925	$925.
Operational test (all groups; 626 airplanes).	5 work-hours × $85 per hour = $425 per test cycle.	0	425 per test cycle	266,050 per test cycle.

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

ESTIMATED COSTS OF ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Installation and testing	8 work-hour × $85 per hour = $680	$*	$840

*The FAA has received no definitive data on the parts cost for the on-condition installation specified in this proposed AD.

Authority for This Rulemaking

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

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

Regulatory Findings

The FAA has determined that this proposed AD would not have federalism

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

For the reasons discussed above, I certify that the proposed regulation:

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2017–26–10, Amendment 39–19141 (82 FR 61675, December 29, 2017), and adding the following new AD:

The Boeing Company: Docket No. FAA–2020–0903; Project Identifier AD–2020–00957–T.

(a) Comments Due Date

The FAA must receive comments on this AD action by November 27, 2020.

(b) Affected ADs

This AD replaces AD 2017–26–10, Amendment 39–19141 (82 FR 61675, December 29, 2017).

(c) Applicability

This AD applies to The Boeing Company Model 757–200, –200PF, –200CB, and –300 series airplanes, certificated in any category, as identified in Boeing Alert Requirements Bulletin 757–27A0158 RB, dated July 9, 2020.

(d) Subject

Air Transport Association (ATA) of America Code 27, Flight controls.

(e) Unsafe Condition

This AD was prompted by reports of unwanted lateral oscillations during landing operations, and the development of wiring changes for certain spoiler control modules (SCMs), which will improve the lateral handling qualities of the airplane during approach and landing. The FAA is issuing this AD to address unwanted lateral oscillations during landing operations, which could cause over-control of the airplane and subsequent lateral pilot induced oscillation, which could affect continued safe flight and landing.

(f) Compliance

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

(g) Required Actions

Except as specified by paragraph (h) of this AD: At the applicable times specified in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin 757–27A0158 RB, dated July 9, 2020, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Alert Requirements Bulletin 757–27A0158 RB, dated July 9, 2020.

Note 1 to paragraph (g): Guidance for accomplishing the actions required by this AD can be found in Boeing Alert Service Bulletin 757–27A0158, dated July 9, 2020, which is referred to in Boeing Alert Requirements Bulletin 757–27A0158 RB, dated July 9, 2020.

(h) Exceptions to Service Information Specifications

Where Boeing Alert Requirements Bulletin 757–27A0158 RB, dated July 9, 2020, uses the phrase ''the original issue date of the Requirements Bulletin 757–27A0158 RB,'' this AD requires using ''the effective date of this AD.''

(i) Minimum Equipment List (MEL)

In the event that the spoiler inhibit function (SIF) system as modified by this AD is inoperable, an airplane may be operated as specified in the operator's existing FAA-approved MEL, provided the operator's existing FAA-approved MEL includes provisions that address the modified SIF system.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Los Angeles ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (k)(1) of this AD. Information may be emailed to: *9-ANM-LAACO-AMOC-Requests@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by The Boeing Company Organization Designation Authorization (ODA) that has been authorized by the Manager, Los Angeles ACO Branch, FAA, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(4) AMOCs approved previously for AD 2017–26–10 are approved as AMOCs for the corresponding provisions of this AD.

(k) Related Information

(1) For more information about this AD, contact Katherine Venegas, Aerospace Engineer, Cabin Safety and Environmental Systems Section, FAA, Los Angeles ACO Branch, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5353; fax: 562–627–5210; email: *Katherine.Venegas@faa.gov.*

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.* You may view this referenced service information 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.

Issued on September 30, 2020.

Gaetano A. Sciortino,

Deputy Director for Strategic Initiatives, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–22457 Filed 10–9–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2020–0726; Airspace Docket No. 20–AGL–28]

RIN 2120–AA66

Proposed Amendment of Class E Airspace; Cairo, IL

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 Cairo Regional Airport, Cairo, IL. The FAA is proposing this action as the result of an airspace review caused by the decommissioning of the Cape Girardeau very high frequency omni-directional range (VOR) navigation aid as part of the VOR Minimum Operational Network (MON) Program.

The name and geographic coordinates of the airport would also be updated to coincide with the FAA's aeronautical database.

DATES: Comments must be received on or before November 27, 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–2020–0726; Airspace Docket No. 20–AGL–28, at the beginning of your comments. You may also submit comments through the internet at *https://www.regulations.gov.*

FAA Order 7400.11E, 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 7400.11E 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 (404) 305–6364.

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 Cairo Regional Airport, Cairo, IL, to support instrument flight rule operations at this airport.

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–2020–0726 and Airspace Docket No. 20–AGL–28) 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.*

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 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020. FAA Order 7400.11E is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11E 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 (reduced from a 7-mile) radius of Cairo Regional Airport, Cairo, IL; adding an extension 2.5 miles each side of the 330° bearing from the Cairo NDB extending from the 6.5-mile radius of the Cairo Regional Airport to 7 miles northwest of the Cairo NDB; and updating the name (previously Cairo Airport) and geographic coordinates of the airport to coincide with the FAA's aeronautical database.

This action is the result of an airspace review caused by the decommissioning of the Cape Girardeau VOR, which provided navigation information for the instrument procedures this airport, as part of the VOR MON Program.

Class E airspace designations are published in Paragraph 6005, of FAA Order 7400.11E, dated July 21, 2020, and effective September 15, 2020, 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 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020, is amended as follows:

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

* * * * *

AGL IL E5 Cairo, IL [Amended]

Cairo Regional Airport, IL
(Lat. 37°03′51″ N, long. 89°13′10″ W)
Cairo NDB
(Lat. 37°03′40″ N, long. 89°13′23″ W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Cairo Regional Airport, and within 2.5 miles each side of the 330° bearing from the Cairo NDB extending from the 6.5-mile radius from the Cairo Regional Airport to 7 miles northwest of the Cairo NDB.

Issued in College Park, Georgia, on October 6, 2020.

Andreese C. Davis,

Manager, Airspace & Procedures Team South, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2020–22509 Filed 10–9–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2018–1001; Airspace Docket No. 18–AWP–24]

RIN 2120–AA66

Proposed Revocation of Class E Airspace; Fresno, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to remove the Class E airspace extending upward from the surface designated as an extension to a Class C surface area at Fresno Yosemite International Airport, Fresno, CA, as it is no longer needed. This action would support the operation of Instrument Flight Rules (IFR) under standard instrument approach and departure procedures in the National Airspace System.

DATES: Comments must be received on or before November 27, 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–2018–1001; Airspace Docket No. 18–AWP–24, at the beginning of your comments. You may also submit comments through the internet at *https://www.regulations.gov.*

FAA Order 7400.11E, 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 7400.11E at NARA, email *fedreg.legal@nara.gov* or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

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

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 remove Class E airspace extending upward from the surface designated as an extension to a Class C surface area for the Fresno Yosemite International Airport, Fresno, CA, to support IFR operations in standard instrument approach and departure procedures 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. 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–2018–1001; Airspace Docket No. 18–AWP–24''. 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 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 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020. FAA Order 7400.11E is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11E 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 removing the Fresno Yosemite International Airport Class E3 airspace extending upward from the surface of the earth. The Clovis VORTAC was decommissioned and requires the legal descriptions in FAA Order 7400.11E be rewritten to eliminate reference to this navigational aid. In addition, during review of the Class E airspace extending upward from the surface as an extension to the Class C surface area, it was identified that the airspace is no longer needed to support approaches into the airport. This action would support the operation of Instrument Flight Rules (IFR) under standard instrument approach and departure procedures in the National Airspace System.

Class E airspace designations are published in paragraph 6003 of FAA Order 7400.11E, dated July 21, 2020, and effective September 15, 2020, 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.

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 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020, is amended as follows:

6003. Class E Airspace Areas Designated as an Extension.

The Class E airspace areas listed below consist of airspace extending upward from the surface designated as an extension to a Class C surface area.

* * * * *

AWP CA E3 Fresno, CA [Remove]

Fresno Air Terminal, CA
(Lat. 36°46′34″ N, long. 119°43′06″ W)
Clovis VORTAC
(Lat. 36°53′04″ N, long. 119°48′55″ W)

Issued in Seattle, Washington, on October 6, 2020.

Byron Chew,

Acting Manager, Operations Support Group, Western Service Center.

[FR Doc. 2020–22566 Filed 10–9–20; 8:45 am]

BILLING CODE 4910–13–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4001 and 4901

RIN 1212–AB44

Examination and Copying of PBGC Records

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Proposed rule.

SUMMARY: The proposed rule would update and clarify guidance on examining records kept by the Pension Benefit Guaranty Corporation. The proposed amendments reflect statutory changes to the Freedom of Information Act and recent updates to PBGC's procedures for record examination.

DATES: Comments must be submitted on or before December 14, 2020 to be assured of consideration.

ADDRESSES: Comments may be submitted by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Email: reg.comments@pbgc.gov.* Include RIN 1212–AB44 in the subject line.
- *Mail or Hand Delivery:* Regulatory Affairs Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW, Washington, DC 20005–4026.

All submissions must include the agency's name (Pension Benefit Guaranty Corporation or PBGC) and the Regulation Identifier Number for this rulemaking (RIN 1212–AB44). Comments received will be posted without change to PBGC's website, *http://www.pbgc.gov,* including any personal information provided. Copies of comments may also be obtained by writing to Disclosure Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street

NW, Washington, DC 20005–4026, or calling 202–326–4040 during normal business hours. (TTY users may call the Federal Relay Service toll-free at 800–877–8339 and ask to be connected to 202–326–4040.)

FOR FURTHER INFORMATION CONTACT: Melissa Rifkin (*rifkin.melissa@pbgc.gov*), Attorney, Regulatory Affairs Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW, Washington, DC 20005–4026; 202–326–4400, extension 6563. (TTY users may call the Federal Relay Service toll-free at 800–877–8339 and ask to be connected to 202–326–4400, extension 6563.)

SUPPLEMENTARY INFORMATION:

Executive Summary

Purpose and Authority

The purpose of this regulatory action is to update the Pension Benefit Guaranty Corporation's (PBGC's) regulation on requesting, obtaining, and examining records to reflect statutory changes and current agency practice. Authority for this rule is provided by section 4002(b)(3) of the Employee Retirement Income Security Act of 1974 and by the Freedom of Information Act, as amended.

Major Provisions

This proposed rule would:

- Clarify that PBGC's disclosable records are generally available in an electronic, rather than paper, format.
- Describe the procedure to seek expedited treatment for record requests.
- Clarify the acceptable methods for submitting record requests.
- Update the time limit to respond to record requests.
- Clarify the procedures available to a requester when PBGC extends the time to respond to a disclosure request or an appeal.
- Clarify the procedure for responding to requests that are of concern to a Federal agency other than PBGC.
- Update the fees for search and review time.
- Modify the definitions of certain categories of requesters.

Background

The Pension Benefit Guaranty Corporation (PBGC) proposes to amend its regulation on Examination and Copying of PBGC Records (29 CFR part 4901) (''FOIA regulation'') to: (1) Incorporate statutory changes to the Freedom of Information Act (5 U.S.C. 552) (''FOIA'') made by the FOIA Improvement Act of 2016 (''the 2016 Act'') and prior statutory amendments; (2) reflect PBGC's current procedures for processing and responding to FOIA requests; and (3) update the fees charged to certain requesters to more accurately reflect PBGC's costs in performing the search and review work that is necessary to respond to their FOIA requests. The proposed rule would also make clarifications and other editorial changes to 29 CFR part 4901.

PBGC is committed to maintaining excellent customer service in responding to FOIA requests. Since 2015, PBGC has received the Department of Justice's Office of Information Policy's highest score in each key area for which it recognizes agencies: (1) Applying a presumption of openness, (2) having an efficient system in place for responding to requests, (3) increasing proactive disclosures, (4) utilizing technology, and (5) reducing any backlogs and improving timeliness.[1] A 2015 audit by the National Security Archive, a non-governmental organization, gave PBGC its highest rating and found it to be among ''the best overall [for] . . . proactively meeting the 21st Century Standard of posting all or nearly all FOIA releases online.'' [2] The proposed changes would further improve PBGC's FOIA process and increase the transparency of its procedures.

Proposed Amendments

Records Available in an Electronic Format

Section 2 of the 2016 Act replaced references to ''public inspection and copying'' in the FOIA with ''public inspection in an electronic format.'' A stated goal of the 2016 Act was to ''require federal agencies to make their disclosable records and documents available for public inspection in an electronic format.'' [3] PBGC's Disclosure Division follows this directive and produces disclosable records in an electronic format, but in several places PBGC's FOIA regulation refers to the practice of offering paper copies of documents. PBGC proposes to replace the term ''copy'' in its FOIA regulation with language conveying that, where practicable, records covered under the FOIA are available or will be made available in an electronic, rather than paper, format. Also, PBGC proposes to add in § 4901.2 a definition of the term ''record'' with a reference to the statutory definition, which includes information in an electronic format.

Electronic Reading Room

PBGC used to maintain a reference room on site where members of the public could inspect and copy certain PBGC records without formally requesting them. Following the directive of the 2016 Act to make records and documents available for public inspection in an electronic format, PBGC modified its FOIA regulation and replaced instances of the term ''reference room'' with ''electronic reading room,'' meaning an online and publicly accessible database of certain PBGC records.[4]

PBGC proposes to update § 4901.4(c) of the FOIA regulation to remove the requirement that PBGC keep a register for the purpose of collecting the names of people who inspect rulemaking proceedings in the electronic reading room and the times at which they do so. This requirement was possible with PBGC's on site reference room but is impractical with its electronic reading room. It would be unnecessarily burdensome to require individuals who inspect rulemaking proceedings in the electronic reading room to provide their names.

Submitting a Record Request

PBGC proposes to amend § 4901.11 of the FOIA regulation to clarify the procedures for submitting a request for records. First, PBGC's Disclosure Division requires FOIA requests to be in writing, and the proposed amendment would codify this requirement. Second, the proposed amendment would codify that electronic telecommunication (*i.e.,* email, online portal) is an approved method to submit a FOIA request. Third, the proposed amendment would add a statement that a requester may seek the assistance of a PBGC FOIA Public Liaison and a description of this position. PBGC's Disclosure Division has designated FOIA Public Liaisons, as required by FOIA, who will assist requesters with describing records they are seeking, understanding the status of requests, and resolving disputes. PBGC proposes this addition to § 4901.11 to highlight the availability of this help.

[1] See Department of Justice, Summary of Agency Chief FOIA Officer Reports for 2015, 2016, 2017, and 2018. See for 2018, *www.justice.gov/OIP/Reports/2018Summary%26Assessment/download#2018;* for 2017, *www.justice.gov/oip/reports/2017_cfo_summary_and_assessment.pdf/download*; for 2016, *www.justice.gov/oip/reports/2016_cfo_summary_and_assessment/download*; and for 2015, *www.justice.gov/oip/2015_cfo_summary_and_assessment.pdf/download.*

[2] See *Most Agencies Falling Short on Mandate for Online Records, The National Security Archive 2015 E–FOIA Audit, nsarchive2.gwu.edu/NSAEBB/NSAEBB505/.*

[3] Congressional Research Services, Summary of FOIA Improvement Act of 2016, Public Law 114–185, June 30, 2016.

[4] *See* 82 FR 26990 (June 13, 2017).

In addition, PBGC proposes to clarify its procedures applied when a FOIA request does not sufficiently describe the records being sought. Section 4901.12(b) of the FOIA regulation states that PBGC will offer assistance to a requester who has submitted a deficient request. The proposed amendment would add that the requester will be informed of the availability of assistance from the FOIA Public Liaison, that failure to reasonably describe the records being sought could cause a delay in responding to the request or a denial of the request, and that an amended request must provide sufficient detail to meet the requirements of an original request.

Action on Request

Section 552(a)(6)(A)(i) of the FOIA provides that a Federal agency has 20 working days to make a determination on a FOIA request. A Senate Report to the Electronic Freedom of Information Act Amendments of 1996,[5] the law that increased the required response period from 10 to 20 days, said, ''Compliance with the 10-day rule is a practical impossibility for the majority of agencies.'' [6] Therefore, PBGC proposes to update the time limit for responding to FOIA requests in § 4901.14(a) of the FOIA regulation from 10 working days to 20 working days, not including extensions. In practice, PBGC already follows the time limit permitted under the statute to allow for thorough and appropriate searches and reviews of agency records.

Section 552(a)(6) of the FOIA provides that Federal agencies have a single opportunity to ask the requester for additional information and toll the 20-working day response period while awaiting the requester's response. This provision is intended to ''ensure accuracy in FOIA responses.'' [7] PBGC's Disclosure Division follows the statute with respect to tolling the response period, and PBGC proposes to codify this practice in § 4901.14(a).

Also, PBGC proposes to add to § 4901.14(b) a provision that PBGC will provide records in the format specified in the request if practicable.

Finally, PBGC proposes to clarify its procedures for when a requested record cannot be located. Section 4901.14(d) of the FOIA regulation states that a request may be denied if a record is not located in time to determine whether it may be disclosed. PBGC proposes to clarify that when records cannot be located despite a reasonably calculated search to uncover all relevant documents, PBGC will let the requester know there are no records to provide, rather than deny the request.

Appeals

Under PBGC's procedures, a requester may appeal any adverse determination by the Disclosure Division. However, § 4901.15(a) states only that a requester may appeal a denial of a request for disclosure of information. The proposed amendment to § 4901.15(a) would clarify that a requester may appeal any adverse decision by the Disclosure Division under FOIA, including a denial of: access to records, expedited processing, or waiver of fees. It also would clarify the instructions for submitting an appeal.

Extensions of Time

As provided for in section 552(a)(6)(B) of the FOIA and § 4901.16 of the FOIA regulation, PBGC may extend its time to respond to a disclosure request or an appeal when it must collect records stored offsite, examine a voluminous amount of records, or consult with another agency to respond to a FOIA request. PBGC proposes to add to § 4901.16 that when that extension of time exceeds 10 working days, the requester will be provided with an opportunity to seek assistance, modify the request, or arrange an alternative time period (with new response due dates) for processing the original or modified request. This change is intended to improve customer service.

Expedited Action on Requests and Appeals

Section 552(a)(6)(E)(i) of the FOIA states that Federal agencies must promulgate regulations to provide expedited processing of FOIA requests and appeals where the requester demonstrates a compelling need and for other reasons determined by the agency. PBGC's Disclosure Division has a process to request and receive expedited processing. The proposed regulation would codify this process. Proposed new § 4901.17 would allow a requester to submit a request for expedited action on a disclosure request or appeal. PBGC would act on the disclosure request or appeal as soon as practicable if the requester demonstrates that: (1) A lack of expedited action could reasonably be expected to pose an imminent threat to the life or physical safety of an individual or the loss of an individual's substantial due process rights, or (2) the requester is primarily engaged in disseminating information and the disclosure request or appeal is urgently needed to inform the public about an actual or alleged Federal Government activity.

The proposed rule would move the current § 4901.17 on exhaustion of administrative remedies to new § 4901.18.

Record of Concern to More Than One Agency

PBGC proposes to modify § 4901.23, which covers the procedures for a requested record that is of interest to a Federal agency other than PBGC. Currently, PBGC may release such a record only if it determines that PBGC's interest in the record is greater than that of the other agency. Under the proposed amendment, PBGC would have greater discretion over whether to transfer the request to another agency. If PBGC receives a request for records that is of concern to another agency, PBGC would either consult with the interested Federal agency about the requested records before determining whether the record is disclosable or refer the request to the interested Federal agency to make that determination. This change is intended to eliminate referrals where the requested record is of concern to the other agency, but PBGC is nonetheless able to determine whether it may be disclosed. Allowing a consultation in these situations will help to ensure that certain requests for records are not unnecessarily delayed.

Charges for Services

PBGC proposes to simplify the categories of requesters used to determine if a requester will be charged fees. Under § 4901.31(b), (1) non-commercial scientific or educational institutions and (2) the news media are considered as two separate categories. Under the proposed amendment, they would be combined into a single category, as all requesters that fall within these parameters are not assessed fees for responses to their FOIA requests.

In addition, PBGC proposes to update the definitions in § 4901.31(b). The definition of ''commercial use'' would state in proposed § 4901.31(b)(1)(ii) that such use may include litigation work and that PBGC will determine if a requester should be in the ''commercial use'' category on a case-by-case basis and inform the requester of its decision. The definition of ''educational institution'' would be modified in proposed § 4901.31(b)(2)(iii) to allow PBGC to verify that a request is in furtherance of scholarly research and state that PBGC will inform the requester of its decision. Also, the definition of ''representative of the news

[5] Public Law 104–231.

[6] S. Rep. 104–272, May 15, 1996.

[7] 153 Cong. Rec. S15701–04, on the OPEN Government Act on 2007, Public Law 110–175.

media'' would be updated and clarified in proposed § 4901.31(b)(2)(iv).

Finally, the proposed rule would clarify in proposed § 4901.31(e) the circumstances in which PBGC may fail to comply with a time limit under section 552(a)(6) of the FOIA but still assess fees.

Fee Schedule

PBGC proposes to update the fees charged for search and review time on its FOIA fee schedule. Under section 552(a)(4)(A)(i) of the FOIA,[8] Federal agencies must conform their FOIA fee schedules with OMB's Uniform Freedom of Information Act Fee Schedule and Guidelines [9] (OMB Guidelines). This guidance states, ''Agencies should charge fees that recoup the full allowable direct costs they incur.'' Direct costs, per OMB Guidelines, include the salary rate, meaning basic rate of pay plus 16 percent, intended to cover benefits,[10] of the employee making the search. Agencies may establish an average rate for the range of grades typically involved if ''a homogeneous class of personnel is used exclusively (*e.g.,* all administrative/clerical, or all professional/executive).''

PBGC's fees are too low to comport with the requirement to fully recoup direct costs, per OMB Guidelines and 5 U.S.C. 552(a)(4)(A)(i). PBGC currently charges $1.75 per quarter hour ($7.00 per hour) for search and review work performed by custodial or clerical personnel and $4.00 per quarter hour ($16.00 per hour) for search and review work performed by supervisory and professional personnel. These rates were set in 1987 [11] and have not been raised since. PBGC's current fees are well below the salary rates of the PBGC employees working on FOIA requests.

PBGC personnel who typically conduct search and review work are a homogeneous class of professional employees. These employees generally are at the grade level of GS–12 or higher. Accordingly, PBGC proposes to set a single fee for search and review work performed by professional personnel at $54.00 per hour (approximately basic pay plus 16 percent [12] for a GS–12, step 5 employee in Washington, DC). The rate is within the range of fees charged by other agencies for search and review work by professional personnel.

The proposed change to PBGC's fee schedule is unlikely to increase fees to individual plan participants or beneficiaries requesting their own records. PBGC considers most such requests to be covered wholly under the Privacy Act of 1974, 5 U.S.C. 552a, which allows fees only for duplication. Any components of these requests that are not covered under the Privacy Act likely require no more than two hours of search time, which, as ''other requesters,'' individual plan participants requesting their own records are granted at no charge. Also, PBGC will not earn any additional funds from this change, as FOIA fees are paid to the U.S. Treasury, rather than to the agency responding to the request.

In addition, PBGC proposes to streamline and simplify its methods of calculating certain fees under FOIA. Section 4901.32(a)(2) of the FOIA regulation states that PBGC's transportation costs necessary for retrieving offsite records will be charged to a requester. Under the proposed amendment, PBGC would charge these costs in accordance with the Transactional Billing Rate Schedule established by the National Archives and Records Administration.

Finally, § 4901.32(a)(3), which establishes a different system of charges for searches of computerized records, would be deleted, and the outmoded limits on copied documents in § 4901.32(b)(3) and references to PBGC's provision of a manual copying machine in § 4901.32(b)(4) would be deleted.

Payment of Fees

PBGC proposes changing the list in § 4901.33 of approved methods to submit payment of FOIA fees to check, money order or other PBGC permitted means. This change will allow PBGC to employ new technologies for submitting FOIA fee payments as they are developed.

Waiver or Reduction of Charges

Section 552(a)(4)(A)(iii) of the FOIA describes the conditions necessary to waive FOIA fees.[13] Because inability to pay is not described in this provision of the statute, PBGC proposes to delete the language in § 4901.34(b) of the FOIA regulation, which provides that the Disclosure Officer may waive or reduce fees based on the requester's inability to pay. The proposed rule would instead adhere to the statutory language about when fees may be waived. The proposed rule would also provide that PBGC will inform the requester in writing that a fee waiver request was denied and why. This proposed amendment is intended to increase accuracy and transparency about when fees may be waived.

Compliance With Rulemaking Guidelines

Executive Orders 12866, 13563, and 13771

The Office of Management and Budget has determined that this rulemaking is not a ''significant regulatory action'' under Executive Order 12866. This rule updates PBGC's FOIA regulation to comport with amendments to 5 U.S.C. 552 and PBGC's procedures. Accordingly, this proposed rule is exempt from Executive Order 13771, and OMB has not reviewed the proposed rule under Executive Order 12866.

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

Although this is not a significant regulatory action under Executive Order 12866, PBGC has examined the economic implications of this proposed rule and has concluded that there will be no significant economic impact as a result of the proposed amendments to PBGC's regulation. Most of the proposed amendments merely clarify existing PBGC practices or modify the regulation to meet statutory requirements. The only additional costs to the public come from the update to the fees for search and review time under § 4901.32 to bring the fee schedule in line with current costs. Under the FOIA regulation, PBGC collects annually less than $3,000 in fees for responding to FOIA requests. Under the proposed rule, PBGC anticipates that it will collect between $6,500 and $10,000 in fees annually. As such, the increased fees under § 4901.32 will not have a significant economic impact on the public.

Section 6 of Executive Order 13563 requires agencies to rethink existing regulations by periodically reviewing

[8] ''[E]ach agency shall promulgate regulations . . . specifying the schedule of fees applicable to the processing of requests . . . Such schedule shall conform to the guidelines which shall be promulgated, pursuant to notice and receipt of public comment, by the Director of the Office of Management and Budget and which shall provide for a uniform schedule of fees for all agencies.''

[9] 52 FR 10012 (March 27, 1987).

[10] *See* id; *see also* Department of Justice, Office of Information Policy's Template for Agency FOIA Regulations.

[11] *See* 52 FR 30662 (August 17, 1987).

[12] The 16 percent accounts for benefits, per OMB Guidelines.

[13] The conditions under 552(a)(4)(A)(iii) of the FOIA are, ''if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.''

their regulatory program for rules that ''may be outmoded, ineffective, insufficient, or excessively burdensome.'' These rules should be modified, streamlined, expanded, or repealed as appropriate. PBGC has identified clarifications, updates, and improvements to this regulation consistent with the principles for review under Executive Order 13563. PBGC believes that the proposed changes will provide clearer guidance to the public.

Regulatory Flexibility Act

The Regulatory Flexibility Act [14] imposes certain requirements with respect to rules that are subject to the notice-and-comment requirements of section 553(b) of the Administrative Procedure Act and that are likely to have a significant economic impact on a substantial number of small entities. Unless an agency determines that a proposed rule is not likely to have a significant economic impact on a substantial number of small entities, section 603 of the Regulatory Flexibility Act requires that the agency present an initial regulatory flexibility analysis at the time of the publication of the proposed rule describing the impact of the rule on small entities and seek public comment on such impact. Small entities include small businesses, organizations, and governmental jurisdictions.

Small Entities

For purposes of the Regulatory Flexibility Act requirements with respect to this proposed rule, PBGC considers a small entity to be a plan with fewer than 100 participants. This is substantially the same criterion PBGC uses in other regulations [15] and is consistent with certain requirements in title I of ERISA [16] and the Internal Revenue Code (Code),[17] as well as the definition of a small entity that the Department of Labor has used for purposes of the Regulatory Flexibility Act.[18]

Thus, PBGC believes that assessing the impact of the final rule on small plans is an appropriate substitute for evaluating the effect on small entities. The definition of small entity considered appropriate for this purpose differs, however, from a definition of small business based on size standards promulgated by the Small Business Administration [19] under the Small Business Act. Therefore, PBGC requests comments on the appropriateness of the size standard used in evaluating the impact of the amendments in this proposed rule on small entities.

Based on its definition of small entity, PBGC certifies under section 605(b) of the Regulatory Flexibility Act that the amendments in this proposed rule would not have a significant economic impact on a substantial number of small entities. Most of the amendments clarify existing PBGC practices and will have a neutral cost impact. The amendment to PBGC's search and review fees is consistent with OMB Guidelines. Accordingly, as provided in section 605 of the Regulatory Flexibility Act, sections 603 and 604 do not apply.

Paperwork Reduction Act

This document does not contain a collection-of-information requirement subject to the Paperwork Reduction Act (PRA).

List of Subjects

29 CFR Part 4001

Business and industry, Organization and functions (Government agencies), Pension insurance, Pensions, Small businesses.

29 CFR Part 4901

Freedom of information.

In consideration of the foregoing, PBGC proposes to amend 29 CFR parts 4001 and 4901 as follows.

PART 4001—TERMINOLOGY

■ 1. The authority citation for part 4001 continues to read as follows:

Authority: 29 U.S.C. 1301, 1302(b)(3).

■ 2. Amend § 4001.2 by revising the definition of ''*Disclosure officer*'' to read as follows:

§ 4001.2 Definitions.

* * * * *

Disclosure Officer means the official designated as Disclosure Officer in the Office of the General Counsel, PBGC.

* * * * *

PART 4901—DISCLOSURE AND PUBLIC INSPECTION OF PENSION BENEFIT GUARANTY CORPORATION RECORDS

■ 3. The authority citation for part 4901 continues to read as follows:

Authority: 5 U.S.C. 552, 29 U.S.C. 1302(b)(3), E.O. 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235.

■ 4. Revise the heading of part 4901 to read as set forth above.

■ 5. Revise § 4901.1 to read as follows:

§ 4901.1 Purpose and scope.

This part contains PBGC's general rules implementing the Freedom of Information Act. This part sets forth generally the categories of records accessible to the public, types of records subject to prohibitions or restrictions on disclosure, and procedures whereby members of the public may access and inspect PBGC records.

■ 6. Amend § 4901.2 by removing ''party,'' from the first sentence, and adding in alphabetical order a definition for ''Record'' to read as follows:

§ 4901.2 Definitions.

* * * * *

Record has the meaning attributed to it by section 552(f)(2) of FOIA.

* * * * *

§ 4901.3 [Amended]

■ 7. Amend § 4901.3 by removing ''The PBGC'' and adding in its place ''PBGC'', and removing ''website'' and adding in its place ''website''.

■ 8. Amend § 4901.4 by:

■ a. Removing ''The PBGC shall'' and adding in its place ''PBGC will'' in the introductory text;

■ b. Removing ''Copies of **Federal Register** documents published by the PBGC, and copies of Federal'' and adding in its place ''**Federal Register** documents published by PBGC, and Federal'' in paragraph (a);

■ c. Removing ''Copies of informational'' and adding in its place ''Informational'' in paragraph (b);

■ d. Revising paragraphs (c) and (d); and

■ e. Removing ''paragraph (a)(2)'' and adding in its place ''section 552(a)(2)'' in paragraph (e).

The revisions read as follows:

§ 4901.4 Information maintained in electronic reading room.

* * * * *

(c) *Rulemaking proceedings.* All papers and documents made a part of the official record in administrative proceedings conducted by PBGC in connection with the issuance, amendment, or revocation of rules and regulations or determinations having

[14] 5 U.S.C. 601 *et seq.*

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

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

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

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

[19] *See,* 13 CFR 121.201.

general applicability or legal effect with respect to members of the public or a class thereof;

(d) *Other agency proceedings, policies, staff manuals and instructions, and records.* Except to the extent that deletion of identifying details is required to prevent a clearly unwarranted invasion of personal privacy (in which case PBGC will explain in writing the justification for the deletion)—

(1) *Adjudication proceedings.* Final opinions, orders, and (except to the extent that an exemption provided by FOIA must be asserted in the public interest to prevent a clearly unwarranted invasion of personal privacy or violation of law or to ensure the proper discharge of the functions of PBGC) other papers and documents made a part of the official record in adjudication proceedings conducted by PBGC;

(2) *Policy statements and interpretations.* Statements of policy and interpretations affecting a member of the public which have been adopted by PBGC and which have not been published in the **Federal Register**;

(3) *Staff manuals and instructions.* Administrative staff manuals and instructions to staff issued by PBGC that affect any member of the public;

(4) *Frequently requested records.* Records that have been released under section 552(a)(3) of FOIA and have been the subject of three or more disclosure requests; and

(5) *Other records.* Records that have been released under section 552(a)(3) of FOIA and that PBGC determines, because of the nature of the records' subject matter, have become or are likely to become the subject of subsequent disclosure requests for substantially the same records; and

* * * * *

■ 9. Revise § 4901.5 to read as follows:

§ 4901.5 Disclosure of other information.

(a) *In general.* Upon the request of any person submitted in accordance with subpart B of this part, the Disclosure Officer will make any document (or portion thereof) from the records of PBGC in the custody of any official of PBGC available for inspection unless PBGC reasonably foresees that disclosure would harm an interest protected by an exemption under the provisions of section 552(b) of FOIA and subpart C of this part or disclosure is otherwise prohibited by law. The procedures in subpart B of this part must be used for records that are not made available in PBGC's electronic reading room under § 4901.4 and may be used for records that are available in the electronic reading room. Records are not records of PBGC and are not required to be furnished under FOIA, if they could only be produced by manipulation of existing information (such as computer analyses of existing data), thus creating information not previously in existence.

(b) *Discretionary disclosure.* Unless prohibited from disclosure by § 4901.21(a), the Disclosure Officer may make any document (or portion thereof) from the records of PBGC available for inspection if the Disclosure Officer determines that disclosure furthers the public interest and does not impede the discharge of any of the functions of PBGC.

■ 10. Revise § 4901.6 to read as follows:

§ 4901.6 Filing rules; computation of time.

(a) *Place, method, and date of filing.* (1) For rules about where to file a submission under this part with PBGC, see § 4000.4 of this chapter.

(2) For rules about permissible methods of filing with PBGC under this part, see § 4000.3 of this chapter.

(3) For rules about the date that a submission under this part was filed with PBGC, see subpart C of part 4000 of this chapter.

(b) *Computation of time.* For rules about any time period under this part, see subpart D of part 4000 of this chapter.

■ 11. Revise § 4901.11 to read as follows:

§ 4901.11 Submission of requests for access to records.

(a) *In general.* A request to inspect any record subject to this subpart must be submitted in writing to the Disclosure Officer, Pension Benefit Guaranty Corporation, by mail, in-person delivery, or electronic telecommunication in accordance with the FOIA instructions on PBGC's website, *www.pbgc.gov.* To facilitate processing, ''FOIA request'' should appear prominently on the request.

(b) *Assistance with requests.* A person who intends to submit or has submitted a request to inspect any record subject to this subpart may at any time seek assistance from a FOIA Public Liaison listed on PBGC's website, *www.pbgc.gov.* PBGC's FOIA Public Liaisons are responsible for assisting in reducing delays, increasing transparency and understanding of the status of requests, and assisting in the resolution of disputes.

■ 12. Amend § 4901.12 by:

■ a. Removing ''Each request'' and adding in its place ''Each disclosure request'' in paragraph (a);

■ b. Revising paragraph (b); and

■ c. Removing ''Requests calling'' and adding in its place ''Disclosure requests calling''; removing ''paragraph (a)(3)'' and adding in its place ''section 552(a)(3)''; removing ''the PBGC'' and adding in its place ''PBGC''; and removing ''disclosure officer shall'' and adding in its place ''Disclosure Officer will'' in paragraph (c).

The revision reads as follows:

§ 4901.12 Description of information requested.

* * * * *

(b) *Deficient descriptions.* (1) If the description is insufficient to enable a professional employee familiar with the subject area of the disclosure request to locate the record with a reasonable amount of effort, the Disclosure Officer will notify the requester and, to the extent possible, indicate the additional information required. PBGC will make every reasonable effort to assist a requester in the identification and location of the record or records sought. PBGC will not withhold records merely because of difficulty in finding them.

(2) A requester who is attempting to modify or reformulate a disclosure request may discuss the request with a FOIA Public Liaison, who is available to assist the requester in reasonably describing the records sought. If the requester fails to reasonably describe the records sought, PBGC's response to the request may be delayed or denied.

(3) Any amended disclosure request must meet the requirements for a request under paragraph (a) of this section.

* * * * *

■ 13. Revise § 4901.13 to read as follows:

§ 4901.13 Receipt by agency of request.

The Disclosure Officer will note the date and time of receipt on each disclosure request for access to records. A disclosure request is deemed received and the period within which PBGC acts on the request, as set forth in § 4901.14, begins on the next working day following receipt, except that a disclosure request is deemed received only if and when PBGC receives all of the following:

(a) A sufficient description under § 4901.12;

(b) Payment or assurance of payment if required under § 4901.33(b); and

(c) The requester's consent to pay substantial search, review, and/or duplication charges under subpart D of this part if PBGC determines that such charges may be substantial and so notifies the requester. Consent must be in the form of a statement that charges under subpart D of this part will be

acceptable either in any amount or up to a specified amount. To avoid possible delay, a requester may include such a statement in an initial disclosure request.

■ 14. Revise § 4901.14 to read as follows:

§ 4901.14 Action on request.

(a) *Time for action.* Promptly and in any event within 20 working days after receipt of a disclosure request (subject to extension under § 4901.16), the Disclosure Officer will take action with respect to each requested item (or portion of an item) under either paragraph (b), (c), or (d) of this section. Following receipt, PBGC may ask the requester for information once and toll the 20-day period until PBGC receives such information.

(b) *Request granted.* If the Disclosure Officer determines that the disclosure request will be granted, PBGC will so advise the requester and will promptly make the records available to the requester. PBGC will accommodate any specification of the preferred form or format for the sought record as stated in the request, if the record is readily reproducible in the preferred form or format.

(c) *Request denied.* If the Disclosure Officer determines that the disclosure request will be denied, PBGC will so advise the requester in writing with a brief statement of the reasons for the denial, including, if applicable, a reference to the specific exemption(s) authorizing the denial and an explanation of how each such exemption applies to the matter withheld.

(d) *Records not located.* If the Disclosure Officer determines that, despite a reasonably calculated search to uncover all relevant documents, the requested records could not be located, PBGC will issue a ''no-records'' response, and so advise the requester in writing.

(e) *Information for requester.* Written responses issued under paragraph (c) or (d) of this section will include the name and title of the person(s) responsible for the denial, outline the appeal procedure available, and notify the requester of the right to seek dispute resolution services from a PBGC FOIA Public Liaison or the Office of Government Information Services.

■ 15. Amend § 4901.15 by:

■ a. Revising paragraphs (a) through (c); and

■ b. Removing ''shall'' and adding in its place ''will''; and removing ''the PBGC's public reference'' and adding in its place ''PBGC's electronic reading'' in paragraph (d).

The revisions read as follows:

§ 4901.15 Appeals from denial of requests.

(a) *Submittal of appeals.* A requester may appeal any adverse determination by the Disclosure Officer of a request under FOIA, including a denial of a request for access to records, expedited action, or fee waiver. The requester may file a written appeal within 90 days from the date of the denial or, in the case of a partial denial, 90 days from the date the requester receives the disclosed material. The appeal must include the grounds for appeal and any supporting statements or arguments. The requester must address the appeal to the General Counsel, Pension Benefit Guaranty Corporation, and must submit the appeal by mail, in-person delivery, or electronic telecommunication in accordance with the FOIA instructions on PBGC's website, *www.pbgc.gov.* To facilitate processing, the words ''FOIA appeal'' should appear prominently on the appeal.

(b) *Receipt and consideration of appeal.* The General Counsel will note the date and time of receipt on each appeal and notify the requester thereof. Within 20 working days after receipt of an appeal (subject to extension under § 4901.16), the General Counsel will issue a decision on the appeal.

(1) The General Counsel will determine de novo whether the denial of disclosure was in accordance with FOIA and this part.

(2) Unless otherwise ordered by the court, the General Counsel may act on an appeal notwithstanding the pendency of an action for judicial relief in the same matter and, if no appeal has been filed, may treat the pending action as the filing of an appeal.

(c) *Decision on appeal.* As to each item (or portion of an item) whose nondisclosure is appealed, the General Counsel will either—

(1) Grant the appeal and so advise the requester in writing, in which case the records with respect to which the appeal is granted will promptly be made available to the requester; or

(2) Deny the appeal and so advise the requester in writing with a brief statement of the reasons for the denial, including a reference to the specific exemption(s) authorizing the denial, an explanation of how each such exemption applies to the matter withheld, and notice of the provisions for judicial review in section 552(a)(4) of FOIA. The General Counsel's decision will be the final action of PBGC with respect to the request.

* * * * *

■ 16. Revise § 4901.16 to read as follows:

§ 4901.16 Extensions of time.

In unusual circumstances (as described in section 552(a)(6)(B) of FOIA), the time to respond to a disclosure request under § 4901.14(a) or an appeal under § 4901.15(b) may be extended as reasonably necessary to process the request or appeal. The Disclosure Officer will notify the requester in writing within the original time period of the unusual circumstances and the date when a response is expected to be sent. When the extension for a disclosure request exceeds 10 working days, the notice will provide the requester with an opportunity to modify the disclosure request or arrange an alternative time period for processing the original or modified request. This notice will also alert the requester of the availability of a PBGC FOIA Public Liaison for assistance and the Office of Government Information Services for dispute resolution services. The maximum extension for responding to an appeal is 10 working days minus the amount of any extension on the request to which the appeal relates.

■ 17. Revise § 4901.17 to read as follows:

§ 4901.17 Expedited action on requests and appeals.

(a) *In general.* Upon a request submitted in accordance with paragraph (b) of this section, PBGC will expedite a disclosure request under § 4901.11 or an appeal under § 4901.15 if PBGC determines that the requester has demonstrated one of the following:

(1) The disclosure request or appeal involves circumstances in which the lack of expedited action could reasonably be expected to pose an imminent threat to the life or physical safety of an individual or the loss of an individual's substantial due process rights.

(2) The requester is primarily engaged in disseminating information and the disclosure request or appeal is urgently needed to inform the public about an actual or alleged Federal Government activity.

(b) *Timing and method of request.* A request for PBGC to expedite a disclosure request or an appeal may be made at any time and must be made by mail, in-person delivery, or electronic telecommunication in accordance with the FOIA instructions on PBGC's website, *www.pbgc.gov.*

(c) *Action on request.* (1) PBGC will notify the requester within 10 calendar days of receipt of a request for expedited action whether PBGC will expedite a disclosure request or an appeal.

(2) *Request granted.* If PBGC determines that the request for expedited action will be granted, PBGC will take action on the disclosure request or the appeal as soon as practicable.

(3) *Request denied.* If PBGC determines that the request for expedited action will be denied, PBGC will so advise the requester in writing with a brief statement of the reasons for the denial. The writing will also include the name and title or position of the person(s) responsible for the denial, outline the appeal procedure available, and notify the requester of the right to seek dispute resolution services from a PBGC FOIA Public Liaison or the Office of Government Information Services. PBGC will act on any appeal of that decision expeditiously.

■ 18. Add § 4901.18 to read as follows:

§ 4901.18 Exhaustion of administrative remedies.

If the Disclosure Officer fails to make a determination to grant or deny access to requested records, or the General Counsel does not make a decision on appeal from a denial of access to PBGC records, within the time prescribed (including any extension) for making such determination or decision, the requester's administrative remedies will be deemed exhausted and the requester may apply for judicial relief under FOIA. However, since a court may allow PBGC additional time to act as provided in FOIA, processing of the disclosure request or appeal will continue and PBGC will so advise the requester.

■ 19. Revise § 4901.21 to read as follows:

§ 4901.21 Restrictions in general.

(a) *Records not disclosable.* PBGC will not disclose records to the extent prohibited by section 552(b)(1) or (3) of FOIA, sections 4010 and 4043 of ERISA, or other statutes.

(b) *Records disclosure of which may be refused.* Unless prohibited from disclosure by paragraph (a) of this section, PBGC need not but may, as provided in § 4901.5(b), disclose records exempted from FOIA, which include as of [EFFECTIVE DATE OF THE FINAL RULE] records under:

(1) Section 552(b)(2) of FOIA, dealing in general with internal agency personnel rules and practices;

(2) Section 552(b)(4) of FOIA, dealing in general with trade secrets and commercial and financial information;

(3) Section 552(b)(5) of FOIA, dealing in general with inter-agency and intra-agency memoranda and letters;

(4) Section 552(b)(6) of FOIA, dealing in general with personnel, medical, and similar files;

(5) Section 552(b)(7) of FOIA, dealing in general with records or information compiled for law enforcement purposes;

(6) Section 552(b)(8) of FOIA, dealing in general with reports on financial institutions; or

(7) Section 552(b)(9) of FOIA, dealing in general with information about wells.

§ 4901.22 [Amended]

■ 20. Amend § 4901.22 by removing ''shall not'' and adding in its place ''will not'' in the first sentence, and removing ''shall be'' and adding in its place ''will be'' in the second sentence.

■ 21. Revise § 4901.23 to read as follows:

§ 4901.23 Record of concern to agency other than PBGC.

When reviewing a record in response to a disclosure request, PBGC will determine whether another agency is better able to determine whether the record is exempt from disclosure under FOIA. As to any such record, PBGC will proceed in one of the following ways:

(a) *Consultation with another agency.* When the record contains information of interest to another agency, PBGC will make a release determination only if its interest in the record is the primary interest and only after PBGC consults with that agency.

(b) *Referral to another agency.* (1) When an agency other than PBGC has primary interest in the record, then PBGC will refer the responsibility for responding to the disclosure request regarding that record to that agency.

(2) Whenever PBGC refers any part of the responsibility for responding to a disclosure request to another agency, PBGC will document the referral, maintain a copy of the record that it refers, and notify the requester of the referral, informing the requester of the name(s) of the agency to which the record was referred, including that agency's FOIA office.

■ 22. Amend § 4901.24 by:

■ a. Revising the section heading and paragraph (a);

■ b. Removing ''submitter shall'' and adding in its place ''submitter must''; removing ''paragraph shall'' and adding in its place ''paragraph will''; and removing ''therefor'' in paragraph (b);

■ c. Removing ''disclosure officer'' and adding in its place ''Disclosure Officer''; removing ''Counsel shall'' and adding in its place ''Counsel will''; and removing ''requester shall'' and adding in its place ''requester will'' in paragraph (c);

■ d. Removing ''disclosure should'' and adding in its place ''disclosure must''; removing ''subsection (b)'' and adding in its place ''section 552(b)''; removing ''paragraph (b)(4) of FOIA'' and adding in its place ''section 552(b)(4)''; removing ''asserted should'' and adding in its place ''asserted must''; and removing ''shall'' and adding in its place ''will'' in paragraph (d);

■ e. Revising paragraph (e); and

■ f. Removing ''disclosure officer'' and adding in its place ''Disclosure Officer''; and removing ''Counsel shall'' and adding in its place ''Counsel will'' in paragraph (f).

The revisions read as follows:

§ 4901.24 Special rules for trade secrets and confidential commercial or financial information submitted to PBGC.

(a) *Application.* To the extent permitted by law, this section applies to a request for disclosure of a record that contains information that has been designated by the submitter in good faith in accordance with paragraph (b) of this section or a record that PBGC has reason to believe contains such information, unless one of the following applies:

(1) Access to the information is denied.

(2) The information has been published or officially made available to the public.

(3) Disclosure of the information is required by law other than FOIA.

(4) The designation under paragraph (b) of this section appears obviously frivolous, except that in such a case PBGC will notify the submitter in writing of a determination to disclose the information within a reasonable time before the disclosure date (which shall be specified in the notice).

* * * * *

(e) *Notification to submitter of decision to disclose.* If the Disclosure Officer or (where disclosure is in response to an appeal) the General Counsel decides to disclose information subject to this section despite the submitter's objections, the Disclosure Officer (or General Counsel) will give the submitter written notice, explaining briefly why the information is to be disclosed despite those objections, describing the information to be disclosed, and specifying the date when the information will be disclosed to the requester. The notification will, to the extent permitted by law, be provided a reasonable number of days before the disclosure date so specified, and a copy will be provided to the requester.

* * * * *

■ 23. Amend § 4901.31 by:

■ a. Revising paragraphs (a) and (b);

■ b. Removing ''the PBGC reasonably'' and adding in its place ''PBGC reasonably''; removing ''the PBGC will'' and adding in its place ''PBGC will''; and removing ''will the PBGC'' and

adding in its place ''will PBGC'' in paragraph (c); and

■ c. Revising paragraphs (d) and (e).

The revisions read as follows:

§ 4901.31 Charges for services.

(a) *In general.* Pursuant to the provisions of section 552 of FOIA, as amended, PBGC will assess charges to cover the direct costs of searching for, reviewing, and/or duplicating records requested under FOIA, except where the charges are limited or waived under paragraph (b) or (d) of this section, according to the fee schedule in § 4901.32. No charge will be assessed if the costs of routine collection and processing of the fee would be equal to or greater than the fee itself. Except as provided in paragraph (e) of this section, no charge for searching (or in the case of a requester described under section 552(a)(4)(A)(ii)(II) of FOIA, for duplication) will be assessed if PBGC has failed to comply with any time limit under section 552(a)(6) of FOIA.

(1) *Direct costs* means those expenditures which PBGC actually incurs in searching for and duplicating (and in the case of commercial requesters, reviewing) documents to respond to a disclosure request under FOIA and this part. Not included in direct costs are overhead expenses such as costs of space, and heating or lighting the facility in which the records are stored.

(2) *Search* means all time spent looking for material that is responsive to a disclosure request under FOIA and this part, including page-by-page or line-by-line identification of materials within a document, if required. Searches may be done manually or by computer using existing programming. Search is distinguishable from ''review'' which is defined in paragraph (a)(3) of this section.

(3) *Review* means the process of examining documents located in response to a disclosure request under FOIA and this part to determine whether any portion of any document located is permitted or required to be withheld. It also includes processing any documents for disclosure, *e.g.,* doing all that is necessary to redact them and otherwise prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(4) *Duplication* means the process of making a copy of a document necessary to respond to a disclosure request under FOIA and this part, in a form that is reasonably usable by the requester. Copies can take the form of paper copy, audio-visual materials, or electronic records, among others.

(b) *Categories of requesters.* For purposes of assessing fees, requesters who seek access to records under FOIA and this part are divided into three categories: Commercial use requesters, non-commercial scientific or educational institutions or news media requesters, and all other requesters. PBGC will determine the category of a requester and charge fees according to the following rules.

(1) *Commercial use requesters.* (i) When records are requested for commercial use, PBGC will assess charges, as provided in this subpart, for the full direct costs of searching for, reviewing for release, and duplicating the records sought. Fees for search and review may be charged even if the record searched for is not found or if, after it is found, it is determined that the request to inspect it may be denied under section 552(b) of FOIA and this part.

(ii) A ''commercial use'' request is a request that asks for information for a use or a purpose that furthers a commercial, trade, or profit interest, which can include furthering those interests through litigation. PBGC's decision to place a requester in the commercial use category will be made on a case-by-case basis dependent upon on the requester's intended use of the information. PBGC will notify requesters of their placement in this category.

(2) *Non-commercial scientific or educational institutions, or news media requesters.* (i) When records are requested by a non-commercial scientific or educational institution or a news media requestor, PBGC will assess charges, as provided in this subpart, for the full direct cost of duplication only, excluding charges for the first 100 pages.

(ii) A non-commercial scientific institution is an institution that is not operated for a ''commercial use'' as that term is defined in paragraph (b)(1)(ii) of this section, and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(iii) An educational institution is any school that operates a program of scholarly research. A requester in this fee category must show that the request is made in connection with his or her role at the educational institution. PBGC may seek verification from the requester that the request is in furtherance of scholarly research and PBGC will advise requesters of their placement in this category.

(iv)(A) A representative of the news media is any person or entity that gathers information of potential interest to a segment of the public, uses editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. The term news means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals that disseminate ''news'' and make their products available through a variety of means to the general public, including news organizations that disseminate solely on the internet. These examples are not intended to be all-inclusive. A ''freelance'' journalist who demonstrates a solid basis for expecting publication through a news media entity will be considered as a representative of the news media.

(B) To be eligible for inclusion in this category, the request must not be made for a commercial use. A request for records supporting the news dissemination function of the requester who is a representative of the news media will not be considered to be a request that is for a commercial use.

(3) *All other requesters.* When records are requested by requesters who do not fit into any of the categories in paragraph (b)(1) or (2) of this section, PBGC will assess charges, as provided in this subpart, for the full direct cost of searching for and duplicating the records sought, with the exceptions that there will be no charge for the first 100 pages of duplication and the first two hours of search time. Notwithstanding the preceding sentence, there will be no charge for search time in the event of requests under the Privacy Act of 1974 from subjects of records filed in PBGC's systems of records for the disclosure of records about themselves. Search fees, where applicable, may be charged even if the record sought is not found.

* * * * *

(d) *Waiver or reduction of charges.* Circumstances under which any fee listed in § 4901.32 may be waived or reduced are set forth in § 4901.34.

(e) *Unusual or exceptional circumstances.* Notwithstanding paragraph (a) of this section, if PBGC fails to comply with a time limit under section 552(a)(6) of FOIA, PBGC may nevertheless assess a charge for search and review services (or in the case of a requester described under section 552(a)(4)(A)(ii)(II), for duplication) if one of the following circumstances applies:

(1) PBGC has determined that unusual circumstances (as defined in section

552(a)(6)(B) of FOIA) apply, PBGC needs more than 10 additional days to process the disclosure request, and more than 5,000 pages are necessary to respond to the request, provided that:

(i) PBGC has provided timely written notice of this determination to the requester; and

(ii) PBGC has discussed with the requester, or made three or more good-faith attempts to do so, via written mail, electronic mail, or telephone how the requester could effectively limit the scope of the request.

(2) PBGC has determined that unusual circumstances (as defined in section 552(a)(6)(B) of FOIA) apply, PBGC has provided timely written notice to the requester of the unusual circumstances extending the time limit by 10 additional days, and PBGC processes the disclosure request within that time.

(3) A court has determined that exceptional circumstances exist (as defined in section 552(a)(6)(C) of FOIA) and has issued an order excusing PBGC's failure to comply with the time limit.

■ 24. Amend § 4901.32 by revising paragraphs (a) and (b) to read as follows:

§ 4901.32 Fee schedule.

(a) *Charges for searching and review of records.* Charges applicable under this subpart to the search for and review of records will be made according to the following fee schedule:

(1) *Search time and review time.* For ordinary search services and review services, PBGC charges $54.00 per hour. PBGC charges fees in quarter hour increments.

(2) *Retrieving records stored by NARA.* For disclosure requests that require the retrieval of records stored at a Federal records center operated by the National Archives and Records Administration (NARA), PBGC charges additional costs in accordance with the Transactional Billing Rate Schedule established by NARA.

(b) *Charges for duplication of records.* Charges applicable under this subpart for obtaining requested copies of records made available for inspection will be made according to the following fee schedule and subject to the following conditions.

(1) *Standard copying fee.* $0.15 for each page of record copies furnished.

(2) *Voluminous material.* If the volume of page copy desired by the requester is such that the reproduction charge at the standard page rate would be in excess of $50, the person desiring reproduction may request a special rate quotation from PBGC.

(3) *Indexes.* Pursuant to section 552(a)(2) of FOIA copies of indexes or supplements thereto which are maintained as therein provided but which have not been published will be provided on request at a cost not to exceed the direct cost of duplication.

* * * * *

■ 25. Amend § 4901.33 by:

■ a. Revising paragraphs (a), (b) introductory text, and (b)(1);

■ b. Removing ''the PBGC may'' and adding in its place ''PBGC may'' in paragraph (b)(2); and

■ c. Removing ''The PBGC may'' and adding in its place ''PBGC may'' in paragraph (c).

The revisions read as follows:

§ 4901.33 Payment of fees.

(a) *Medium of payment.* Payment of the applicable fees as provided in this section must be made by check, money, or other PBGC permitted method, and in accordance with the FOIA instructions on PBGC's website, *www.pbgc.gov.*

(b) *Advance payment or assurance of payment.* Payment or assurance of payment before work is begun or continued on a disclosure request may be required as follows:

(1) Where PBGC estimates or determines that charges allowable under the rules in this subpart, are likely to exceed $250, PBGC may require advance payment of the entire fee or assurance of payment, as follows:

(i) Where the requester has a history of prompt payment of fees under this part, PBGC will notify the requester of the likely cost and obtain satisfactory assurance of full payment; or

(ii) Where the requester has no history of payment for requests made pursuant to FOIA and this part, PBGC may require the requester to make an advance payment of an amount up to the full estimated charges.

* * * * *

■ 26. Amend § 4901.34 by:

■ a. Removing ''disclosure officer'' and adding in its place ''Disclosure Officer''; removing ''government'' and adding in its place ''Government''; removing ''waiver request shall'' and adding in its place ''waiver or reduction request must''; and removing ''request for waiver'' and adding in its place ''request'' in paragraph (a); and

■ b. Revising paragraph (b).

The revision reads as follows:

§ 4901.34 Waiver or reduction of charges.

* * * * *

(b) If the Disclosure Officer determines that the request for fee waiver or reduction will be denied, the requester will be so advised in writing with a brief statement of the reasons for the denial. The writing will include the name and title or position of the person(s) responsible for the denial, outline the appeal procedure available, and notify the requester of the right to seek dispute resolution services from a PBGC FOIA Public Liaison or the Office of Government Information Services.

Issued in Washington, DC, by:

Gordon Hartogensis,

Director, Pension Benefit Guaranty Corporation.

[FR Doc. 2020–20018 Filed 10–9–20; 8:45 am]

BILLING CODE 7709–02–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 334

[COE–2019–0010]

Washington Channel, Fort McNair, Washington, DC; Restricted Area

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of proposed rulemaking and request for comments.

SUMMARY: The U.S. Army Corps of Engineers (Corps) is proposing to establish a restricted area in the Washington Channel adjacent to Fort McNair. Fort McNair is the headquarters of the Army's Military District of Washington and home of the National Defense University as well as the official residence of the U.S. Army's Vice Chief of Staff. Fort McNair requested a restricted area to fulfill Joint Base Myer-Henderson Hall (JBM–HH) security needs including Marine Helicopter Squadron (HMX) missions and protection of VIP quarters at Fort McNair. On August 8, 2019, the Corps published a proposed rule for the establishment of a restricted area in the Washington Channel adjacent to Fort McNair. After evaluating the comments received in response to that proposed rule, the proposal has been revised and the Corps is inviting public comment on the revised proposed rule text.

DATES: Written comments must be submitted on or before November 12, 2020.

ADDRESSES: You may submit comments, identified by docket number COE–2019–0010, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments to docket number COE–2019–0010.

Email: david.b.olson@usace.army.mil. Include the docket number, COE–2019–0010, in the subject line of the message.

Mail: U.S. Army Corps of Engineers, Attn: CECW–CO–R (David B. Olson), 441 G Street NW, Washington, DC 20314–1000.

Hand Delivery/Courier: Due to security requirements, we cannot receive comments by hand delivery or courier.

Instructions: Direct your comments to docket number COE–2019–0010. All comments received will be included in the public docket without change and may be made available on-line at *http://www.regulations.gov,* including any personal information provided, unless the commenter indicates that 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 *regulations.gov* or email. The *regulations.gov* website is an anonymous access system, which means we will not know your identity or contact information unless you provide it in the body of your comment. If you send an email directly to the Corps without going through *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, we recommend that you include your name and other contact information in the body of your comment and also include your contact information with any compact disk you submit. If we cannot read your comment because of technical difficulties and cannot contact you for clarification, we may not be able to consider your comment. Electronic comments should avoid the use of any special characters, any form of encryption, and be free of any defects or viruses.

Docket: For access to the docket to read background documents or comments received, go to *www.regulations.gov.* All documents in the docket are listed. Although listed in the index, some information is not publicly available, such as 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.

FOR FURTHER INFORMATION CONTACT: Mr. David Olson, Headquarters, Operations and Regulatory Division, Washington, DC at 202–761–4922.

SUPPLEMENTARY INFORMATION: Pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3), the U.S. Army Corps of Engineers (Corps) is proposing to amend its regulations at 33 CFR part 334 for the establishment of a restricted area in waters of the Washington Channel in Washington, DC. In a memorandum dated April 16, 2020, Fort McNair submitted a revised request to the Corps for a proposed rule to establish this restricted area. The proposed restricted area is necessary to fulfill the current security needs of Fort McNair and Joint Base Myer-Henderson Hall (JBM–HH) at these facilities. Fort McNair is the headquarters of the Army's Military District of Washington and home of the National Defense University as well as the official residence of the U.S. Army's Vice Chief of Staff.

The initial proposed rule as published in the August 8, 2019, issue of the **Federal Register** (84 FR 38893). Forty-eight comments were received in response to that proposed rule, and those comments can be viewed in the *www.regulations.gov* docket for this rulemaking activity (docket number COE–2019–0010).

The original proposal was to prohibit access within the proposed restricted area at all times, other than limited exceptions for fishing access. In response to the proposed rule, comments were received from the public stating the Washington Channel is increasingly utilized for regional transportation, water recreation, and cultural activities such as the District of Columbia's Holiday Boat Parade and the Blessing of the Fleet. Commenters expressed concern that the proposal would affect the ability of residents and visitors to enjoy these activities in the restricted area. Commenters also expressed concerns that restriction of the channel would significantly narrow the waterway, creating unsafe navigation conditions by forcing paddle boats, kayaks, sail boats and motor boats into the same space as larger water taxis and river cruise ships. To respond to the public comments, an alternative restricted area proposal was developed that would provide greater flexibility for mariners. The revised proposal would allow transient traffic offshore of Fort McNair at all times with the exception of National Security Special Events such as the State of the Union Address, State Funerals, Presidential Inaugurations, Marine Helicopter Squadron (HMX) missions, and other periods of increased security. Other than during National Security Special Events and other periods of increased security, water craft would be able to transit, but not anchor, moor or loiter in the restricted area unless approved by the Commander, JBM–HH/Fort McNair or his/her designated representatives.

Procedural Requirements

a. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This proposed rule has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, this proposed rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771. The Corps has determined that this proposed rule is not a significant regulatory action. This determination is based on the size, duration, and location of the restricted area. The restricted area occupies only a portion of the waterway. Outside of National Special Security Events, a vessel that needs to transit the restricted area may do so, but must not anchor, moor or loiter in, the restricted area. During National Special Security Events, the vessel may transit the restricted area if the operator of the vessel obtains permission from the Commanding Officer, JBM–HH or his/her designated representative. Fishermen may be authorized controlled access to the restricted area after registering with JBM–HH/Fort McNair officials and following specific access notification procedures.

b. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Corps certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. While some owners or operators of vessels that intend to transit the proposed restricted area may be small entities, this proposed rule would not have a significant economic impact on any vessel owner or operator. In

addition, the restricted area is necessary to address the current security needs at Fort McNair and JBM–HH Washington, DC. Vessels can utilize navigable waters outside of the restricted area. Also, vessels or other craft can transit, but not anchor, moor or loiter in, the restricted area unless approved by the Commander, JBM–HH/Fort McNair or his/her designated representatives transit the restricted area as long as they obtain permission from the Commanding Officer, JBM–HH or his/her designated representative. Unless information is obtained to the contrary during the comment period, the Corps expects the proposed restricted area would have no economic impact on the public, nor create any navigational hazards or interference with existing waterway traffic. After considering the economic impacts of this restricted area regulation on small entities, I certify that this action will not have a significant impact on a substantial number of small entities.

c. Review Under the National Environmental Policy Act

Due to the administrative nature of this action, the Corps expects that this proposed regulation, if adopted, will not have a significant impact to the quality of the human environment and, therefore, preparation of an environmental impact statement will not be required. An environmental assessment will be prepared after the public notice period is closed and all comments have been received and considered.

d. Unfunded Mandates Act

This proposed rule does not impose an enforceable duty among the private sector and, therefore, it is not a Federal private sector mandate and it is not subject to the requirements of either Section 202 or Section 205 of the Unfunded Mandates Act. We have also found under Section 203 of the Act, that small governments will not be significantly and uniquely affected by this rulemaking.

e. Congressional Review Act

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

List of Subjects in 33 CFR Part 334

Danger zones, Marine safety, Navigation (water), Restricted Areas, Waterways.

For the reasons set out in the preamble, the Corps proposes to amend 33 CFR part 334 as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

■ 1. The authority citation for 33 CFR part 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

■ 2. Add § 334.225 to read as follows:

§ 334.225 Washington Channel, Fort Lesley J. McNair, Washington, DC; Restricted Area.

(a) *The area.* The restricted area shall encompass all navigable waters of the United States, as defined at 33 CFR part 329, within the area bounded by a line connecting the following coordinates: Commencing from the shoreline at latitude 38°52′18.776″ N, longitude −077°1′9.436″ W; thence to latitude 38°52′17.696″ N, longitude −077°1′13.345″ W; thence to latitude 38°52′12.798″ N, longitude −077°1′12.114″ W; thence to latitude 38°52′17.559″ N, longitude −077°1′9.706″ W; thence to latitude 38°51′43.667″ N, longitude −077°1′9.771″ W; thence to latitude 38°51′41.135″ N, longitude 077°1′9.45″ W; thence to latitude 38°51′38.723″ N, longitude −077°1′6.921″ W; thence to latitude 38°51′38.257″ N, longitude −077°1′3.101″ W; thence to latitude 38°51′40.069″ N, longitude −077°0′57.895″ W; thence to latitude 38°51′41.708″ N, longitude −077°0′54.969″ W; thence to latitude 38°51′41.918″ N, longitude −077°0′53.911″ W; thence to latitude 38°51′43.571″ N, longitude −077°0′55.143″ W. The datum for these coordinates is NAD–83.

(b) *The regulations:* (1) All persons, vessels, or other craft are prohibited from anchoring, mooring or loitering within the restricted area without the permission of the Commander, Joint Base Myer Henderson Hall (JBM–HH)/Fort McNair or his/her designated representatives. The restriction will be in place 24 hours a day, 7 days a week. During National Special Security Events (NSSEs) and other periods of increased security, all persons, vessels, or other craft are prohibited from anchoring, mooring, loitering, or transiting the restricted area. At other times, all persons, vessels, or other craft can transit, but must not anchor, moor or loiter in, the restricted area unless approved by the Commander, JBM–HH/Fort McNair or his/her designated representatives.

(2) The boundary of the restricted area will be demarcated with marker buoys and warning signs located at all or some of the coordinates at approximately 75–150 meters from the shoreline of Fort McNair listed in paragraph (a) of this section.

(3) *Closure notification.* During temporary closures for known events, boaters will be notified of closure of the restricted area to transit by Local Notices to Mariners (LNMs). For unforeseen events requiring closure, Broadcast Notices to Mariners (BNMs), Safety Marine Information Broadcasts (SMIBs), or direction from shore, or any combination of these, will be used to alert boaters.

(c) *Enforcement.* The restricted area will be jointly enforced by the Commander, Joint Base Myer Henderson Hall (JBM–HH)/Fort McNair or any such agencies he/she designates and the Metropolitan Harbor Patrol. The U.S. Coast Guard also has enforcement authority under Title 14, United States Code, Section 522. During NSSEs and other periods of increased security, all persons, vessels, or other craft are prohibited from anchoring, mooring, loitering, or transiting the restricted area. At other times, all persons, vessels, or other craft can transit but must not anchor, moor or loiter in the restricted area unless approved by the Commander, JBM–HH/Fort McNair. The areas identified in paragraph (a) of this section will be monitored 24 hours a day, 7 days a week. If any person or vessel encroaching within the areas identified in paragraph (a) of this section is directed to immediately leave the restricted area and fails to do so, such failure to comply could result in forceful removal and/or criminal charges.

(d) *Exceptions.* Fishermen may be authorized controlled access to the restricted area after registering with JBM–HH/Fort McNair officials and following specific access notification procedures.

Thomas P. Smith,

Chief, Operations and Regulatory Division, Directorate of Civil Works.

[FR Doc. 2020–21677 Filed 10–9–20; 8:45 am]

BILLING CODE 3720–58–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 147

[EPA–HQ–OW–2020–0154; FRL–10015–00–OW]

State of New Mexico Underground Injection Control Program; Primacy Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes to approve an application from the State of New Mexico under the Safe Drinking Water Act (SDWA) to revise the state's existing Underground Injection Control (UIC) program for Class I injection wells located within the state, except those in Indian country. New Mexico has revised the state's UIC Class I program regulations to remove the current ban on Class I injection wells and establish new permit conditions, oversight, and enforcement to safely manage Class I hazardous waste disposal wells.

DATES: Comments must be received on or before November 27, 2020.

ADDRESSES: You may send comments, identified by Docket ID No. EPA–HQ–OW–2020–0154, by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov/* (our preferred method). Follow the online instructions for submitting comments.
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center, Water Docket, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.
- *Hand Delivery or Courier (by scheduled appointment only):* EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operations are 8:30 a.m.–4:30 p.m., Monday–Friday (except Federal Holidays).

Instructions: All submissions received must include the Docket ID No. EPA–HQ–OW–2020–0154 for this rulemaking. Comments received may be posted without change to *https://www.regulations.gov/,* including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document. Out of an abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room are closed to the public, with limited exceptions, to reduce the risk of transmitting COVID–19. Our Docket Center staff will continue to provide remote customer service via email, phone, and webform. We encourage the public to submit comments via *https://www.regulations.gov/* or email, as there may be a delay in processing mail and faxes. Hand deliveries and couriers may be received by scheduled appointment only. For further information on EPA Docket Center services and the current status, please visit us online at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Kyle Carey, Drinking Water Protection Division, Office of Ground Water and Drinking Water (4606M), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564–2322; fax number: (202) 564–3754; email address: *carey.kyle@epa.gov,* or Evelyn Rosborough, Region VI Library (6WD), U.S. Environmental Protection Agency, 1201 Elm Street, Suite 500, Dallas, Texas 75270; telephone number: (214) 665–7515; fax: (214) 665–6490; email address: *rosborough.evelyn@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Written Comments

Submit your comments, identified by Docket ID No. EPA–HQ–OW–2020–0154, at *https://www.regulations.gov* or other methods identified in the **ADDRESSES** section of this document. Once submitted, comments cannot be edited or removed from the docket. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Contact EPA if you want to submit CBI; see **FOR INFORMATION CONTACT** section of this document. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

The EPA is temporarily suspending its Docket Center and Reading Room for public visitors, with limited exceptions, to reduce the risk of transmitting COVID–19. Our Docket Center staff will continue to provide remote customer service via email, phone, and webform. We encourage the public to submit comments via *https://www.regulations.gov/* as there may be a delay in processing mail and faxes. Hand deliveries or couriers will be received by scheduled appointment only. For further information and updates on EPA Docket Center services, please visit us online at *https://www.epa.gov/dockets.*

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

B. Participation in the Public Hearing

Please note that EPA may deviate from its typical approach because the President has declared a national emergency. Because of current CDC recommendations, as well as state and local orders for social distancing to limit the spread of COVID–19, EPA may not be able to hold in-person public meetings at this time.

Confirmation or cancellation of the public hearing will be announced on November 27, 2020 and on EPA Region VI's website at: *https://www.epa.gov/uic/new-mexico-proposed-uic-program-revision-class-i-injection-wells.* For information regarding the public hearing, including a request to hold a hearing, or to speak at the hearing, please contact Evelyn Rosborough, Region VI Library (6WD), U.S. Environmental Protection Agency, 1201 Elm Street, Suite 500, Dallas, Texas 75270; or telephone: (214) 665–7515; fax: (214) 665–6490; email: *rosborough.evelyn@epa.gov.*

If requested, the public hearing may be held at the Wendell Chino Building (Porter Hall, 1st floor), 1220 South St. Francis Drive, Santa Fe, New Mexico 87505 or at the New Mexico State Capitol, 490 Old Santa Fe Trail, Santa Fe, NM 87501. EPA may change the format and the timing of the public hearing (*i.e.,* a virtual hearing held during regular business hours) if appropriate to protect public health in the face of COVID–19–risks. EPA will publish notice of any such change at least seven days prior to the hearing date exclusively at: *https://www.epa.gov/uic/new-mexico-proposed-uic-program-revision-class-i-injection-wells.*

C. Public Outreach

On October 13, 2020, a public notice announcing this proposed approval, request for public comment, and notice of a public hearing to be held on November 27, 2020, will be published in the *Albuquerque Journal,* the *Roswell Daily Record,* the *Gallup Independent,* and posted to EPA Region VI's website at: *https://www.epa.gov/uic/new-mexico-proposed-uic-program-revision-class-i-injection-wells.* In addition, EPA will email a link to the document published in the **Federal Register** to a statewide list of interested stakeholders.

II. Introduction

EPA approved the State of New Mexico's UIC program as meeting the requirements for primary enforcement responsibility (primacy) for Class I, III, IV, and V injection wells, under Section 1422 of the SDWA, on July 11, 1983. The State of New Mexico has revised their UIC Class I program regulations to remove the current ban on Class I hazardous waste wells and establish new permit conditions, oversight, and enforcement to safely manage Class I wells, except those in Indian country. EPA considers this to be a substantial program revision and therefore subject to the procedures specified in the *Code of Federal Regulations* (CFR) at 40 CFR 145.32(b)(2). EPA is proposing to approve New Mexico's revision to its Class I program. If approved, EPA would make conforming changes to 40 CFR 147.1601 to reflect New Mexico's revised Class I program.

EPA will continue to oversee the State of New Mexico's administration of UIC Class I, III, IV, and V programs as authorized under the SDWA. Part of EPA's oversight responsibility includes the review of required state quarterly reports of non-compliance and annual UIC performance reports pursuant to 40 CFR 144.8.

III. Legal Authorities

These proposed regulations are being promulgated under the authority of Sections 1422 and 1450 of the SDWA, 42 U.S.C. 300h–1 and 300j–9.

A. Revision of State UIC Programs

As required by Section 1421 of the SDWA, EPA promulgated minimum requirements at 40 CFR part 145 for effective state UIC programs to prevent underground injection activities that endanger underground sources of drinking water (USDWs). Under Section 1422 of the SDWA, once EPA approves a state UIC program, the state has primary enforcement responsibility for underground water sources. A state may revise its UIC program as provided under 40 CFR 145.32(a) and by following the procedures described under 40 CFR 145.32(b), which require the state to submit a modified program description, an Attorney General's statement, a Memorandum of Agreement, or other such documentation as EPA determines to be necessary under the circumstances (40 CFR 145.32(b)(1)).

B. Program Revision Effective Date

A program revision becomes effective upon approval of the Administrator (40 CFR 145.32(b)(4)). All revisions to the state UIC program would be federally enforceable as of the effective date of EPA's approval of the respective revision and 40 CFR part 147 codification. Consistent with EPA Guidance 16,[1] EPA considers state-initiated program revisions to permit a formerly banned activity under the State of New Mexico Class I UIC program to be a substantial program revision. Under EPA regulations, this means there is an opportunity for public comment and to request a public hearing (40 CFR 145.32(b)(2)).

C. Indian Country

EPA's approval of the State of New Mexico's program revision to remove the prohibition on hazardous waste injection disposal under the SDWA UIC Class I program does not extend to Indian lands. Pursuant to EPA's UIC regulations at 40 CFR 144.3, Indian lands ''means 'Indian country' as defined in 18 U.S.C. 1151.'' EPA, or eligible Indian tribes, as appropriate, will retain responsibilities under the SDWA UIC program for Class I, III, IV, and V injection wells in Indian country in the State of New Mexico.

IV. State of New Mexico's Application

A. Notice of Completion

On May 2, 2019, EPA determined that the Agency had received a complete UIC program revision application from the State of New Mexico, in which the state requested approval of its revised UIC regulations for Class I injection wells. The full application and supplemental materials are available electronically at *https://www.regulations.gov* in EPA's Docket No. EPA–HQ–OW–2020–0154; and a copy of the application can be accessed for inspection and copying at: The U.S. Environmental Protection Agency Region VI Office, 1201 Elm Street, Suite 500, Dallas, Texas 75270, by contacting Evelyn Rosborough, telephone number: (214) 665–7515; fax: (214) 665–6490; email address: *rosborough.evelyn@epa.gov.* Public comments are requested, and a public hearing will be held if requests are received within 45 days of publication of this document (see the ''Public Participation'' heading in the **SUPPLEMENTARY INFORMATION** section of this document for further information on how to request a public hearing).

The UIC program revision application package from the State of New Mexico includes revisions of: (1) The description of the state's UIC program (40 CFR 145.23); (2) all applicable state statutes, regulations, and forms (40 CFR 145.22(a)(5)); (3) the Attorney General's statement that the state has adequate legal authority to carry out the program described and to meet the requirements of 40 CFR part 145; and (4) the Memorandum of Agreement between the State of New Mexico and EPA's Region VI Administrator (40 CFR 145.25).

B. Public Participation Activities Conducted by the State of New Mexico

On May 15, 2015, the New Mexico Water Quality Control Commission (WQCC or Commission) published a public notice of the Commission's intent to adopt amendments to the WQCC rules governing underground injection control to authorize the State of New Mexico to allow the approval of Class I hazardous waste injection wells, but only for petroleum refineries disposing the waste generated at the refinery. The public notice was published in 15 newspapers across the State of New Mexico. Written comments on the proposed rulemaking changes were accepted between May 15, 2015, and July 14, 2015. The public hearing was held on July 14, 2015, before both a WQCC hearing officer and the full Commission. Prior to the hearing, five technical witnesses from the Navajo Nation and one from New Mexico Oil Conservation Division pre-filed written testimony. At the hearing, in addition to the technical witnesses, several members of the public, including local elected officials, provided written or oral testimony in favor of the proposed rule changes. There was no testimony, written or oral, in opposition to the proposal.

V. Incorporation by Reference

In this action, EPA is proposing to approve the revisions to the State of New Mexico's UIC program to permit Class I hazardous waste injection wells in the state, except those in Indian lands. New Mexico's statutes and supporting documentation are publicly available in EPA's Docket at EPA–HQ–

[1] *https://www.epa.gov/sites/production/files/2020-02/documents/attorneygeneralsstatement-31july1981.pdf.*

OW–2020–0154. This action proposes to amend 40 CFR part 147 and incorporate by reference EPA-approved state statutes and regulations. EPA will continue to administer the UIC program for all well classes within Indian lands.

If EPA approves and finalizes this action by rule, the provisions of New Mexico's statutes and regulations that contain standards, requirements, and procedures applicable to owners or operators of UIC Class I hazardous waste wells will be incorporated by reference into 40 CFR 147.1601 as described in the regulatory text. Provisions of the New Mexico's statutes and regulations that contain standards, requirements, and procedures applicable to owners or operators of Class I, III, IV, and V injection were incorporated by reference into 40 CFR 147.1601 through prior EPA rules but are being reapproved for this new format. Any provisions incorporated by reference, as well as all permit conditions or permit denials issued pursuant to such provisions, will be enforceable by EPA pursuant to the SDWA section 1423 and 40 CFR 147.1(e).

In order to better serve the public, EPA is reformatting the codification of EPA-approved New Mexico SDWA section 1422 UIC program statutes and regulations for well Classes I, III, IV, and V. Instead of codifying the New Mexico statutes and regulations as separate paragraphs, EPA will be incorporating by reference a compilation that contains ''EPA Approved New Mexico SDWA § 1422 Underground Injection Control Program Statutes and Regulations for Well Classes I, III, IV, and V,'' dated July 8, 2020. This compilation is incorporated by reference into 40 CFR 147.1601 and is available at *https://www.regulations.gov* in the docket for this rule. For information about the availability of this material at the EPA, see the **FOR FURTHER INFORMATION CONTACT** section of this document.

A complete list of the New Mexico statutes and regulations contained in the compilation, titled ''EPA Approved New Mexico SDWA § 1422 Underground Injection Control Program Statutes and Regulations for Well Classes I, III, IV, and V,'' dated July 8, 2020, will also be codified in Table 1 to paragraph (a) at 40 CFR 147.1601.

VI. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *http://www2.epa.gov/laws-regulations/laws-and-executive-orders.*

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

This action is exempt from review by the Office of Management and Budget (OMB) because it proposes to approve the State of New Mexico's UIC Program and state UIC programs are exempt from review.

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

This action is not an Executive Order 13771 regulatory action because actions such as state UIC Program revisions are exempted under Executive Order 12866.

C. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA. OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control number 2040–0042. Reporting or record-keeping requirements will be based on the State of New Mexico UIC Regulations, and the State of New Mexico is not subject to the PRA.

D. Regulatory Flexibility Act (RFA)

The agency certifies that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden, or otherwise has a positive economic effect on the small entities subject to the rule. This proposed rulemaking would not impose any requirements on small entities as this rule (when finalized) would approve and codify the State of New Mexico's UIC program revisions. We have therefore concluded that this action will have no net regulatory burden for all directly regulated small entities.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local, or Tribal governments or the private sector. EPA's approval of the State of New Mexico's program revisions will not constitute a federal mandate because there is no requirement that a state establishes UIC regulatory programs and because the program is a state, rather than a federal program.

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. This action contains no federal mandates for Tribal governments and does not impose any enforceable duties on Tribal governments. Thus, Executive Order 13175 does not apply to this action.

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

EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in Section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it proposes to approve existing the State of New Mexico's UIC program requirements.

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

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

J. National Technology Transfer and Advancement Act

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 has determined that this action is not subject to Executive Order 12898 (59 FR 7629, February 16, 1994) because it does not establish an environmental health or safety standard. This action would approve the State of New

Mexico's revisions to its UIC Class I program.

List of Subjects in 40 CFR Part 147

Environmental protection, Incorporation by reference, Indian lands, Intergovernmental relations, Reporting and recordkeeping requirements, Water supply.

Andrew Wheeler,

Administrator.

For the reasons set out in the preamble, the Environmental Protection Agency is proposing to amend 40 CFR part 147 as follows:

PART 147—STATE, TRIBAL, AND EPA-ADMINISTERED UNDERGROUND INJECTION CONTROL PROGRAMS

■ 1. The authority citation for part 147 continues to read as follows:

Authority: 42 U.S.C. 300f *et seq.;* and 42 U.S.C. 6901 *et seq.*

■ 2. Amend § 147.1601 by:

■ a. Revising the introductory text and paragraphs (a) and (b);

■ b. Adding a paragraph heading to paragraph (c) and adding paragraph (c)(3); and

■ c. Revising paragraph (d).

The revisions and additions read as follows:

§ 147.1601 State-administered program—Class I, III, IV, and V wells.

The UIC Program for Class I, III, IV, and V wells in the State of New Mexico except for those located on Indian lands, as defined under 40 CFR 144.3, is the program administered by the New Mexico Water Quality Control Commission, the New Mexico Environment Department (formerly the New Mexico Environmental Improvement Division), and the Oil Conservation Division of the New Mexico Energy, Minerals and Natural Resources Department and approved by EPA pursuant to section 1422 of the Safe Drinking Water Act (SDWA). The effective date of this program is August 10, 1983. A subsequent program revision application for Class I hazardous waste wells was approved by EPA pursuant to section 1422 of the SDWA; the effective date of this program [will be contingent on publication of the final rule]. The State-administered UIC programs for Classes I, III, IV, and V consist of the following elements, as submitted to EPA in the State's program applications.

(a) Incorporation by reference. The requirements set forth in the State statutes and regulations approved by EPA for inclusion in ''*EPA-Approved New Mexico SDWA § 1422 Underground Injection Control Program Statutes and Regulations for Well Classes I, III, IV, and V,*'' dated July 8, 2020, and listed in the Table 1 to this paragraph (a) of this section are hereby incorporated by reference and made a part of the applicable UIC program under the SDWA for the State of New Mexico. 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. Copies of the State of New Mexico's regulations that are incorporated by reference may be inspected at the U.S. Environmental Protection Agency, Water Docket, EPA Docket Center (EPA/DC), EPA WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC 20004, or the Region VI, Library, U.S. Environmental Protection Agency, 1201 Elm Street, Suite 500, Dallas, Texas 75270. If you wish to obtain materials from the EPA Headquarters Library, please call the Water Docket at (202) 566–2426 or from the EPA Regional Office, please call (214) 665–8326. You may also inspect the materials 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 *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

TABLE 1 TO PARAGRAPH (a)—EPA-APPROVED STATE OF NEW MEXICO SDWA § 1422 UNDERGROUND INJECTION CONTROL PROGRAM STATUTES AND REGULATIONS FOR WELL CLASSES I, III, IV, AND V

State citation	Title/subject	State effective date	EPA approval date
WQCC 82–1Sections 1–100 through 5–300 ...	New Mexico Water Quality Control Commission Regulations.	September 20, 1982 ..	July 11, 1983.
New Mexico Administrative Code, Title 20, Chapter 6, Part 2.	Ground and Surface Water Protection	December 21, 2018 ...	[Date of publication and FR citation of the final rule].

(b) *Other laws.* The following statutes and regulations, although not incorporated by reference, are also part of the approved State-administered UIC program:

(1) Water Quality Act, New Mexico Statutes Annotated Sections 74–6–1 through 74–6–13 (1978 and Supp. 1982);

(2) Geothermal Resources Conservation Act, New Mexico Statutes Annotated Sections 71–5–1 through 71–5–24 (1978 and Supp. 1982); and

(3) Surface Mining Act, New Mexico Statutes Annotated Sections 69–25A–1 through 69–25A–35 (1978 and Supp. 1980).

(c) *Memorandum of Agreement.*

* * * * *

(3) Amendment No. 1, Underground Injection Program Substitute Memorandum of Agreement Between the State of New Mexico and United States Environmental Protection Agency Region VI, signed by the EPA Regional Administrator on May 2, 2019.

(d) *Statement of legal authority.*

(1) ''Attorney General's Statement,'' signed by the Assistant Attorney General for the Environmental Improvement Division, the Assistant Attorney General for Oil Conservation Division, and the Deputy Attorney General, Civil Division, Counsel for the Mining and Minerals Division, undated, submitted December 8, 1982;

(2) Attorney General's Statement for Program Revision of New Mexico UIC Program, signed by Bill Brancard, Special Assistant Attorney General, State of New Mexico Energy, Minerals and Natural Resources Department, submitted December 12, 2018.

* * * * *

[FR Doc. 2020–21487 Filed 10–9–20; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register

Vol. 85, No. 198

Tuesday, October 13, 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

October 7, 2020.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding; whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by November 12, 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.

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.

Food and Nutrition Service

Title: Survey of Supplemental Nutrition Assistance Program (SNAP) and Work.

OMB Control Number: 0584–NEW.

Summary of Collection: The Food and Nutrition Act of 2008 (the Act), as amended in Public Law 116–94 Section 17, provides the authority to FNS to conduct research to help improve the administration operations and effectiveness of SNAP in delivering nutrition-related benefits.

Need and Use of the Information: The purpose of the Survey of SNAP and Work is to provide FNS and State SNAP agencies with information about the employment patterns and characteristics of nondisabled adult SNAP participants, information not currently collected in the Annual Social and Economic Supplement (ASEC) to the Current Population Survey (CPS) or other available data sets. In addition, the Survey of SNAP and Work will identify health, social, and personal factors that promote or inhibit employment among SNAP participants.

FNS published a notice on Monday, September 30, 2019, in the **Federal Register**, Volume 84, Number 189, pages 51508–51509, and provided a 60-day period for public comments; there are no changes to this request since this publication of the 60dayFRN. There was a delay to submit this collection due to: (1) The high number of regulations which FNS is trying to issue by the end of the year, each of which includes associated Information Collection Request (ICRs) and (2) COVID–19 rated Emergency ICRs and Guidance Documents which necessitate priority attention.

Description of Respondents: 51 State, Local, and Tribal Government; 88,383 Individuals or Households.

Number of Respondents: 88,434.

Frequency of Responses: Reporting: Once.

Total Burden Hours: 38,569.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2020–22531 Filed 10–9–20; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Olympic Peninsula Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Olympic Peninsula Resource Advisory Committee (RAC) will hold a virtual meeting. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the Act. RAC information can be found at the following website: *https://www.fs.usda.gov/main/olympic/workingtogether/advisorycommittees.*

DATES: The meeting will be from 8:30 a.m. to 5:00 p.m., Pacific Standard Time on:

- Wednesday, November 4, 2020, and
- Thursday, November 5, 2020, if needed.

All RAC meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

ADDRESSES: The meeting will be held with virtual attendance only. For virtual meeting information, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION.** All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Olympic National Forest (NF) Supervisor's Office. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Susan Garner, RAC Coordinator, by phone at 360–956–2390 or via email at *susan.garner@usda.gov.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Review the proposals, and
2. Recommend projects for Title II funding.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by to be scheduled on the agenda by October 30, 2020. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time to make oral comments must be sent to Susan Garner, RAC Coordinator, Olympic National Forest Supervisor's Office, 1835 Black Lake Boulevard Southwest, Olympia, Washington 98512; by email to *susan.garner@usda.gov,* or via facsimile to 360–956–2330.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices, or other reasonable accommodation. For access to the facility or proceedings, please contact the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case-by-case basis.

Dated: October 6, 2020.

Cikena Reid,

USDA Committee Management Officer.

[FR Doc. 2020–22494 Filed 10–9–20; 8:45 am]

BILLING CODE 3411–15–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Texas Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meetings.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act (FACA) that the Texas Advisory Committee (Committee) will hold a series of meetings via teleconference on Tuesday, November 10, 2020 and Thursday, November 12, 2020 from 2:00 p.m. to 4:00 p.m. Central Time. The purpose of the meetings is to hear testimony on the civil rights implications of the government response to hurricane disasters.

DATES: These meetings will be held on:

- Tuesday, November 10, 2020 from 2:00 p.m. to 4:00 p.m. CDT
- Thursday, November 12, 2020 from 2:00 p.m. to 4:00 p.m. CDT

ADDRESSES: *Public Call Information:* Dial: 800–367–2403; Conference ID: 3812365.

FOR FURTHER INFORMATION CONTACT: Brooke Peery, Designated Federal Officer (DFO) at *bpeery@usccr.gov* or by phone at (202) 701–1376.

SUPPLEMENTARY INFORMATION: This meeting is available to the public through the following toll-free call-in number: 800–367–2403, conference ID number: 3812365. 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 Brooke Peery (DFO) at *bpeery@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=a10t0000001gzkoAAA.*

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. Roll Call & Chair Remarks
II. Panelist Statements
III. Committee Q&A
IV. Public Comment
V. Adjournment

Dated: October 6, 2020.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2020–22500 Filed 10–9–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Census Bureau

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Annual Retail Trade Survey

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on July 6, 2020 during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: U.S. Census Bureau.

Title: Annual Retail Trade Survey.

OMB Control Number: 0607–0013.

Form Number(s): SA–44D and SA–44T.

Type of Request: Regular submission. Revision of a currently approved collection.

Number of Respondents: 17,297.

Average Hours per Response: 1 hour and 27 minutes.

Burden Hours: 25,035.

Needs and Uses: The Annual Retail Trade Survey (ARTS) covers employer firms with establishments located in the United States and classified in the retail trade sector as defined by the North American Industry Classification System (NAICS). The survey requests firms to provide annual sales, sales tax, e-commerce sales, year-end inventories, total operating expenses, purchases, and accounts receivable. We also request, for selected industries, sales and e-commerce sales by merchandise line.

The data collected in the Annual Retail Trade Survey provide a current statistical picture of the retail portion of consumer activity. These data are collected to provide a sound statistical basis for the formulation of policy by

various government agencies, as well as to serve as a benchmark for the estimates compiled from the Monthly Retail Trade Report. Results will be made available, at the United States summary level, for selected retail trade industries approximately fourteen months after the end of the reference year. ARTS estimates are publicly released based on the North American Industry Classification System (NAICS), which has been widely adopted throughout both the public and private sectors.

As requested by the Bureau of Economic Analysis (BEA), every five years, in survey years ending in ''2'' and ''7'', ARTS requests data on detailed operating expenses from firms. The last time ARTS collected detailed operating expenses was in 2018 for the 2017 survey year. The plan is to reinstate some of these questions in 2023 as part of the 2022 survey year ARTS data collection. For survey year 2020 (collected in 2021), the ARTS will also include improved language and ordering of the questions on the value of inventories and inventory valuation method to ensure a better understanding and response to the questions from respondents. Effective with survey year 2020 and consistent with the agency's goal of harmonizing content across all annual surveys as recommended by the National Academy of Sciences, ARTS will no longer collect accounts receivable data. Survey year 2019 estimates (to be released in February 2021) will be the final year that accounts receivable data are available to the public.

The Census Bureau published a pre-submission notice in the **Federal Register** on Monday, July 6, 2020 (Vol. 85, No. 129). The notice, which was located on pages 40199 and 40200, proposed additional questions on the ARTS related to the impact of the coronavirus pandemic on firms for survey year 2020. After internal discussions, the Census Bureau decided it will not include additional questions on this survey related to the impact that the coronavirus pandemic had on firms.

This request is for the clearance of two electronic worksheets, the SA–44D and SA–44T. From survey year 2016 through survey year 2019, there were eight electronic form types (SA–44, SA–44A, SA–44C, SA–44D, SA–44E, SA–44N SA–44S and SA–44T). Starting with survey year 2020 (which will be collected in 2021), there will only be the two electronic form types named above. Forms SA–44, SA–44A, SA–44C, SA–44E, SA–44N and SA–44S, are being combined with the remaining forms to reduce respondent burden by streamlining data collection operations on the number of forms received by a company. The two remaining worksheets will collect data from companies with and without merchandise lines, enable us to collect information on a NAICS basis, and to request similar data items. Variations in the electronic worksheets are needed to address the size of the firm, kind-of-business, or data items requested.

The Bureau of Economic Analysis (BEA) uses the data to estimate the change in the private inventories component of gross domestic product (GDP) and output in both the benchmark and annual input-output (I–O) accounts and GDP by industry. Data on sales taxes are also used to prepare estimates of GDP by industry and to derive industry output for the I–O accounts. Data on detailed operating expenses are collected on this survey quinquennially and used to produce national estimates of value added, gross output, and intermediate inputs, and serve as a benchmark for the annual industry accounts, which provide the control totals for the GDP-by-state accounts.

The Bureau of Labor Statistics uses the data as input to its Producer Price Indexes and in developing productivity measurements. Private businesses use the estimates in computing business activity indexes.

Other government agencies and businesses use the data to satisfy a variety of public and business needs such as economic market analysis, company performance, and forecasting future demands.

Affected Public: Business or other for-profit organizations.

Frequency: Annually.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13, United States Code, Sections 131 and 182.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the collection or the OMB Control Number 0607–0013.

Sheleen Dumas,

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

[FR Doc. 2020–22641 Filed 10–9–20; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 2106]

Approval of Expansion of Subzone 61T; Plaza Warehousing & Realty Corporation; Caguas, Puerto Rico

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 Board's regulations (15 CFR part 400) provide for the establishment of subzones for specific uses;

Whereas, the Department of Economic Development and Commerce, grantee of Foreign-Trade Zone 61, has made application to the Board to expand Subzone 61T on behalf of Plaza Warehousing & Realty Corporation to include additional acreage in Caguas, Puerto Rico (FTZ Docket B–46–2020, docketed July 20, 2020);

Whereas, notice inviting public comment has been given in the **Federal Register** (85 FR 45373, July 28, 2020) 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 examiner's memorandum, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied;

Now, therefore, the Board hereby approves the expansion of Subzone 61T at the facility of Plaza Warehousing & Realty Corporation, located in Caguas, Puerto Rico, as described in the application and **Federal Register** notice, subject to the FTZ Act and the Board's regulations, including Section 400.13.

Dated: October 6, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 2020–22541 Filed 10–9–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Flow Cytometry Standards Consortium

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of research consortium.

SUMMARY: The National Institute of Standards and Technology (NIST), an agency of the United States Department of Commerce, in support of efforts to develop standards for regenerative medicine and advanced therapies, is establishing the Flow Cytometry Standards Consortium (''Consortium''). The Consortium will bring together stakeholders to identify and address measurement and standards needs related to flow cytometry used in the characterization and testing of cell and gene therapies. The Consortium efforts are intended to develop measurement solutions and standards to improve measurement confidence, establish measurement traceability, and enable comparability in flow cytometry measurements. Participation fees will be at least $25,000 annually or in-kind contributions of equivalent value. Participants will be required to sign a Cooperative Research and Development Agreement (CRADA).

DATES: The Consortium's activities will commence on December 1, 2020 (''Commencement Date''). NIST will accept letters of interest to participate in this Consortium on an ongoing basis.

ADDRESSES: Completed letters of interest or requests for additional information about the Consortium can be directed via mail to the Consortium Manager, Dr. Lili Wang, Biosystems and Biomaterials Division of NIST's Material Measurement Laboratory, 100 Bureau Drive, Mail Stop 8312, Gaithersburg, Maryland 20899, or via electronic mail to *flowcytometry@nist.gov,* or by telephone at (301) 975–2447.

FOR FURTHER INFORMATION CONTACT: J'aime Maynard, CRADA Administrator, National Institute of Standards and Technology's Technology Partnerships Office, by mail to 100 Bureau Drive, Mail Stop 2200, Gaithersburg, Maryland 20899, by electronic mail to *Jaime.maynard@nist.gov,* or by telephone at (301) 975–8408.

SUPPLEMENTARY INFORMATION: Advances in cell and gene-based therapeutics as well as other regenerative medicine products have increased the need for high quality, robust, and validated measurements for cell characterization. Flow cytometry, including imaging cytometry, has emerged as an important platform due to its ability to rapidly and simultaneously characterize heterogeneous cell populations and subcellular analytes. For example, flow cytometry has been critical for establishing identity, purity, and potency for Chimeric Antigen Receptor (CAR)-T cell manufacturing; and associated data to support the approval of Biological License Applications (BLA) by the U.S. Food and Drug Administration (FDA) and the approval by the European Medicines Agency (EMA). In addition, multiparameter flow cytometric measurements are routinely carried out in vaccine, drug and cancer research, clinical diagnosis, and immunotherapies. However, challenges remain with respect to measurement confidence and comparability of measurement results from different instrument platforms, locations, and over time, hindering critical decision-making based on flow cytometry data in research and clinical settings.

NIST has extensively engaged with stakeholders to identify measurement needs. These include hosting joint workshops with the U.S. FDA and with the International Society for Advancement of Cytometry (ISAC) that brought together experts and stakeholders from industry, academia and government to discuss unique challenges for cell and gene therapy. The workshops identified three common, pre-competitive measurement needs: (1) High-quality reference materials, (2) confidence in the procedures from standardization/inter-laboratory studies, and (3) uncertainty associated with specimen quality and/or pre-analytical processes.

This Consortium aims to develop measurement solutions and standards for flow cytometry, including improving measurement confidence by establishing traceability and assisting measurement comparability. Measurement applications to be addressed may include the use of flow cytometry for the characterization and testing for cell identity, purity, count, activity, potency, and biomarker expression. The working cell types will be determined based on the collective input of the Consortium members and can start with common immunotherapy cell types, *e.g.,* T cells, iPSCs, and NK cells. To fulfill the objectives of the Consortium, associated critical reagents, such as antibodies, plasmids, and viral vectors pertaining to the development of the high-quality measurements and reference materials, will be characterized using orthogonal measurement capabilities, *e.g.,* ddPCR, qPCR, NGS, Flow-FISH, nanoflow cytometry, and mass spectrometry, most of which are available at NIST as a part of the NIST Advanced Therapy Program. NIST may also leverage current capabilities such as the state-of-the-art flow cytometry and automation capabilities and expertise, ERF measurement service, blood cell characterization, cell counting expertise, as well as existing collaborations with calibration bead and cytometer manufacturers, international metrological institutions, and Standards Development Organizations (SDOs) such as CLSI to advance the goals of this Consortium.

The Consortium is expected to form several Working Groups to continuously identify and address needs and gaps in quantitative cytometry through workshops, public meetings, and other collaborative efforts. The scope of Working Groups can include:

(1) Equivalent Number of Reference Fluorophores (ERF) Measurement Service:

a. Develop reference standards including reference materials, reference data, reference methods, and measurement service for assigning the ERF to calibration microspheres and assessing the associated uncertainties and utilities. This is the first step towards reliable quantitative measurements in flow cytometry.

(2) Reference Material Selection and Design:

a. Develop candidate reference standards including biological reference materials, reference data, reference methods;

b. Evaluate common reagents and control materials including various types of compensation controls;

c. Design and carry out interlaboratory testing to characterize and evaluate the reference materials using multiple methods, including orthogonal methods.

(3) Assay and Protocol Selection and Design:

a. Establish an inventory of existing protocols, shared data, existing standards;

b. Generate standard operating procedures/methods for cross platform assay standardization and data analysis;

c. Test the robustness of assays and associated uncertainties.

No proprietary information will be shared as part of the Consortium.

Participation Process: Interested parties with relevant flow cytometry associated capabilities (see below), products, and/or technical expertise to support this Consortium should contact NIST using the information provided in the **ADDRESSES** section of this notice. NIST will then provide each interested party with a letter of interest template, which the party must complete, and submit to NIST. NIST will contact interested parties if there are questions regarding the responsiveness of the letters. NIST will determine the eligibility to participate in the Consortium based on the requirements listed below. NIST will select participants based on information provided by interested organizations in their letter of interest and upon the availability of necessary resources to NIST.

Requirements: Each letter of interest should provide the following information:

(1) A description of the experience in flow cytometry/imaging cytometry, production and characterization of microparticles, antibodies, biological cells, other critical reagents of cytometric applications, and analysis of large data sets and related expertise to contribute to the Consortium.

(2) Subgroups or topic areas of interest for participation.

(3) List of interested party's anticipated participants.

Letters of interest must not include business proprietary information. NIST will not treat any information provided in response to this Notice as proprietary information. NIST will notify each organization of its eligibility. In order to participate in this Consortium, each eligible organization must sign a CRADA for this Consortium. All participants to this Consortium will be bound by the same terms and conditions. Participants will be required to contribute at least $25,000 annually as participation fees or in-kind resources of equivalent value, as determined by NIST. NIST does not guarantee participation in the Consortium to any organization submitting a Letter of interest.

Authority: 15 U.S.C. 272; 21 U.S.C. 356g.

Kevin Kimball,

Chief of Staff.

[FR Doc. 2020–22620 Filed 10–9–20; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA548]

Fisheries of the South Atlantic; South Atlantic Fishery Management Council; Public Meetings

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

ACTION: Notice of a public meeting.

SUMMARY: The South Atlantic Fishery Management Council's (SAFMC) and the Gulf of Mexico Fishery Management Council (GMFMC) will hold a joint meeting of their Scientific and Statistical Committees (SSC) via webinar. See **SUPPLEMENTARY INFORMATION**.

DATES: The joint SSC meeting will take place from 9 a.m. to 1 p.m., Friday, October 30, 2020.

ADDRESSES: The meeting will be held via webinar.

Council addresses: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N Charleston, SC 29405; Gulf of Mexico Fishery Management Council, 4107 West Spruce Street, Suite 200, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; phone: (843) 571–4366 or toll free: (866) SAFMC–10; fax: (843) 769–4520; email: *kim.iverson@safmc.net.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public via webinar as it occurs. Webinar registration is required. Information regarding webinar registration will be posted to the SAFMC's website at: *http://safmc.net/safmc-meetings/scientific-and-statistical-committee-meetings/* as it becomes available. The meeting agenda, briefing book materials, and online comment form will be posted to the SAFMC's website two weeks prior to the meeting. Written comment on SSC agenda topics is to be distributed to the Committees through the Council office, similar to all other briefing materials. For this meeting, the deadline for submission of written comment is 12 p.m., Friday, October 23, 2020.

The following agenda items will be addressed by the SSCs during the meeting:

1. Provide fishing level recommendations using the previously reviewed Southeast Data, Assessment, and Review (SEDAR) 64 assessment for yellowtail snapper;

2. Approve the schedule, Terms of Reference (ToR), and make appointments for the upcoming mutton snapper assessment.

The SSCs will provide guidance to staff and recommendations for Council consideration as appropriate.

Multiple opportunities for comment on agenda items will be provided during SSC meeting. Open comment periods will be provided at the start of the meeting and near the conclusion. Those interested in providing comment should indicate such in the manner requested by the Chair, who will then recognize individuals to provide comment. Additional opportunities for comment on specific agenda items will be provided, as each item is discussed, between initial presentations and SSC discussion. Those interested in providing comment should indicate such in the manner requested by the Chair, who will then recognize individuals to provide comment. All comments are part of the record of the meeting.

Although non-emergency issues not contained in the meeting agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. 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 intent to take final action to address the emergency.

Special Accommodations

This meeting is accessible to people with disabilities. Requests for auxiliary aids should be directed to the SAFMC office (see **ADDRESSES**) at least 3 business 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: October 7, 2020.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2020–22555 Filed 10–9–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Request for Comment; Implementation Plan for the National Strategy for Ocean Mapping, Exploring, and Characterizing the United States Exclusive Economic Zone

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Office of Oceanic and Atmospheric Research (OAR).

ACTION: Notice of public comment.

SUMMARY: On behalf of the Ocean Policy Committee, Ocean Science and Technology Subcommittee, and the Office of Science and Technology Policy (OSTP) and the Council on Environmental Quality (CEQ) as Co-Chairs of the Ocean Policy Committee, the National Ocean Mapping, Exploration, and Characterization Council (NOMEC Council) requests input from all interested parties on the development of an Implementation Plan for the National Strategy for Ocean Mapping, Exploring, and Characterizing the United States Exclusive Economic Zone (U.S. EEZ) (''National Strategy''). Through this Request for Information (RFI), the NOMEC Council seeks input from the public on engaging stakeholders in developing the Implementation Plan for the National Strategy, and the processes that will ensure implementation is informed by and responsive to all sectors through sustained engagement and effective partnerships.

DATES: Comments must be received by October 30, 2020 November 12, 2020.

ADDRESSES: A copy of the National Strategy may be downloaded or viewed at: *https://www.whitehouse.gov/wp-content/uploads/2020/01/20200611-FINAL-STRATEGY-NOMEC-Sec.-2.pdf.* Responses should be submitted via email to *nomec.execsec@noaa.gov.* Include ''Public Comment on Implementation Plan for the National Strategy'' in the subject line of the message. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender is publicly accessible. NOAA will accept anonymous comments. Clearly indicate which section and page number, if applicable, submitted comments pertain to. All submissions must be in English. Please note that the U.S. Government will not pay for responsible preparation, or for the use of any information contained in the response.

Instructions: Response to this RFI is voluntary. Respondents need not reply to all questions listed. For all submissions, clearly indicate which questions are being answered. Email attachments will be accepted in plain text, Microsoft Word, or Adobe PDF formats only. Each individual or institution is requested to submit only one response. OSTP may post responses to this RFI, without change, on a Federal website. NOAA, therefore, requests that no business proprietary information, copyrighted information, or personally identifiable information be submitted in response to this RFI. Please note that the U.S. Government will not pay for response preparation, or for the use of any information contained in the response.

FOR FURTHER INFORMATION CONTACT: National Ocean Mapping, Exploration, and Characterization (NOMEC) Council Co-Chairs; Dr. Alan Leonardi, NOAA, *alan.leonardi@noaa.gov,* 301–734–1016; RDML Shepard Smith, NOAA, *shep.smith@noaa.gov,* 202–510–5561; Dr. John Haines, USGS, *jhaines@usgs.gov,* 703–648–6422.

SUPPLEMENTARY INFORMATION: Pursuant to Presidential Memorandum, Ocean Mapping of the United States Exclusive Economic Zone and the Shoreline and Nearshore of Alaska, 84 FR 64699 (Nov. 19, 2020), the National Ocean Mapping, Exploration, and Characterization Council (NOMEC Council), on behalf of the Director of the OSTP and the Chairman of the CEQ, in their capacity as Co-Chairs of the Ocean Policy Committee, and working through its Ocean Science and Technology Subcommittee and in coordination with the Administrator of NOAA, seek public input and information for development of an Implementation Plan for the National Strategy. The NOMEC Council has commenced development of the Implementation Plan and is soliciting public input through this RFI to obtain information from a wide range of stakeholders, including academia, private industry, and other relevant organizations and institutions to provide input on stakeholder engagement in developing and executing the Implementation Plan. The public input provided in response to this RFI will inform the NOMEC Council as it continues to develop the Implementation Plan.

Questions To Inform Development of the Implementation Plan

Through this RFI, the National Ocean Mapping, Exploration, and Characterization Council seeks responses to the following questions to inform development of an Implementation Plan for the National Strategy on Ocean Mapping, Exploration, and Characterization that is responsive to cross-sector requirements and engages all interested sectors in the implementation.

1. What does successful implementation look like to your organization, sector, or interest group? How do you anticipate your organization or sector will participate in the NOMEC implementation?
2. What specific implementation actions would be of value to your organization/sector?
3. How should the Council appropriately engage your organization and/or sector in developing an implementation plan? How should we engage your organization to get ongoing feedback throughout implementation?
4. What activities is your organization currently undertaking, has recently undertaken, or is planning that may support or benefit from NOMEC implementation? What processes and connections would be required to realize those opportunities?
5. What publicly accessible databases and archives does your organization offer that may house data relevant to NOMEC?
6. Who are the additional partners that are needed to effectively plan and execute a successful NOMEC program in the future, as well as those that can help disseminate information from this work to various audiences? How could Federal agencies more effectively engage these partners? If there are barriers to this cooperation, please describe. Please do not only limit your responses to organizations that are traditionally involved in this work, but also think how we can engage other groups that can make important contributions.

Dated: September 24, 2020.

David Holst,

Chief Financial and Administrative Officer, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 2020–22411 Filed 10–9–20; 8:45 am]

BILLING CODE 3510–KD–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA566]

Western Pacific 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 Western Pacific Fishery Management Council (Council) will hold virtual meetings of its Fishing Industry Advisory Committee (FIAC) and Non-Commercial Fisheries Advisory Committee (NCFAC) to discuss and make recommendations on fishery management issues in the Western Pacific Region.

DATES: The FIAC will meet on Wednesday, October 28, 2020, from 1 p.m. to 4 p.m. and the NCFAC will meet on Thursday, October 29, 2020, from 1 p.m. to 3 p.m. All times listed are Hawaii standard times. For specific times and agendas, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: Each of the meetings will be held by web conference. Audio and visual portions for all of the web conferences can be accessed at: *https://wprfmc.webex.com/join/info.wpcouncilnoaa.gov.* Web conference access information will also be posted on the Council's website at *www.wpcouncil.org.* For assistance with the web conference connection, contact the Council office at (808) 522–8220.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council; telephone: (808) 522–8220.

SUPPLEMENTARY INFORMATION: Public comment periods will be provided in the agenda. Information on how to provide public comment will be posted on the Council's website at *www.wpcouncil.org.* The order in which agenda items are addressed may change. The meetings will run as late as necessary to complete scheduled business.

Schedule and Agenda for the FIAC Meeting

Wednesday, October 28, 2020, 1 p.m.–4 p.m.

1. Introduction and Welcome
2. Overview of the Council and FIAC Role
3. Round Table on Industry Issues
   - A. American Samoa
   - B. Hawaii
   - C. Guam
   - D. Commonwealth of the Northern Mariana Islands (CNMI)
4. Fishery Development and Management
   - A. American Samoa Diversification
   - B. Mariana Islands
     - i. Establishing Guam as a Hub for Pelagic Fisheries in Micronesia
     - ii. Review of the Guam 50 mile Longline and Bottomfish Closures
     - iii. Pilot Project for longline fishing in CNMI
   - C. Hawaii
     - i. Hawaii Seafood branding
     - ii. Public/Private Management of Harbor Facilities
     - iii. Main Hawaiian Islands Management Review
   - D. Region-wide
     - i. Aquaculture
     - ii. Protected Species
     - iii. Executive Order 13910-Council Priorities
5. Other Issues
6. Public Comment
7. Discussion and Recommendations
8. Other Business

Schedule and Agenda for the NCFAC Meeting

Thursday, October 29, 2020, 1 p.m.–3 p.m.

1. Welcome and Introductions
2. NCFAC History
3. NCFAC Duties and Charge
   - A. Marine Recreational Information Program Regional Implementation Plan
   - B. Annual Stock Assessment and Fishery Evaluation Reports
   - C. Council Research Priorities
   - D. Electronic Reporting and Non-Commercial Data Collection
4. Discussion on Non-Commercial Fishery Issues
   - A. Data Issues
   - B. Protected Species Issues
5. Public Comment
6. Discussion and Recommendations
7. Other Business

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, (808) 522–8220 (voice) or (808) 522–8226 (fax), at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 7, 2020.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2020–22559 Filed 10–9–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA542]

South Atlantic Fishery Management Council; Public Meetings

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

ACTION: Notice of a public meeting.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold a meeting of its Dolphin Wahoo Advisory Panel (AP) on October 28, 2020.

DATES: The meeting will be held via webinar on October 28, 2020, from 8:30 a.m. until 5 p.m.

ADDRESSES:

Council address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N Charleston, SC 29405.

Meeting address: The meeting will be held via webinar. The webinar is open to members of the public. Registration is required. Webinar registration, an online public comment form, and briefing book materials will be available two weeks prior to the meeting at: *http://safmc.net/safmc-meetings/current-advisory-panel-meetings/.*

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, SAFMC; phone: (843) 571–4366 or toll free: (866) SAFMC–10; fax: (843) 769–4520; email: *kim.iverson@safmc.net.*

SUPPLEMENTARY INFORMATION: The Dolphin Wahoo AP will meet via webinar. Agenda items for the AP meeting include: Review of recent and developing Council actions, review of Amendment 10 to the Dolphin Wahoo Fishery Management Plan addressing annual catch limits, accountability measures, allocations, and other management parameters for Dolphin and Wahoo, development of a fishery performance report for Wahoo, an update on Dolphin Wahoo Participatory Workshops being conducted by the NOAA Fisheries Southeast Fisheries Science Center, discussion of the economic effects of COVID–19, feedback on climate change and regional management, an update on the South Atlantic Fishery Management Council's Citizen Science Program, and other business. The AP members will discuss these issues and provide recommendations for Council consideration as appropriate.

Special Accommodations

The meeting is 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: October 7, 2020.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2020–22554 Filed 10–9–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA525]

Fisheries of the South Atlantic; Southeast Data, Assessment, and Review (SEDAR); Public Meeting

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

ACTION: Notice of SEDAR 65 Review Workshop for HMS Atlantic Blacktip Shark.

SUMMARY: The SEDAR 65 assessment of the Atlantic stock of Blacktip Shark will consist of a series of workshops and webinars: Stock Identification (ID) Workshop; Stock ID Review Workshop; Stock ID Joint Cooperator Technical Review; Data Workshop; Assessment Webinars; and a Review Workshop. See **SUPPLEMENTARY INFORMATION**.

DATES: The SEDAR 65 Review Workshop will be held via webinar on October 29 and 30, 2020 from 12 p.m. until 5 p.m. EDT and November 2, 4, and 5, 2020, from 12 p.m. until 5 p.m. EST. The established times may be adjusted as necessary to accommodate the timely completion of discussion relevant to the assessment process. Such adjustments may result in the meeting being extended from or completed prior to the time established by this notice.

ADDRESSES:

Meeting address: The SEDAR 65 Review Workshop will be held via webinar. The webinar is open to members of the public. Registration is available online at: *https://attendee.gotowebinar.com/register/4363248477396410380.*

SEDAR address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N Charleston, SC 29405; *www.sedarweb.org.*

FOR FURTHER INFORMATION CONTACT: Kathleen Howington, SEDAR Coordinator, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; phone: (843) 571–4366; email: *Kathleen.howington@safmc.net.*

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions, have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a three-step process including: (1) Data Workshop; (2) Assessment Process utilizing webinars; and (3) Review Workshop. The product of the Data Workshop is a data report which compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The product of the Assessment Process is a stock assessment report which describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a Summary documenting panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, Highly Migratory Species Management Division, and Southeast Fisheries Science Center. Participants include: Data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and non-governmental organizations (NGOs); international experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion at the Review Workshop are as follows:

- Review the stock assessment report and determine if it is scientifically sound.

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 this meeting. 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 intent to take final action to address the emergency.

Special Accommodations

This meeting is accessible to people with disabilities. Requests for auxiliary aids should be directed to the SAFMC office (see **ADDRESSES**) at least 10 business 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: October 7, 2020.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2020–22553 Filed 10–9–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Request for Information; Implementation Plan for the National Strategy for Mapping, Exploring, and Characterizing the United States Exclusive Economic Zone

AGENCY: Office of Oceanic and Atmospheric Research (OAR), National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice of public comment.

SUMMARY: On behalf of the Ocean Policy Committee, Ocean Science and Technology Subcommittee, and the Office of Science and Technology Policy (OSTP) and the Council on Environmental Quality (CEQ) as Co-Chairs of the Ocean Policy Committee, the National Ocean Mapping, Exploration, and Characterization Council (NOMEC Council) requests input from all interested parties on the development of an Implementation Plan for the National Strategy for Mapping, Exploring, and Characterizing the United States Exclusive Economic Zone (U.S. EEZ)(''National Strategy''). Through this Request for Information (RFI), the NOMEC Council seeks input from the public to recommend exploration and characterization priorities to be included in the Implementation Plan for the National Strategy.

DATES: Comments must be received by October 30, 2020 November 12, 2020.

ADDRESSES: A copy of the National Strategy may be downloaded or viewed at: *https://www.whitehouse.gov/wp-content/uploads/2020/01/20200611-FINAL-STRATEGY-NOMEC-Sec.-2.pdf* Responses should be submitted via email to *nomec.execsec@noaa.gov.* Include ''Public Comment on

Exploration Priorities for the Implementation Plan'' in the subject line of the message. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender is publicly accessible. NOAA will accept anonymous comments. Clearly indicate which section and page number, if applicable, submitted comments pertain to. All submissions must be in English. Please note that the U.S. Government will not pay for responsible preparation, or for the use of any information contained in the response.

Instructions: Response to this RFI is voluntary. Respondent needs not reply to all questions listed. For all submissions, clearly indicate which questions are being answered. Email attachments will be accepted in plain text, Microsoft Word, or Adobe PDF formats only. Each individual or institution is requested to submit only one response. OSTP may post responses to this RFI, without change, on a Federal website. NOAA, therefore, requests that no business proprietary information, copyrighted information, or personally identifiable information be submitted in response to this RFI. Please note that the U.S. Government will not pay for response preparation, or for the use of any information contained in the response.

FOR FURTHER INFORMATION CONTACT: National Ocean Mapping, Exploration, and Characterization (NOMEC) Council Co-Chairs; Dr. Alan Leonardi, NOAA, *alan.leonardi@noaa.gov,* 301–734–1016; RDML Shepard Smith, NOAA, *shep.smith@noaa.gov,* 202–510–5561; Dr. John Haines, USGS, *jhaines@usgs.gov,* 703–648–6422.

SUPPLEMENTARY INFORMATION: Pursuant to the Presidential Memorandum, Ocean Mapping of the United States Exclusive Economic Zone and the Shoreline and Nearshore of Alaska, 84 FR 64699 (Nov. 19, 2020), the National Ocean Mapping, Exploration, and Characterization Council (NOMEC Council), on behalf of the Director of the OSTP and the Chairman of the CEQ, in their capacity as Co-Chairs of the Ocean Policy Committee, working through its Ocean Science and Technology Subcommittee and in coordination with the Administrator of NOAA, are developing an Implementation Plan for the National Strategy. The NOMEC Council has commenced development of the Implementation Plan and is soliciting public input through this RFI to obtain information from a wide range of stakeholders, including academia, private industry, and other relevant organizations and institutions. The public input provided in response to this RFI will inform the NOMEC Council as it continues to identify strategic priorities for Exploration and Characterization within the Implementation Plan.

Questions To Inform Development of the Implementation Plan

Through this RFI, the National Ocean Mapping, Exploration, and Characterization Council seeks responses to the following questions to inform the Exploration and Characterization priorities for an Implementation Plan for the National Strategy for Ocean Mapping, Exploration, and Characterization.

1. NOMEC Strategy Goal 3.1 ''Identify Strategic Priorities'' describes the need for strategic ocean exploration and characterization priorities and lists some examples. What do you feel are the most important strategic national priorities for exploration and characterization efforts in the deep sea (depth >40 m)? These can be specific geographic areas within the U.S. EEZ or thematic/topical issue priorities.

2. What are the most important questions for exploration and characterization to address?

3. What are the most important data variables that need to be measured, and what are the most valuable physical samples to collect; to conduct baseline exploration and characterization?

4. What novel or established tools, platforms, and technologies could advance our capability to explore, and characterize the U.S. EEZ more efficiently and effectively? To the extent innovative capabilities already exist, but are not being effectively used, what are the barriers to adopting them? How can these barriers be overcome?

5. Deep waters within the U.S. EEZ host a wide variety of habitats and geomorphological features (*e.g.,* continental shelves, canyons, seamounts, trenches, abyssal plains, and mesopelagic and bathypelagic zones of the water column). Which ones of these do you think are most important to explore to address the priority questions you identified above?

6. How can artificial intelligence and machine learning be used to guide planning, execution, and analysis of exploration and characterization activities?

7. How should the data generated by implementation of the Strategy be managed so that it is most accessible and useful (file formats, compatibility, etc.) to public and private sectors?

Dated: September 24, 2020.

David Holst,

Chief Financial and Administrative Officer, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 2020–22413 Filed 10–9–20; 8:45 am]

BILLING CODE 3510–KD–P

DEPARTMENT OF DEFENSE

Department of the Army

U.S. Army Science Board; Notice of Federal Advisory Committee Meeting

AGENCY: Department of the Army, DoD.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The Department of the Army is publishing this notice to announce the following Federal Advisory Committee meeting of the U.S. Army Science Board (ASB). This meeting is open to the public.

DATES: Thursday, October 22, 2020. Time: 9:00 a.m.–4:30 p.m. This meeting will be open but with required COVID–19 precautions.

ADDRESSES: The meeting will be held at Bell Textron, 2231 Crystal Drive, Suite 1010, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Ms. Heather J. Gerard, (703) 545–8652, *heather.j.gerardi.civ@mail.mil* or Ms. Gloria Mudge at *gloria.l.mudge.civ@mail.mil.* Mailing address is Army Science Board, 2530 Crystal Drive, Suite 7098, Arlington, VA 22202. Website: *https://asb.army.mil/.*

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.140 and 102–3.150.

Purpose of the Meeting: The purpose of the meeting is for ASB members to review, deliberate, and vote on the findings and recommendations presented for a Fiscal Year 2020 (FY20) ASB studies.

Agenda: The board will present findings and recommendations for deliberation and vote on the following FY20 studies: ''Data Integrity for Operating Force (OF) Decision Making'': This study will be discussed from 9:30 a.m. to 11:45 a.m.; ''Army Modeling and Simulation'': This study will be discussed from 1:00 p.m. to 3:30 p.m..

Public Accessibility to the Meeting: Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165, and subject to the availability of

space, this meeting is open to the public. Seating for this event is limited due to COVID–19 restrictions and reservations must be made in advance to attend this event. Send an email request to Ms. Gloria Mudge at *gloria.l.mudge.civ@mail.mil.* Advanced security and COVID–19 screening is required to attend this meeting. A photo ID is required to enter the facility. COVID–19 screening and questionnaire will be taken at the door, facemasks are required and social distancing is mandatory. Seating is therefore limited and on a first come, first served basis.

For additional information about public access procedures, contact the Alternate Designated Federal Officer, at the email address or telephone number listed in the **FOR FURTHER INFORMATION CONTACT** section.

Written Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140, and § 10(a)(3) of the Federal Advisory Committee Act of 1972, the public or interested organizations may submit written statements to the ASB about its mission and functions. Written statements may be submitted at any time or in response to the stated agenda of a planned meeting of the ASB. All written statements must be submitted to the Designated Federal Officer (DFO) at the address listed above, and this individual will ensure that the written statements are provided to the membership for their consideration. Written statements not received at least 10 calendar days prior to the meeting may not be considered by the ASB prior to its scheduled meeting. After reviewing written comments, the DFO may choose to invite the submitter of the comments to orally present their issue during a future open meeting.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2020–22466 Filed 10–9–20; 8:45 am]

BILLING CODE 5061–AP–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2020–SCC–00161]

Agency Information Collection Activities; Comment Request; Correction

AGENCY: Office of the Secretary (OS); Department of Education (ED).

ACTION: Correction notice.

SUMMARY: The Department of Education published a document in the **Federal Register** of October 5, 2020, concerning an extension of a previously approved information collection. The document contained an incorrect docket number. The PRA Coordinator, Strategic Collections and Clearance, Office of the Chief Data Officer, Office of Planning, Evaluation and Policy Development, is issuing a correction notice as required by the Paperwork Reduction Act of 1995.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of October 5, 2020, in FR Doc. 2020–21961 on page 62720 in the third column, correct the docket number of ED–2020–SCC–0162 in the heading and under **ADDRESSES** to read as ED–2020–SCC–00161.

Dated: October 6, 2020.

Stephanie Valentine,

PRA Coordinator, Strategic Collections and Clearance, Office of the Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2020–22497 Filed 10–9–20; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2020–SCC–0147]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; National Assessment of Educational Progress (NAEP) 2021 Materials Update

AGENCY: National Center for Education Statistics (NCES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a revision to an existing information collection.

DATES: Interested persons are invited to submit comments on or before November 12, 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 Carrie Clarady, 202–245–6347.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: National Assessment of Educational Progress (NAEP) 2021 Materials Update.

OMB Control Number: 1850–0928.

Type of Review: A revision of an existing information collection.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 329,909.

Total Estimated Number of Annual Burden Hours: 180,233.

Abstract: The National Assessment of Educational Progress (NAEP), conducted by the National Center for Education Statistics (NCES), is a federally authorized survey of student achievement at grades 4, 8, and 12 in various subject areas, such as mathematics, reading, writing, science, U.S. history, civics, geography, economics, technology and engineering literacy (TEL), and the arts. The National Assessment of Educational Progress Authorization Act (Pub. L. 107–279 Title III, section 303) requires the assessment to collect data on specified student groups and characteristics, including information organized by race/ethnicity, gender, socio-economic status, disability, and limited English proficiency. It requires fair and accurate presentation of achievement data and permits the collection of background, noncognitive, or descriptive information that is related

to academic achievement and aids in fair reporting of results. The intent of the law is to provide representative sample data on student achievement for the nation, the states, and subpopulations of students and to monitor progress over time. The request to conduct NAEP 2021, including operational assessments and pilot tests: Operational national/state/TUDA Digitally Based Assessments (DBA) in mathematics and reading at grades 4 and 8, and Puerto Rico in mathematics at grades 4 and 8; and operational national DBA in U.S. history and civics at grade 8 was approved in April 2020, with a further update to the materials approved in July 2020. This request is to conduct NAEP operational assessments in 2021 and will follow the traditional NAEP design which assesses each student in 60-minutes for one cognitive subject. Given the COVID–19 outbreak, NAEP requires personal protective equipment for field staff and must plan for additional sessions given that students may attend school on a staggered schedule. NAEP was not able to secure additional funding from Congress to cover the additional costs for personal protective equipment, necessary increases in field staff, and other operational costs that would be required to assess the full sample. As such, this Amendment reflects the elimination of the national-only assessments (grade 8 U.S. History and Civics, and age 17 Long-Term Trend), a smaller sample of students within each state for reading and mathematics, and the elimination of TUDAs from the 2021 sample. This Amendment also includes the addition of an online version of the student questionnaires that will be available to sampled students who are remote and not able to be assessed in-person, as well as the addition of some questionnaire items on teacher, student, and school experiences conditioned by the COVID–19 pandemic. The final Materials Update #3 is scheduled for October of 2020. The NAEP results will be reported to the public through the Nation's Report Card as well as other online NAEP tools.

Dated: October 6, 2020.

Stephanie Valentine,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2020–22465 Filed 10–9–20; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Advisory Council on Indian Education (NACIE) Open Teleconference Meeting

AGENCY: National Advisory Council on Indian Education (NACIE), U.S. Department of Education.

ACTION: Notice of an open meeting.

SUMMARY: Notice of this meeting is required by the Federal Advisory Committee Act (FACA) and is intended to notify members of the public of an upcoming NACIE open teleconference meeting. This notice is being published less than 15 days prior to the date of the meeting due to the logistical arrangements required to convene NACIE for a virtual meeting due to the COVID–19 impact on the capability to convene face-to-face Council meetings.

DATES: The NACIE open teleconference meeting will be held on October 23, 2020 from 2:00–5:00 p.m. (EDT).

FOR FURTHER INFORMATION CONTACT: Angela Hernandez Marshall, Designated Federal Official, Office of Elementary and Secondary Education (OESE)/Office of Indian Education (OIE), U.S. Department of Education, 400 Maryland Avenue SW, Room 3W113, Washington, DC 20202. Telephone: 202–205–1909, Email: *Angela.Hernandez-Marshall@ed.gov.*

SUPPLEMENTAL INFORMATION:

Statutory Authority and Function: NACIE is authorized by Section 6141 of the Elementary and Secondary Education Act of 1965. NACIE is established within the U.S. Department of Education to advise the Secretary of Education (Secretary) and the Secretary of Interior on the funding and administration (including the development of regulations, and administrative policies and practices) of any program over which the Secretary has jurisdiction and includes Indian children or adults as participants or that may benefit Indian children or adults, including any program established under Title VI, Part A of the Elementary and Secondary Education Act. In addition, NACIE advises the White House Initiative on American Indian and Alaska Native Education, in accordance with Section 5(a) of Executive Order 13592. NACIE submits to the Congress each year a report on its activities that includes recommendations that are considered appropriate for the improvement of Federal education programs that include Indian children or adults as participants or that may benefit Indian children or adults, and recommendations concerning the funding of any such program.

Meeting Agenda: The purpose of the meeting is to convene NACIE to conduct the following business: (1) Conduct brief membership introductions; (2) discuss, review, and approve the draft NACIE annual report to Congress prepared by the NACIE Annual Report subcommittee; (3) introduce the new Office of Indian Education Director; (4) provide updates from the Acting Executive Director of the White House Initiative on American Indian and Alaska Native Education on Initiative activities; (5) review Written Public Comments; and (6) provide U.S. Department of Education updates.

Instructions for Accessing the Meeting

Members of the public may access the NACIE meeting by dial-in listen only access. Up to 100 lines will be available on a first come, first serve basis. The dial-in phone number for the teleconference meeting is 1–408–650–3123 and the participate code is 404–347–733.

Public Comment: Members of the public interested in submitting written comments pertaining to the work of NACIE may do so via email to *Anglea.Hernandez-Marshall@ed.gov.* Please note, written comments should pertain to the work of NACIE and/or the Office of Indian Education.

Reasonable Accommodations: The teleconference meeting is accessible to individuals with disabilities. If you will need an auxiliary aid or service for the meeting (*e.g.,* interpreting service, assistive listening device, or materials in an alternate format), notify the contact person listed in this notice not later than Monday, October 19, 2020. Although we will attempt to meet a request received after that date, we may not be able to make available the requested auxiliary aid or service because of insufficient time to arrange it.

Electronic Access to this Document: The official version of this document is the document published in the **Federal Register**. Free internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site. You also may access documents of the Department published in the **Federal Register** by using the article search feature at:

www.federalregister.gov. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Access to Records of the Meeting: The Department will post the official open meeting report of this meeting on the OESE website at: *https://oese.ed.gov/offices/office-of-indian-education/national-advisory-council-on-indian-education-oie/* 21 days after the meeting. Pursuant to the FACA, the public may also inspect NACIE records at the Office of Indian Education, United States Department of Education, 400 Maryland Avenue SW, Washington, DC 20202, Monday–Friday, 8:30 a.m. to 5:00 p.m. Eastern Time. Please email *Wanda.Lee@ed.gov* or by calling Wanda Lee at (202) 453–7262 to schedule an appointment.

Electronic Access to this Document: The official version of this document is the document published in the **Federal Register**. Free internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site. You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Authority: § 6141 of the Elementary and Secondary Education Act of 1965 (ESEA) as amended by Every Student Succeeds Act (ESSA) (20 U.S.C. 7471)

Frank T. Brogan,

Assistant Secretary, Office of Elementary and Secondary Education.

[FR Doc. 2020–22647 Filed 10–9–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF ENERGY

[FE Docket No. 18–145–LNG]

Energía Costa Azul, S. de R.L. de C.V.; Application To Amend Long-Term Authorization To Export Natural Gas to Mexico and To Re-Export Liquefied Natural Gas From Mexico to Non-Free Trade Agreement Nations

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of application.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice (Notice) of receipt of an Application (Application), filed on September 18, 2020, by Energía Costa Azul, S. de R.L. de C.V. (ECA). ECA seeks to amend DOE/FE Order No. 4365, which currently authorizes ECA to export domestically produced natural gas to Mexico, and to re-export a portion of the natural gas as liquefied natural gas (LNG) from the ECA Large-Scale Project to be located in Mexico to non-free trade agreement (non-FTA) countries. ECA asks DOE/FE to increase the approved non-FTA export volume for the ECA Large-Scale Project from 475 billion cubic feet per year (Bcf/yr) to 636 Bcf/yr of natural gas—an increase of 161 Bcf/yr. ECA filed the Application under the Natural Gas Act (NGA).

DATES: Protests, motions to intervene, or notices of intervention, as applicable, requests for additional procedures, and written comments are to be filed using procedures detailed in the Public Comment Procedures section no later than 4:30 p.m., Eastern time, December 14, 2020.

ADDRESSES:

Electronic Filing by email: fergas@hq.doe.gov.

Regular Mail: U.S. Department of Energy (FE–34), Office of Regulation, Analysis, and Engagement, Office of Fossil Energy, P.O. Box 44375, Washington, DC 20026–4375.

Hand Delivery or Private Delivery Services (e.g., FedEx, UPS, etc.): U.S. Department of Energy (FE–34), Office of Regulation, Analysis, and Engagement, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW, Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Benjamin Nussdorf or Amy Sweeney, U.S. Department of Energy (FE–34), Office of Regulation, Analysis, and Engagement, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–7893 or (202) 586–2627, *benjamin.nussdorf@hq.doe.gov* or *amy.sweeney@hq.doe.gov.*

Cassandra Bernstein, U.S. Department of Energy (GC–76), Office of the Assistant General Counsel for Electricity and Fossil Energy, Forrestal Building, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–9793, *cassandra.bernstein@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: On March 29, 2019, in Order No. 4365, DOE/FE authorized ECA to export domestically produced natural gas to Mexico in a volume up to 545 Bcf/yr, and to re-export a portion of this natural gas in the form of LNG to non-FTA countries in a volume equivalent to 475 Bcf/yr of natural gas, pursuant to NGA section 3(a), 15 U.S.C. 717b(a).[1] ECA is authorized to re-export this LNG from the ECA Large-Scale Project, to be located on the site of ECA's existing LNG import terminal north of Ensenada, Baja California, Mexico.

ECA states that it has determined that the full design of the ECA Large-Scale Project will be capable of producing an additional volume of LNG for re-export. In light of this design increase, ECA asks DOE/FE to amend Order No. 4365 to authorize the re-export of an additional 161 Bcf/yr of natural gas in the form of LNG from the ECA Large-Scale Project to non-FTA countries.[2] ECA seeks to export this LNG on its own behalf and as agent for other entities who hold title to the natural gas and/or LNG at the time of export. ECA requests the authorization for a term to commence on the earlier of the date of first export or seven years from the issuance of the requested authorization, and to extend through December 31, 2050.

Additional details can be found in ECA's Application, posted on the DOE/FE website at: *https://www.energy.gov/sites/prod/files/2020/09/f79/Energia%20Costa%20Azul%20-%20Design%20Increase%2018-145-LNG.pdf*

DOE/FE Evaluation

In reviewing ECA's Application, DOE will consider any issues required by law or policy. DOE will consider domestic need for the natural gas, as well as any other issues determined to be appropriate, including whether the arrangement is consistent with DOE's policy of promoting competition in the marketplace by allowing commercial parties to freely negotiate their own trade arrangements. As part of this analysis, DOE will consider the study entitled, *Macroeconomic Outcomes of Market Determined Levels of U.S. LNG Exports* (2018 LNG Export Study),[3] and

[1] *Energía Costa Azul, S. de R.L. de C.V.,* DOE/FE Order No. 4365, FE Docket No. 18–145–LNG, Opinion and Order Granting Long-Term Authorization to Re-Export U.S-Sourced Natural Gas in the Form of Liquefied Natural Gas from Mexico to Non-Free Trade Agreement Countries (ECA Large-Scale Project) (Mar. 29, 2019).

[2] DOE/FE will review ECA's request for an amendment to its existing FTA export authorization, as well as its request for an additional amount for use as fuel for pipeline transportation or liquefaction in Mexico, separately pursuant to section 3(c) of the NGA, 15 U.S.C. 717b(c).

[3] *See* NERA Economic Consulting, Macroeconomic Outcomes of Market Determined Levels of U.S. LNG Exports (June 7, 2018), *available*

DOE/FE's response to public comments received on that Study.[4]

Additionally, DOE will consider the following environmental documents:

• *Addendum to Environmental Review Documents Concerning Exports of Natural Gas From the United States,* 79 FR 48132 (Aug. 15, 2014);[5]

• *Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas From the United States,* 79 FR 32260 (June 4, 2014);[6] and

• *Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas From the United States: 2019 Update,* 84 FR 49278 (Sept. 19, 2019), and DOE/FE's response to public comments received on that study.[7]

Parties that may oppose this Application should address these issues and documents in their comments and protests, as well as other issues deemed relevant to the Application.

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.,* requires DOE to give appropriate consideration to the environmental effects of its proposed decisions. No final decision will be issued in this proceeding until DOE has met its environmental responsibilities.

Public Comment Procedures

In response to this Notice, any person may file a protest, comments, or a motion to intervene or notice of intervention, as applicable. Interested parties will be provided 60 days from the date of publication of this Notice in which to submit comments, protests, motions to intervene, or notices of intervention.

Any person wishing to become a party to the proceeding must file a motion to intervene or notice of intervention. The filing of comments or a protest with respect to the Application will not serve to make the commenter or protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the Application. All protests, comments, motions to intervene, or notices of intervention must meet the requirements specified by the regulations in 10 CFR part 590.

Filings may be submitted using one of the following methods: (1) Emailing the filing to *fergas@hq.doe.gov,* with FE Docket No. 18–145–LNG in the title line; (2) mailing an original and three paper copies of the filing to the Office of Regulation, Analysis, and Engagement at the address listed in **ADDRESSES**; or (3) hand delivering an original and three paper copies of the filing to the Office of Regulation, Analysis, and Engagement at the address listed in **ADDRESSES**. All filings must include a reference to FE Docket No. 18–145–LNG. PLEASE NOTE: If submitting a filing via email, please include all related documents and attachments (*e.g.,* exhibits) in the original email correspondence. Please do not include any active hyperlinks or password protection in any of the documents or attachments related to the filing. All electronic filings submitted to DOE must follow these guidelines to ensure that all documents are filed in a timely manner. Any hardcopy filing submitted greater in length than 50 pages must also include, at the time of the filing, a digital copy on disk of the entire submission.

A decisional record on the Application will be developed through responses to this Notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final Opinion and Order may be issued based on the official record, including the Application and responses filed by parties pursuant to this Notice, in accordance with 10 CFR 590.316.

The Application is available for inspection and copying in the Office of Regulation, Analysis, and Engagement docket room, Room 3E–042, 1000 Independence Avenue SW, Washington, DC 20585. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. The Application and any filed protests, motions to intervene, notices of interventions, and comments will also be available electronically by going to the following DOE/FE Web address: *http://www.fe.doe.gov/programs/gasregulation/index.html.*

Signed in Washington, DC, on October 7, 2020.

Amy Sweeney,

Director, Office of Regulation, Analysis, and Engagement, Office of Oil and Natural Gas.

[FR Doc. 2020–22557 Filed 10–9–20; 8:45 am]

BILLING CODE 6450–01–P

at: https://www.energy.gov/sites/prod/files/2018/06/f52/Macroeconomic%20LNG%20Export%20Study%202018.pdf.

[4] U.S. Dep't of Energy, Study on Macroeconomic Outcomes of LNG Exports: Response to Comments Received on Study; Notice of Response to Comments, 83 FR 67251 (Dec. 28, 2018).

[5] The Addendum and related documents are available at: *http://energy.gov/fe/draft-addendum-environmental-review-documents-concerning-exports-natural-gas-united-states.*

[6] The 2014 Life Cycle Greenhouse Gas Report is available at: *http://energy.gov/fe/life-cycle-greenhouse-gas-perspective-exporting-liquefied-natural-gas-united-states.*

[7] U.S. Dep't of Energy, Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas From the United States: 2019 Update—Response to Comments, 85 FR 72 (Jan. 2, 2020). The 2019 Update and related documents are available at: *https://fossil.energy.gov/app/docketindex/docket/index/21.*

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL21–3–000]

NextEra Energy Seabrook, LLC; Notice of Petition for Declaratory Order

Take notice that on October 5, 2020, pursuant to Rule 207 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.207 (2019), NextEra Energy Seabrook, LLC (Petitioner), hereby submits a petition for declaratory order seeking to understand the scope of its FERC-jurisdictional regulatory obligations with respect to NECEC Transmission, LLC's (NECEC) New England Clean Energy Connect project (NECEC Elective Upgrade), to resolve a dispute with NECEC, as more fully explained in the petition.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Petitioner.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For

assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the eFiling link at *http://www.ferc.gov.* Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Comment Date: 5:00 p.m. Eastern time on November 4, 2020.

Dated: October 6, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–22545 Filed 10–9–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Revocation of Market-Based Rate Authority and Termination of Electric Market-Based Rate Tariff

	Docket Nos.
Electric Quarterly Reports	ER02–2001–020
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

On August 24, 2020, the Commission issued an order announcing its intent to revoke the market-based rate authority of several public utilities that had failed to file their required Electric Quarterly Reports.[1] The Commission directed those public utilities to file the required Electric Quarterly Reports within 15 days of the date of issuance of the order or face revocation of their authority to sell power at market-based rates and termination of their electric market-based rate tariffs.[2]

The time period for compliance with the August 24 Order has elapsed. The above-captioned companies failed to file their delinquent Electric Quarterly Reports. The Commission hereby revokes, effective as of the date of issuance of this notice, the market-based rate authority and terminates the electric market-based rate tariff of each of the companies who are named in the caption of this order.

Dated: October 6, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–22544 Filed 10–9–20; 8:45 am]

BILLING CODE 6717–01–P

[1] *Electric Quarterly Reports,* 172 FERC 61,159 (2020) (August 24 Order).

[2] *Id.* at Ordering Paragraph A.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP20–504–000]

Northern Natural Gas Company; Notice of Schedule for Environmental Review of the Lake City 1st Branch Line Abandonment and Capacity Replacement Project

On July 31, 2020, Northern Natural Gas Company (Northern) filed an application in Docket No. CP20–504–000 requesting a Certificate of Public Convenience and Necessity pursuant to Section 7 of the Natural Gas Act to abandon in place and construct and operate certain natural gas pipeline facilities. The proposed project is known as the Lake City 1st Branch Line Abandonment and Capacity Replacement Project (Project) and would provide for safer long-term operation of Northern's system.

On August 7, 2020, the Federal Energy Regulatory Commission (Commission or FERC) issued its Notice of Application for the Project. Among other things, that notice alerted agencies issuing federal authorizations of the requirement to complete all necessary reviews and to reach a final decision on a request for a federal authorization within 90 days of the date of issuance of the Commission staff's Environmental Assessment (EA) for the Project. This instant notice identifies the FERC staff's planned schedule for the completion of the EA for the Project.

Schedule for Environmental Review

Issuance of EA—February 26, 2021
90-day Federal Authorization Decision Deadline—May 27, 2021

If a schedule change becomes necessary, additional notice will be provided so that the relevant agencies are kept informed of the Project's progress.

Project Description

Northern proposes the following actions in Webster and Calhoun Counties, Iowa: (1) Abandon in-place about 34.2 miles of the Lake City 1st branch pipeline from Dayton to Lake City; (2) construct and operate about 9.2 miles of 6-inch-diameter pipeline and associated aboveground appurtenances (an extension of the Lake City 2nd branch line); and (3) uprate the Maximum Allowable Operating Pressure of the existing Callender branch pipeline, the existing Manson 2nd branch pipeline, and 25.3 miles of the existing Lake City 2nd branch pipeline.

Background

On August 31, 2020, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment for the Proposed Lake City 1st Branch Line Abandonment and Capacity Replacement Project and Request for Comments on Environmental Issues* (NOI). The NOI was sent to affected landowners; federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; other interested parties; and local libraries and newspapers. In response to the NOI, the Commission received comments from three landowners and the Natural Resources Conservation Service. The primary issues raised by the commentors are concerns regarding federal permits and the Project's impacts on farmland and private property. All substantive comments will be addressed in the EA.

Additional Information

In order to receive notification of the issuance of the EA and to keep track of all formal issuances and submittals in specific dockets, the Commission offers a free service called eSubscription. 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.

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, select General Search from the eLibrary menu, enter the selected date range and Docket Number excluding the last three digits (*i.e.,* CP20–504), and follow the instructions. For assistance with access to eLibrary, the helpline can be reached at (866) 208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov.* The eLibrary link on the FERC website also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings.

Dated: October 6, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–22546 Filed 10–9–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP20–1237–000]

Midship Pipeline Company, LLC; Notice of Initiation of Section 5 Proceeding

On October 2, 2020, the Commission issued an order in Docket No. RP20–1237–000, pursuant to section 5 of the Natural Gas Act, 15 U.S.C. 717d, instituting an investigation into the public interest implications of a potential rejection of a firm transportation service agreement between Midship Pipeline Company, LLC and Gulfport Energy Corporation (Gulfport) should Gulfport initiate bankruptcy proceedings and propose to reject that agreement. *Midship Pipeline Company, LLC* 173 FERC 61,011 (2020).

Any interested person desiring to be heard in Docket No. RP20–1237–000 must file a notice of intervention or motion to intervene, as appropriate, with the Federal Energy Regulatory Commission, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 (2020), within 30 days of the date of issuance of the order.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the eFile link at *http://www.ferc.gov.* In lieu of electronic filing, you may submit a paper copy. 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.

Dated: October 5, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–22503 Filed 10–9–20; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OGC–2020–0509; FRL 10015–50–OGC]

Proposed Consent Decree, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed consent decree; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended (''CAA'' or the ''Act''), the United States Environmental Protection Agency (''EPA'') gives notice of a proposed consent decree in *Our Children's Earth Foundation* v. *Wheeler,* No. 4:20–cv–00396–JSW (N.D. Cal.). In this litigation, Our Children's Earth Foundation (''OCEF'') alleged that the Administrator of EPA failed to perform certain non-discretionary duties to timely respond, in accordance with the Act, to numerous state implementation plan (''SIP'') submittals from the State of California. The proposed consent decree would establish deadlines for EPA to take action in response to these California SIP submittals. The proposed consent decree does not require EPA to take any specific, particular action in response to the submittals.

DATES: Written comments on the proposed consent decree must be received by November 12, 2020.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OGC–2020–0509, online at *https://www.regulations.gov* (EPA's preferred method). Follow the online instructions for submitting comments.

Instructions: All submissions received must include the Docket ID number for this action. Comments received may be posted without change to *https://www.regulations.gov/,* including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the ''Additional Information about Commenting on the Proposed Consent Decree'' heading under the **SUPPLEMENTARY INFORMATION** section of this document. Out of an abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room are closed to the public, with limited exceptions, to reduce the risk of transmitting COVID–19. Our Docket Center staff will continue to provide remote customer service via email, phone, and webform. We encourage the public to submit comments via *https://www.regulations.gov,* as there may be a delay in processing mail and faxes. Hand deliveries and couriers may be received by scheduled appointment only. For further information on EPA Docket Center services and the current status, please visit us online at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Charles Starrs, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone: (202) 564–1996; email address: *starrs.charles@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining a Copy of the Proposed Consent Decree

The official public docket for this action (identified by Docket ID No. EPA–HQ–OGC–2020–0509) contains a copy of the proposed consent decree.

The electronic version of the public docket for this action contains a copy of the proposed consent decree, and is available through *https://www.regulations.gov.* You may use *https://www.regulations.gov* to submit or view public comments, access the index listing of the contents of the official public docket, and access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select ''search.''

II. Additional Information About the Proposed Consent Decree

The proposed consent decree would fully resolve two lawsuits filed by OCEF seeking to compel the Administrator to take action, in accordance with CAA section 110, 42 U.S.C. 7410, to respond to numerous California SIP submittals. Both lawsuits were filed in the United States District Court for the Northern District of California: the first, *OCEF* v. *Wheeler,* No. 4:20–cv–00396–JSW, was

filed on January 20, 2020 and the second, *OCEF* v. *Wheeler,* No. 3:20–cv–01380–WHA, was filed on February 24, 2020. Subsequently, by Order dated June 15, 2020, both cases were consolidated in one action, *OCEF* v. *Wheeler,* No. 4:20–cv–00396–JSW.

In the consolidated action, OCEF alleges that the State of California made 72 specifically-identified SIP submittals over a period of years (the majority from 2016–2018) and that EPA has failed to meet its non-discretionary duty to take timely action in response to each of those submittals. In the ordinary course of its administrative action, EPA continues to evaluate and take action on SIP submittals from all the states, including the State of California, and does not necessarily suspend such on-going action because of pending litigation, such as the consolidated action that is the subject of the proposed consent decree. In fact, during the pendency of this litigation, EPA has taken final action on some of the California SIP submittals originally at issue in the litigation.[1]

Under the terms of the proposed consent decree, EPA shall, in accordance with a stated schedule, take final action in response to all the California SIP submittals identified in the litigation that are still at issue (*i.e.* that EPA has not otherwise taken action on during the pending litigation). The schedule requires EPA to take such action on a certain specified number of the California SIP submittals that are at issue by each of four successive dates—December 22, 2020, September 30, 2021, September 30, 2022, and June 30, 2023—such that by the last such date EPA will have taken action on all the submittals. In some instances, the schedule specifically identifies particular SIP submittals in response to which EPA must take action by a specified date, but otherwise, the schedule states that EPA must take action on a minimum number of submittals by each date. It is possible, while this litigation is pending and before the proposed consent decree is final, as EPA continues in the ordinary course of its administrative activities, that EPA may take action on more of the California SIP submittals presently at issue (and which the proposed consent decree currently addresses). In that event, the parties subsequently may slightly adjust the proposed consent decree to ensure that the consent decree is limited to the remaining outstanding SIP submittals. The structure and essence of the proposed consent decree would be unchanged, though, and EPA will be required to take action on all of the remaining SIP submittals at issue in accordance with the prescribed schedule.[2]

In addition to setting out a schedule for EPA to take action on the California SIP submittals at issue, the proposed consent decree provides that if California withdraws any of the submittals, EPA no longer has an obligation (under the proposed consent decree) to take action in response to such withdrawn submittal(s). The proposed consent decree also requires that, as EPA takes action in response to the California SIP submittals at issue, EPA shall send the actions to the Office of the Federal Register for publication in the **Federal Register**. See the proposed consent decree in the docket for other terms and conditions.

For a period of thirty (30) days following the date of publication of this document, the Agency will accept written comments relating to the proposed consent decree. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act.

III. Additional Information About Commenting on the Proposed Consent Decree

Submit your comments, identified by Docket ID No. EPA–HQ–OGC–2020–0509, via *https://www.regulations.gov.* Once submitted, comments cannot be edited or removed from this docket. The EPA may publish any comment received to its public docket. Do not submit to EPA's docket at *https://www.regulations.gov* any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.* For additional information about submitting information identified as CBI, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this document. Note that written comments containing CBI and submitted by mail may be delayed and deliveries or couriers will be received by scheduled appointment only.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an email address or other contact information in the body of your comment. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Use of the *https://www.regulations.gov* website to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an ''anonymous access'' system, which means EPA will not know your identity, email address, or other contact information unless you provide it in the body of your comment.

Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

Gautam Srinivasan,

Associate General Counsel.

[FR Doc. 2020–22576 Filed 10–9–20; 8:45 am]

BILLING CODE 6560–50–P

[1] See, for example, 85 FR 57714 (September 16, 2020), 85 FR 57703 (September 16, 2020). and 85 FR 57712 (September 16, 2020).

[2] EPA would not regard any such future adjustments (if any) to the proposed consent decree as material and does not intend, in such event, to give further notice of the proposed consent decree.

ENVIRONMENTAL PROTECTION AGENCY

[[EPA–HQ–ORD–2015–0467; FRL–10014–48–ORD]

Board of Scientific Counselors (BOSC) Safe and Sustainable Water Resources Subcommittee Meeting—October 2020; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting; correction.

SUMMARY: The Environmental Protection Agency (EPA), Office of Research and Development (ORD), published a document in the **Federal Register** of August 24, 2020, giving notice of a meeting of the Board of Scientific Counselors (BOSC) Safe and Sustainable Water Resources (SSWR) Subcommittee.

FOR FURTHER INFORMATION CONTACT: The Designated Federal Officer (DFO) via phone/voice mail at: (202) 564–6518; via fax at: (202) 565–2911; or via email at: *tracy.tom@epa.gov.*

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of August 24, 2020, in FR Doc. 2020–18516, on page 52130, column 2 correct the ''Dates'' caption to read:

DATES:

1. The initial meeting will be held over two days via videoconference:

a. Wednesday, October 28, 2020, from 12 p.m. to 5 p.m. (EDT); and

b. Thursday, October 29, 2020, from 12 p.m. to 5 p.m. (EDT).

Attendees must register by October 27, 2020.

2. A BOSC deliberation will be held on November 17, 2020 from 11 a.m. to 2 p.m. (EDT). Attendees must register by November 16, 2020.

3. A final summary teleconference will be held on December 2, 2020 from 2 p.m. to 5 p.m. (EDT). Attendees must register by December 1, 2020.

Meeting times are subject to change. These series of meetings are open to the public. Comments must be received by October 27, 2020, to be considered by the subcommittee. Requests for the draft agenda or making a presentation at the meeting will be accepted until October 27, 2020.

Mary Ross,

Director, Office of Science Advisor, Policy and Engagement.

[FR Doc. 2020–22574 Filed 10–9–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2020–0201; FRL–10015–84]

Pesticide Program Dialogue Committee; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Pursuant to the Federal Advisory Committee Act, the Environmental Protection Agency's (EPA's) Office of Pesticide Programs is announcing a virtual public meeting of the Pesticide Program Dialogue Committee (PPDC) on October 28–29, 2020, with participation by webcast only. There will be no in-person gathering for this meeting.

DATES: *Virtual meeting:* The virtual meeting will be held on Wednesday, October 28, 2020, from 11:00 a.m. to approximately 5:00 p.m., and Thursday, October 29, 2020, from 11 a.m. to approximately 5:00 p.m. To make oral comments during the virtual meeting, please email Shannon Jewell by noon on Tuesday, October 20, 2020.

ADDRESSES: *Virtual meeting:* Please visit *https://www.epa.gov/pesticide-advisory-committees-and-regulatory-partners/pesticide-program-dialogue-committee-ppdc* to find the link for joining the meeting. The link will be on the meeting agenda, which will be posted to the website prior to the meeting.

FOR FURTHER INFORMATION CONTACT: Shannon Jewell, Office of Pesticide Programs, Environmental Protection Agency (7501P), 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (571) 289–9911; email address: *jewell.shannon@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you work in agricultural settings or if you are concerned about implementation of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136 *et seq.*); the Federal Food, Drug, and Cosmetic Act (FFDCA) (21 U.S.C. 301 *et seq.*); the Pesticide Registration Improvement Act (PRIA) (which amends FIFRA section 33); and the Endangered Species Act (ESA) (16 U.S.C. 1531 *et seq.*). Potentially affected entities may include, but are not limited to: Agricultural workers and farmers; pesticide industry and trade associations; environmental, consumer, and farm worker groups; pesticide users and growers; animal rights groups; pest consultants; State, local, and tribal governments; academia; public health organizations; and the public. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I get copies of this document and other related information?

The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2020–0201, is available online at *http://www.regulations.gov.* Please note that due to the public health emergency the EPA Docket Center (EPA/DC) and Reading Room was closed to public visitors on March 31, 2020. Our EPA/DC staff will continue to provide customer service via email, phone, and webform.

Once the EPA/DC is reopened to the public, the docket will also be available in-person at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the EPA/DC, West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m. Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. For further information on EPA/DC services, docket contact information and the current status of the EPA/DC and Reading Room, please visit *https://www.epa.gov/dockets.*

II. Background

The PPDC is a federal advisory committee chartered under the Federal Advisory Committee Act (FACA), Public Law 92–463. EPA established the PPDC in September 1995 to provide advice and recommendations to the EPA Administrator on issues associated with pesticide regulatory development and reform initiatives, evolving public policy and program implementation issues, and policy issues associated with evaluating and reducing risks from use of pesticides. The following sectors are represented on the current PPDC: Environmental/public interest and animal rights groups; farm worker organizations; pesticide industry and trade associations; pesticide user, grower, and commodity groups; Federal and State/local/tribal governments; the general public; academia; and public health organizations.

III. How do I participate in the virtual public meeting?

A. Virtual Meeting

The virtual meeting will be conducted via webcast. Please visit *https://www.epa.gov/pesticide-advisory-committees-and-regulatory-partners/pesticide-program-dialogue-committee-ppdc* to find the link for joining the meeting. The link will be on the meeting agenda, which will be posted to the website prior to the meeting.

B. Oral Comments

Requests to make brief oral comments to the PPDC during the virtual meeting should be submitted when registering online or with the DFO listed under **FOR FURTHER INFORMATION CONTACT** on or before noon on the date set in the **DATES** section.

Authority: 5 U.S.C. Appendix 2 *et seq.* and 7 U.S.C. 136 *et seq.*

Dated: October 6, 2020.

Edward Messina,

Acting Director, Office of Pesticide Programs.

[FR Doc. 2020–22590 Filed 10–9–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OGC–2020–0507; FRL–10015–55–OGC]

Proposed Settlement Agreements, Clean Water Act and Endangered Species Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with the Environmental Protection Agency (EPA) Administrator's October 16, 2017, Directive Promoting Transparency and Public Participation in Consent Decrees and Settlement Agreements, notice is hereby given of a proposed stipulated order of dismissal to address several claims in a lawsuit filed by Northwest Environmental Advocates (''Plaintiff'') in the U.S. District Court for the Western District of Washington. On December 7, 2016 the Plaintiff filed a complaint alleging, among other things, that the EPA's failed to perform duties mandated by the Endangered Species Act (ESA) to consult with the Fish & Wildlife Service and the National Marine Fisheries Service (collectively ''the Services'') regarding its actions under the Clean Water Act (CWA) with respect to nonpoint source management programs administered by the State of Washington Department of Ecology (''Ecology''). EPA seeks public input on the proposed stipulated order of dismissal prior to its final decision-making to settle the litigation.

DATES: Written comments on the proposed settlement agreements must be received by *November 12, 2020.*

ADDRESSES: Submit your comments, identified by Docket ID number EPA–HQ–OGC–2020–0507, online at *www.regulations.gov* (EPA's preferred method). For comments submitted at *www.regulations.gov,* follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *www.regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA generally will not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). The EPA encourages the public to submit comments via *www.Regulations.gov,* as there will be a delay in processing mail and no hand deliveries will be accepted. For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Stephen Sweeney, Water Law Office (2355A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone: (202) 564–5491; email address: *sweeney.stephen@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Stipulated Dismissal

On December 7, 2016, Plaintiff filed suit in the federal district court for the Western District of Washington. Plaintiff's original Complaint brought six claims alleging violations of various statutes by EPA and the National Oceanic & Atmospheric Administration (''NOAA''), including Administrative Procedure Act (''APA'') claims alleging violations of the Coastal Zone Management Act, the CWA, the Coastal Zone Act Reauthorization Amendments, and the ESA. The State of Washington Department of Ecology (''Ecology'') also intervened as a defendant in the litigation, as did the Washington State Farm Bureau Federation and Washington Cattlemen's Association. Each party filed motions designed to resolve some of the claims in the dispute. The proposed stipulated order of dismissal would resolve the remaining claims, specifically the remaining claims against EPA under the CWA and ESA.

Plaintiff's remaining claims are that EPA: Violated CWA section 319 by approving Ecology's 2015 nonpoint source program update; violated CWA section 319(h)(8) in successive determinations in 2015, 2016, and 2017 that Washington had made ''satisfactory progress'' in implementing its nonpoint source program over the preceding years (2014, 2015, 2016); and violated ESA section 7 by failing to consult on the preceding actions, as well as on EPA's annual awards of CWA section 319 grant funds in each year between 2011–2017.

Under the proposed stipulated order of dismissal, EPA's obligations would be as follows: EPA's approval of Ecology's 2015 program update submittal would be remanded to EPA, and EPA's reconsideration of the program update (and associated ESA procedural commitments) would be stayed pending Ecology's action (or inaction as of a date certain) in submitting its next anticipated program update under section CWA section 319. Under the proposed settlement, EPA would be obligated to make an effects determination under ESA regulations, pursuant to 50 CFR 402.14(a), on EPA's approval, if any, of either Ecology's 2015 Submittal or its next nonpoint source management program update, depending on whether Ecology timely submits an update and, as appropriate, request initiation of ESA section 7 consultation with the U.S. Fish and Wildlife Service and/or the National Marine Fisheries Service. Specifically, if Ecology does not submit a program update by December 31, 2021, or a mutually negotiated extension, EPA would proceed with an ESA effects determination based on the State's 2015 submittal (which EPA approved in 2015) and, as appropriate, request initiation of ESA section 7 consultation. EPA also would make an ''effects determination'' under the ESA for the first ''satisfactory progress'' determination (under CWA section 319(h)(8)) associated with issuance of

the next (2022) annual federal grant award and, as appropriate, request initiation of ESA consultation with the Services. The proposed stipulated order of dismissal would not resolve NWEA's claim for attorney's fees, which Plaintiff would need to file within 30 days of entry of the stipulated order of dismissal. The proposed stipulated order of dismissal includes obligations for Ecology; those terms are outside the scope of this notice and the Agency is not soliciting comment on them.

For a period of thirty (30) days following the date of publication of this notice, the Agency will accept written comments relating to the obligations of EPA for resolution of the claims contained in the proposed stipulated order of dismissal from persons who are not named as original parties or intervenors to the litigation in question. EPA also may hold a public hearing on whether to enter into the proposed stipulated order of dismissal. EPA or the Department of Justice may withdraw or withhold consent to the proposed stipulated order of dismissal if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the CWA or ESA. Unless EPA or the Department of Justice determines that consent to this proposed stipulated order of dismissal should be withdrawn, the terms of the proposed stipulated order of dismissal will be affirmed and entered with the Court.

II. Additional Information About Commenting on the Proposed Settlement Agreement

A. How can I get a copy of the proposed settlement agreement?

The official public docket for this action (identified by EPA–HQ–OGC–2020–0507) contains a copy of the proposed settlement agreement. The official public docket is located at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The regular hours of the EPA Docket Center Public Reading Room are from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays; however, due to the COVID–19 pandemic, there may be limited or no opportunity to enter the docket center. At the time of this printing, the docket center is closed to public visitors out of an abundance of caution for members of the public and EPA staff to reduce the risk of transmitting COVID–19. During the closure, Docket Center staff will continue to provide remote customer service via email, phone, and webform. For further information on EPA Docket Center services, see *https://www.epa.gov/dockets.* The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

An electronic version of the public docket is available on EPA's website at *www.regulations.gov.* You may use *www.regulations.gov* to submit or view public comments, access the index listing of the contents of the official public docket, and access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select ''search.'' It is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at *www.regulations.gov* without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket.

EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. EPA has not included any copyrighted material in the docket for this proposed settlement. If commenters submit copyrighted material in a public comment, it will be placed in the official public docket and made available for public viewing when the EPA Docket Center is open.

B. How and to whom do I submit comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. The EPA encourages the public to submit comments via *www.Regulations.gov.* There will be a delay in processing mail and no hand deliveries will be accepted due to the COVID–19 pandemic.

EPA recommends that you include your name, mailing address, and an email address or other contact information in the body of your comment. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Use of the *www.regulations.gov* website to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an ''anonymous access'' system, which means EPA will not know your identity, email address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (email) system is not an ''anonymous access'' system. If you send an email comment directly to the Docket without going through *www.regulations.gov,* your email address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: October 6, 2020.

Steven Neugeboren,

Associate General Counsel.

[FR Doc. 2020–22591 Filed 10–9–20; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK

[Public Notice: 2020–6003]

Agency Information Collection Activities: Comment Request

AGENCY: Export-Import Bank of the United States.

ACTION: Submission for OMB review and comments request.

SUMMARY: The Export-Import Bank of the United States (Ex-Im Bank), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal Agencies to comment on the proposed information collection, as required by the Paperwork Reduction Act of 1995.

DATES: Comments must be received on or before December 14, 2020 to be assured of consideration.

ADDRESSES: Comments may be submitted electronically on *WWW.REGULATIONS.GOV* or by mail to Donna Schneider, Export-Import

Bank of the United States, 811 Vermont Ave. NW, Washington, DC 20571.

SUPPLEMENTARY INFORMATION: By neutralizing the effect of export credit support offered by foreign governments and by absorbing credit risks that the private sector will not accept, Ex-Im Bank enables U.S. exporters to compete fairly in foreign markets on the basis of price and product. Under the Working Capital Guarantee Program, Ex-Im Bank provides repayment guarantees to lenders on secured, short-term working capital loans made to qualified exporters. The guarantee may be approved for a single loan or a revolving line of credit. In the event that a borrower defaults on a transaction guaranteed by Ex-Im Bank the guaranteed lender may seek payment by the submission of a claim.

This collection of information is necessary, pursuant to12 U.S.C. 635 (a)(1), to determine if such claim complies with the terms and conditions of the relevant working capital guarantee. The Notice of Claim and Proof of Loss, Working Capital Guarantee is used to determine compliance with the terms of the guarantee and the appropriateness of paying a claim. Export-Import Bank customers are able to submit this form on paper or electronically.

The information collection tool can be reviewed at: *https://www.exim.gov/sites/default/files/pub/pending/eib10-04.pdf.*

Title and Form Number: EIB 10–04 Notice of Claim and Proof of Loss, Working Capital Guarantee.

OMB Number: 3048–0035.

Type of Review: Regular.

Need and Use: This collection of information is necessary, pursuant to 12 U.S.C. 635(a)(1), to determine if such claim complies with the terms and conditions of the relevant guarantee.

Affected Public:

This form affects entities involved in the export of U.S. goods and services.

Annual Number of Respondents: 17.

Estimated Time per Respondent: 1 hour.

Annual Burden Hours: 17 hours.

Frequency of Reporting of Use: As needed to request a claim payment.

Government Expenses:

Reviewing time per year: 17 hours.

Average Wages per Hour: $42.50.

*Average Cost per Year (time*wages):* $722.50.

Benefits and Overhead: 20%.

Total Government Cost: $867.

Bassam Doughman,

Project Manager, Agency Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2020–22485 Filed 10–9–20; 8:45 am]

BILLING CODE 6690–01–P

FEDERAL COMMUNICATIONS COMMISSION

[IB Docket No. 16–185; DA 20–1162; FRS 17134]

Second Meeting of the World Radiocommunication Conference Advisory Committee

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons that the second meeting of the World Radiocommunication Conference Advisory Committee (WAC) will be held on October 20, 2020. Due to exceptional circumstances, the Advisory Committee meeting will be convened as a virtual meeting with remote participation only. This second meeting will consider status reports and recommendations from its Informal Working Groups (IWG) concerning preparation for the 2023 World Radiocommunication Conference (WRC–23).

DATES: October 20, 2020; 11:00 a.m. EDT.

ADDRESSES: *www.fcc.gov/live.*

FOR FURTHER INFORMATION CONTACT: Dante Ibarra, Designated Federal Official, World Radiocommunication Conference Advisory Committee, FCC International Bureau, Global Strategy and Negotiation Division, at *Dante.Ibarra@fcc.gov,* (202) 418–0610 or *WRC-23@fcc.gov.*

SUPPLEMENTARY INFORMATION: The FCC established the Advisory Committee to provide advice, technical support and recommendations relating to the preparation of United States proposals and positions for the 2023 World Radiocommunication Conference (WRC–23).

In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, this notice advises interested persons of the second meeting of the Advisory Committee. Additional information regarding the Advisory Committee is available on the Advisory Committee's website, *www.fcc.gov/wrc-23.* The virtual meeting is open to the public. The meeting will be broadcast live with open captioning over the internet from the FCC Live web page at *www.fcc.gov/live.* There will be audience participation available; send live questions to *livequestions@fcc.gov* only during this meeting.

The proposed agenda for the second meeting is as follows:

Agenda

Second Meeting of the World Radiocommunication Conference Advisory Committee

Federal Communications Commission

October 20, 2020; 11:00 a.m. EDT

1. Opening Remarks
2. Approval of Agenda
3. Approval of the Minutes of the First Meeting
4. IWG reports and Documents Relating to Preliminary Views
5. Future Meetings
6. Other Business

Federal Communications Commission.

Troy Tanner,

Deputy Chief, International Bureau.

[FR Doc. 2020–22538 Filed 10–9–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0716 and OMB 3060–0991; FRS 17122]

Information Collections Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

DATES: Written comments should be submitted on or before December 14, 2020. If you anticipate that you will be submitting comments, but find it

difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION: The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

As part of its continuing effort to reduce paperwork burdens, and as required by the PRA of 1995 (44 U.S.C. 3501–3520), the FCC invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

OMB Control Number: 3060–0716.

Title: Sections 73.88, 73.318 and 73.685, Blanketing Interference.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; and Not-for-profit institutions.

Number of Respondents and Responses: 21,000 respondents; 21,000 responses.

Estimated Time per Response: 1 to 2 hours.

Frequency of Response: Third party disclosure requirement.

Total Annual Burden: 41,000 hours.

Total Annual Cost: None.

Obligation To Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in Section 154(i) of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Impact Assessment(s): No impact(s).

Needs and Uses: The information collection requirements approved under this collection are contained under the following rule sections:

47 CFR 73.88 states that the licensee of each broadcast station is required to satisfy all reasonable complaints of blanketing interference within the 1V/m contour.

47 CFR 73.318(b) states that after January 1, 1985, permittees or licensees who either (1) commence program tests, (2) replace the antennas, or (3) request facilities modifications and are issued a new construction permit must satisfy all complaints of blanketing interference which are received by the station during a one year period.

47 CFR 73.318(c) states that a permittee collocating with one or more existing stations and beginning program tests on or after January 1, 1985, must assume full financial responsibility for remedying new complaints of blanketing interference for a period of one year.

Under 47 CFR 73.88, and 73.685(d), the license is financially responsible for resolving complaints of interference within one year of program test authority when certain conditions are met. After the first year, a license is only required to provide technical assistance to determine the cause of interference.

OMB Control Number: 3060–0991.

Title: AM Measurement Data.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 1,800 respondents; 3,135 responses.

Estimated Hours per Response: 0.50–25 hours.

Frequency of Response: Recordkeeping requirement, Third party disclosure requirement, On occasion reporting requirement.

Total Annual Burden: 20,200 hours.

Total Annual Cost: $1,131,500.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in Sections 151, 152, 154(i), 303, and 307 of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: There is no need for confidentiality treatment with this collection of information.

Privacy Impact Assessment: No impact(s).

Needs and Uses: In order to control interference between stations and assure adequate community coverage, AM stations must conduct various engineering measurements to demonstrate that the antenna system operates as authorized. The data is used by station engineers to correct the operating parameters of the antenna. The data is also used by FCC staff in field investigations to ensure that stations are in compliance with the technical requirements of the Commission's various rules.

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2020–22478 Filed 10–9–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–XXXX, FR No. 17102]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to

any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before December 14, 2020. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION: As part of its continuing effort to reduce paperwork burdens, and as required by the PRA of 1995 (44 U.S.C. 3501–3520), the FCC invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

OMB Control No.: 3060–XXXX.

Title: 3.7 GHz Service Licensee and Earth Station Operator Agreements; 3.7 GHz Service Licensee Engineering Analysis.

Form No.: N/A.

Type of Review: New collection.

Respondents: Business or other for-profit entities; not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents and Responses: 30 respondents and 30 responses.

Estimated Time per Response: 2 hours–5 hours.

Frequency of Response: Recordkeeping requirement; on occasion reporting requirement; third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in sections 1, 2, 4(i), 4(j), 5(c), 201, 302, 303, 304, 307(e), 309, and 316 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 154(j), 155(c), 201, 302, 303, 304, 307(e), 309, and 316.

Total Annual Burden: 120 hours.

Annual Cost Burden: No cost.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: The information collected under this collection will be made publicly available. However, to the extent information submitted pursuant to this information collection is determined to be confidential, it will be protected by the Commission. If a respondent seeks to have information collected pursuant to this information collection withheld from public inspection, the respondent may request confidential treatment pursuant to section 0.459 of the Commission's rules for such information.

Needs and Uses: On February 28, 2020, in furtherance of the goal of releasing more mid-band spectrum into the market to support and enabling next-generation wireless networks, the Commission adopted a Report and Order, FCC 20–22, (3.7 GHz Report and Order), in which it reformed the use of the 3.7–4.2 GHz band, also known as the C-band. Currently, the 3.7–4.2 GHz band is allocated in the United States exclusively for non-Federal use on a primary basis for Fixed Satellite Service (FSS) and Fixed Service. The 3.7 GHz Report and Order calls for the relocation of existing FSS operations in the band into the upper 200 megahertz of the band (4.0–4.2 GHz) and making the lower 280 megahertz (3.7–3.98 GHz) available for flexible use throughout the contiguous United States through a Commission-administered public auction of overlay licenses that is scheduled to occur later this year.

The Commission concluded in the *3.7 GHz Report and Order* that, once this transition is complete, coordination measures are needed to protect incumbent C-band operations in the upper portion of the 3.7–4.2 GHz band. 3.7 GHz Service licensees are required to comply with certain technical rules and coordination practices designed to reduce the risk of interference to incumbent operations. Specifically, 3.7 GHz Service licensees are required to comply with specific power flux density (PFD) limits to protect incumbent earth stations from out-of-band emissions and blocking and to coordinate frequency usage with incumbent Telemetry, Tracking, and Command (TT&C) earth stations. The *3.7 GHz Report and Order* allows 3.7 GHz Service licensees and C-Band earth station operators to modify these PFD limits, but it requires a 3.7 GHz Service licensee that is a party to such an agreement to maintain a copy of the agreement in its station files and disclose it, upon request, to prospective license assignees, transferees, or spectrum lessees, and to the Commission. The Commission also required any 3.7 GHz Service licensee with base stations located within the appropriate coordination distance to provide upon request an engineering analysis to the TT&C operator to demonstrate their ability to comply with the applicable −6 dB I/N criteria.

The information that will be collected under this new information collection is designed to ensure that 3.7 GHz Service licensees operate in a manner that ensures incumbent C-band operations in the upper portion of the 3.7–4.2 GHz band and TT&C operations in the 3700–3980 MHz band are protected. By requiring 3.7 GHz Service licensees to provide a copy of any private agreement with 3.7 GHz earth station operators to prospective license assignees, transferees, or spectrum lessees, and to the Commission, the Commission ensures that such agreements continue to protect incumbent C-band operations in the event a 3.7 GHz service license is subsequently transferred to a new licensee. This collection promotes the safety of operations in the band and reduces the risk of harmful interference to incumbents. It also ensures that relevant stakeholders have access to coordination agreements between 3.7 GHz Service licensees and entities operating earth stations or TT&C operations.

The information provided by the 3.7 GHz Service licensee to the TT&C operator ensures the protection of TT&C operations. The information collection will facilitate an efficient and safe transition by requiring 3.7 GHz Service licensees to demonstrate their ability to comply with the −6 dB I/N criteria, thereby minimizing the risk of interference.

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2020–22479 Filed 10–9–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Agency Information Collection Activities: 60-Day Public Comment Request

AGENCY: Federal Maritime Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of our continuing effort to reduce paperwork and respondent burden, and as required by the Paperwork Reduction Act of 1995, the Federal Maritime Commission (Commission) invites comments on the continuing information collections listed below in this notice.

DATES: Written comments must be submitted on or before December 14, 2020.

ADDRESSES: Submit comments for the proposed information collection requests to Karen V. Gregory, Managing Director at email: *omd@fmc.gov.* Please refer to the assigned OMB control number on any correspondence submitted. The FMC will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

FOR FURTHER INFORMATION CONTACT: Copies of the information collections and instructions, or copies of any comments received, may be obtained by contacting Donna Lee on email at *dlee@fmc.gov* or 202–523–5900.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Commission, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the continuing information collections listed in this notice, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Comments submitted in response to this notice will be included or summarized in our request for Office of Management and Budget (OMB) approval of the relevant information collection. All comments are part of the public record and subject to disclosure. Please do not include any confidential or inappropriate material in your comments. We invite comments on: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Information Collections Open for Comment

Title: 46 CFR part 525—Marine Terminal Operator Schedules and Related Form FMC–1.

OMB Approval Number: 3072–0061 (Expires January 31, 2021).

Abstract: Section 8(f) of the Shipping Act of 1984, 46 U.S.C. 40501(f), provides that a marine terminal operator (MTO) may make available to the public a schedule of its rates, regulations, and practices, including limitations of liability for cargo loss or damage, pertaining to receiving, delivering, handling, or storing property at its marine terminal. The Commission's rules governing MTO schedules are set forth at 46 CFR part 525.

Current Actions: There are no changes to this information collection, and it is being submitted for extension purposes only.

Type of Review: Extension.

Needs and Uses: The Commission uses information obtained from Form FMC–1 to determine the organization name, organization number, home office address, name and telephone number of the firm's representatives and the location of MTO schedules of rates, regulations and practices, and publisher, should the MTOs determine to make their schedules available to the public, as set forth in section 8(f) of the Shipping Act.

Frequency: This information is collected prior to an MTO's commencement of its marine terminal operations.

Type of Respondents: Persons operating as MTOs.

Number of Annual Respondents: The Commission estimates the respondent universe at 30, of which 15 opt to make their schedules available to the public.

Estimated Time per Response: The time per response for completing Form FMC–1 averages 0.5 person hours, and approximately 5 person-hours for related MTO schedules.

Total Annual Burden: The Commission estimates the total person-hour burden at 90 person-hours.

Title: 46 CFR part 520—Carrier Automated Tariffs and Related Form FMC–1.

OMB Approval Number: 3072–0064 (Expires February 28, 2021).

Abstract: Except with respect to certain specified commodities, section 8(a) of the Shipping Act of 1984, 46 U.S.C. 40501(a)–(c), requires that each common carrier and conference shall keep open to public inspection, in an automated tariff system, tariffs showing its rates, charges, classifications, rules, and practices between all ports and points on its own route and on any through transportation route that has been established. In addition, individual carriers or agreements among carriers are required to make available in tariff format certain enumerated essential terms of their service contracts. 46 U.S.C. 40502. The Commission is responsible for reviewing the accessibility and accuracy of automated tariff systems, in accordance with its regulations set forth at 46 CFR part 520.

Current Actions: There are no changes to this information collection, and it is being submitted for extension purposes only.

Type of Review: Extension.

Needs and Uses: The Commission uses information obtained from Form FMC–1 to ascertain the location of common carrier and conference tariff publications, and to access their provisions regarding rules, rates, charges and practices.

Frequency: This information is collected when common carriers or conferences publish tariffs.

Type of Respondents: Persons desiring to operate as common carriers or conferences.

Number of Annual Respondents: The Commission estimates there are 6,035 Carrier Automated Tariffs. It is estimated that the number of annual respondents will be 1,880.

Estimated Time per Response: The time per response ranges from 0.1 to 2 person-hours for reporting and recordkeeping requirements contained in the rules, and 0.5 person-hours for completing Form FMC–1.

Total Annual Burden: The Commission estimates the total person-hour burden at 2,479 person-hours.

Rachel Dickon,

Secretary.

[FR Doc. 2020–22508 Filed 10–9–20; 8:45 am]

BILLING CODE 6730–02–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The public portions of the applications listed below, as well as other related filings required by the

Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than October 28, 2020.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *The Richard J. Katz Trust No. 101, Richard J. Katz, as trustee, the Kathleen S. Katz Trust No. 102, Kathleen S. Katz, as trustee, Stephanie K. Korth, and Adam Katz, all of Sycamore, Illinois; The Richard J. Katz Irrevocable Trust, Peter J. Wilder, as trustee, both of Milwaukee, Wisconsin; Brian J. Katz, Tampa, Florida; and minor grandchildren of Richard J. and Kathleen S. Katz;* to acquire and to retain voting shares of Resource Bancshares, Inc., and thereby indirectly retain voting shares of Resource Bank, National Association, both of DeKalb, Illinois.

B. Federal Reserve Bank of Cleveland (Mary S. Johnson, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101–2566. Comments can also be sent electronically to *Comments.applications@clev.frb.org:*

1. *The Vanguard Group, Inc., Malvern, Pennsylvania; on behalf of itself, its subsidiaries and affiliates, including investment companies registered under the Investment Company Act of 1940, other pooled investment vehicles, and institutional accounts that are sponsored, managed, or advised by Vanguard;* to acquire additional voting shares of KeyCorp, and thereby indirectly acquire additional voting shares of KeyBank, NA, both of Cleveland, Ohio.

2. *The Vanguard Group, Inc., Malvern, Pennsylvania; on behalf of itself, its subsidiaries and affiliates, including investment companies registered under the Investment Company Act of 1940, other pooled investment vehicles, and institutional accounts that are sponsored, managed, or advised by Vanguard;* to acquire additional voting shares of Fifth Third Bancorp, and thereby indirectly acquire additional voting shares of Fifth Third Bank, NA, both of Cincinnati, Ohio.

C. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *The Anne Saunders Special Purpose Revocable Trust dated September 14, 2020, Anne Saunders, trustee, Marissa Beard, Rachel Carlson, and Emma Saunders, all of Douglas, Wyoming;* to acquire voting shares of Converse County Capital Corporation, and thereby indirectly acquire voting shares of The Converse County Bank, both of Douglas, Wyoming; and, as a group acting in concert, to join the Saunders Family Group, which controls voting shares of Converse County Capital Corporation. In addition, Brittanie Saunders, Douglas, Wyoming, and Rebecca Schufman, Richfield, Minnesota, to retain voting shares of Converse County Capital Corporation, and to join the Saunders Family Group.

D. Federal Reserve Bank of San Francisco (Sebastian Astrada, Director, Applications) 101 Market Street, San Francisco, California 94105–1579:

1. *The Vanguard Group, Inc., Malvern, Pennsylvania; on behalf of itself, its subsidiaries and affiliates, including investment companies registered under the Investment Company Act of 1940, other pooled investment vehicles, and institutional accounts that are sponsored, managed, or advised by Vanguard;* to acquire additional voting shares of The Charles Schwab Corporation, San Francisco, California, and thereby indirectly acquire additional voting shares of Charles Schwab Bank, SSB, and Charles Schwab Premier Bank, SSB, both of Westlake, Texas, and Charles Schwab Trust Company, Henderson, Nevada.

E. Federal Reserve Bank of St. Louis (David L. Hubbard, Senior Manager) P.O. Box 442, St. Louis, Missouri 63166–2034. Comments can also be sent electronically to *Comments.applications@stls.frb.org:*

1. *Catherine Hastings Owen and Harry Lee Hastings III, individually and as part of a family control group that also includes Arkansas Bolt Company; Harry L. Hastings, Jr; Stanley T. Hastings Jr; the Harry L. Hastings Jr Family Trust and Rosalyn J. Hastings Family Trust, Harry L. Hastings III, Catherine Hastings Owen, and Stanley T. Hastings Jr as co-trustees of both trusts; the Catherine H. Owen Descendants Gift Trusts for Harper J. Holliday, Sara O. Holliday, Steven C. Owen Jr., and an unnamed minor grandchild, Catherine Hastings Owen, trustee of those trusts; the Harry Lee Hastings III Descendants Gift Trusts for Andrew H. Hastings, Anne M. Hastings, Charles H. Hastings, Ellen B. Hastings, Harry L. Hastings IV, Harry L. Hastings V, Hollis R. Hastings, Huette M. Hastings, Mary H. Hastings, and Winston G. Hastings, Harry L. Hastings III, trustee of those trusts; the Stanley T. Hastings Sr. Descendants Gift Trusts for Alissa C. Hastings, Margo M. Hastings, Patrick T. Hastings, Stanley T. Hastings Jr, Tyler M. Hastings, and Andrew H. Hastings, Stanley T. Hastings Sr., trustee of those trusts; Harry L. Hastings IV; Winston G. Hastings; and Oliver M. Hastings, all of Little Rock, Arkansas;* to acquire voting shares of State Holding Company, and thereby indirectly acquire voting shares of Eagle Bank and Trust Company, both of Little Rock, Arkansas.

Board of Governors of the Federal Reserve System, October 7, 2020.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2020–22585 Filed 10–9–20; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in or To Acquire Companies Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage de novo, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the

question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington DC 20551–0001, not later than October 28, 2020.

A. Federal Reserve Bank of Minneapolis (Chris P. Wangen, Assistant Vice President), 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *Napoleon Bancorporation, Inc., Napoleon, North Dakota;* through its subsidiary, Stock Growers Insurance Agency, Inc., to purchase the assets and assume certain liabilities of Sargent County Insurance & Real Estate, Inc., Forman, North Dakota, and thereby indirectly engage in insurance agency activities in a place with a population not exceeding 5,000 pursuant to 12 CFR 225.28(b)(11)(iii)(A).

Board of Governors of the Federal Reserve System, October 7, 2020.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2020–22578 Filed 10–9–20; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)).

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than November 10, 2020.

A. Federal Reserve Bank of Minneapolis (Chris P. Wangen, Assistant Vice President), 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. First Holding Company of Park River, Inc., Park River, North Dakota; to acquire Ramsey National Bank, Devils Lake, North Dakota.

Board of Governors of the Federal Reserve System, October 6, 2020.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2020–22470 Filed 10–9–20; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Savings and Loan Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Home Owners' Loan Act (12 U.S.C. 1461 *et seq.*) (HOLA), Regulation LL (12 CFR part 238), and Regulation MM (12 CFR part 239), and all other applicable statutes and regulations to become a savings and loan holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a savings association.

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on whether the proposed transaction complies with the standards enumerated in the HOLA (12 U.S.C. 1467a(e)).

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than November 12, 2020.

A. Federal Reserve Bank of Cleveland (Mary S. Johnson, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101–2566. Comments can also be sent electronically to *Comments.applications@clev.frb.org:*

1. *First Mutual Holding Company, Lakewood, Ohio;* to acquire Martinsville First Savings Bank, Martinsville, Virginia, a federal mutual savings association, through the merger of Martinsville First Savings Bank with Martinsville Interim Bank, Martinsville, Virginia, an interim federal savings association subsidiary of First Mutual Holding Company.

Board of Governors of the Federal Reserve System, October 7, 2020.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2020–22586 Filed 10–9–20; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than October 27, 2020.

A. Federal Reserve Bank of Dallas (Robert L. Triplett III, Senior Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *The Vanguard Group, Inc., Malvern, Pennsylvania; on behalf itself, its subsidiaries and affiliates, including investment companies registered under the Investment Company Act of 1940, other pooled investment vehicles, and institutional accounts that are sponsored, managed, or advised by Vanguard;* to acquire additional voting shares of Cullen/Frost Bankers, Inc., and thereby indirectly acquire additional voting shares of Frost Bank, both of San Antonio, Texas.

Board of Governors of the Federal Reserve System, October 6, 2020.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2020–22471 Filed 10–9–20; 8:45 am]

BILLING CODE P

GENERAL SERVICES ADMINISTRATION

[Notice-PBS–2020–09; Docket No. 2020–0002; Sequence No. 39]

Record of Decision of the Supplemental Environmental Impact Statement for the Proposed Master Plan Amendment 2 of the Consolidation of the U.S. Department of Homeland Security Headquarters at the St. Elizabeths West Campus

AGENCY: Public Buildings Service, National Capital Region, General Services Administration (GSA).

ACTION: Notice.

SUMMARY: GSA issued a Record of Decision (ROD) for the 2020 Master Plan Amendment 2 for the Consolidation of the U.S. Department of Homeland Security (DHS) at the St. Elizabeths West Campus, located in Southeast, Washington, DC, on October 9, 2020. The ROD was prepared in accordance with the National Environmental Policy Act (NEPA) of 1969, the Council on Environmental Quality Regulations, and the GSA Public Buildings Service NEPA Desk Guide.

DATES: *Applicable:* Friday, October 9, 2020.

ADDRESSES: The ROD can be found on GSA's project website at *www.gsa.gov/ncrnepa.*

FOR FURTHER INFORMATION CONTACT: Paul Gyamfi, GSA, National Capital Region, Public Buildings Service, Office of Planning and Design Quality, at 202–440–3405, or by email at *paul.gyamfi@gsa.gov.*

SUPPLEMENTARY INFORMATION:

Background

One of the principal missions of GSA is to provide secure office space for Federal agencies throughout the United States, including the Washington, DC, metropolitan area. GSA obtained control of the St. Elizabeths West Campus in Southeast, Washington, DC, in 2004, in anticipation of meeting a portion of the need for secure Federal office space in the National Capital Region (NCR). On June 7, 2005, GSA published a Notice of Intent (NOI), and on June 28, 2007, a revised NOI, to prepare an Environmental Impact Statement (EIS) in compliance with the National Environmental Policy Act of 1969 (NEPA) for the proposed redevelopment of the St. Elizabeths West Campus.

GSA issued a Record of Decision (ROD) for the 2008 Final Master Plan EIS on December 16, 2008, selecting the alternative that consolidated 4.5 million gross square feet of secure office and shared-use space and associated parking on both the West and East Campuses at St. Elizabeths. As part of the 2008 Final Master Plan EIS for this action, GSA also assessed, on a programmatic level, the impacts of constructing 750,000 gross square feet of office space and associated parking on the St. Elizabeths East Campus. GSA noted in its ROD that an EIS tiered to the 2008 Final Master Plan EIS would be prepared for the East Campus.

On November 19, 2018, GSA published an NOI to prepare an EIS for St. Elizabeths Master Plan Amendment 2, which eliminates development on the East Campus and re-evaluates development on the St. Elizabeths West Campus to accommodate 4.1 million gross square feet of secure office and shared-use space, and 1.6 million gross square feet of associated parking, for the DHS Headquarters consolidation. The Master Plan Amendment 2 Draft SEIS was issued for a 70-day public comment period on May 8, 2020 and the Master Plan Amendment 2 Final SEIS was issued for a 30-day public review on August 28, 2020.

Comments received during public review of the Master Plan Amendment 2 Final EIS are provided in Appendix A along with GSA's responses

Preferred Alternative

GSA has chosen to implement Alternative B as defined in the Master Plan Amendment 2 Final Environmental Impact Statement (EIS), issued August 2020. This decision is based on analyses contained in the Master Plan Amendment 2 Draft EIS issued in May 2020, the Master Plan Amendment 2 Final EIS issued in August 2020, the Programmatic Agreement executed in December 2008, the Memorandum of Agreement executed on September 29, 2020, and the comments of Federal and state agencies, stakeholder organizations, members of the public, and elected officials.

Alternative B includes the addition of 1.2 million gross square feet of office space in two separate office structures organized around two enclosed courtyards on the plateau site at the West Campus. The new office buildings will range from three to eight stories, and the largest part of the structures will have an east-west orientation to optimize the use of daylight. The courtyards will be secured to provide open space for building occupants. Building B1 will be stepped down into the ravine near Building 56/57 to stabilize the slope in that area. Building 56/57 will be integrated into the design of Building B1 to provide a connection between the historic and new construction. Buildings 52 and 64 will be retained, rehabilitated, and adaptively reused.

Alternative B also includes the addition of 175,000 gross square feet of office space on the Sweetgum Lane site (proposed Building C1), organized into primarily below-grade construction, with one two-story building constructed to mirror the northwest corner of the Munro Building. The building would include up to three below-grade levels, which would take advantage of the site slope from east to west, allowing the western edge of the building to receive daylight. A central courtyard would provide internal daylighting.

Alternative B will also consist of the following:

- An additional 1,014 employee parking spaces added to the previously proposed underground parking garages at Gates 1 and 2 on the east side of the West Campus;
- Demolition of Buildings 60, 66, 67, 68, and 69, which total 65,295 gross square feet of space, at the plateau site;
- Demolition of Building 15, which totals 2,749 gross square feet of space, at the Sweetgum Lane site;
- Sidewalks and walkways, including enhanced pedestrian connections at the ravine;
- Engineering for stabilization of steep slopes, including building foundations;
- Realignment of site drainages and incorporation of landscaping and stormwater management;
- Shuttle bus drop-off locations;
- Shipping/receiving areas for buildings;

- Electric power, communications, and utility corridors designed for buildings and site improvements; and
- Remediation of contaminated soils.

Kristi Tunstall Williams,

Deputy Director, Office of Planning and Design Quality, Public Buildings Service, National Capital Region, General Services Administration.

[FR Doc. 2020–22605 Filed 10–9–20; 8:45 am]

BILLING CODE 6820–Y1–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Patient Safety Organizations (PSO): Expired Listing for FailSafe PSO

AGENCY: Agency for Healthcare Research and Quality (AHRQ), Department of Health and Human Services (HHS).

ACTION: Notice of delisting.

SUMMARY: The Patient Safety and Quality Improvement Final Rule (Patient Safety Rule) authorizes AHRQ, on behalf of the Secretary of HHS, to list as a patient safety organization (PSO) an entity that attests that it meets the statutory and regulatory requirements for listing. A PSO can be ''delisted'' by the Secretary if it is found to no longer meet the requirements of the Patient Safety and Quality Improvement Act of 2005 (Patient Safety Act) and Patient Safety Rule, when a PSO chooses to voluntarily relinquish its status as a PSO for any reason, or when a PSO's listing expires. The listing for FailSafe PSO, PSO number P0196, has expired and AHRQ has delisted the PSO accordingly.

DATES: The delisting was effective at 12:00 Midnight ET (2400) on September 21, 2020.

ADDRESSES: The directories for both listed and delisted PSOs are ongoing and reviewed weekly by AHRQ. Both directories can be accessed electronically at the following HHS website: *http://www.pso.ahrq.gov/listed.*

FOR FURTHER INFORMATION CONTACT: Cathryn Bach, Center for Quality Improvement and Patient Safety, AHRQ, 5600 Fishers Lane, MS 06N100B, Rockville, MD 20857; Telephone (toll free): (866) 403–3697; Telephone (local): (301) 427–1111; TTY (toll free): (866) 438–7231; TTY (local): (301) 427–1130; Email: *pso@ahrq.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Patient Safety Act, 42 U.S.C. 299b–21 to 299b–26, and the related Patient Safety Rule, 42 CFR part 3, published in the **Federal Register** on November 21, 2008 (73 FR 70732–70814), establish a framework by which individuals and entities that meet the definition of provider in the Patient Safety Rule may voluntarily report information to PSOs listed by AHRQ, on a privileged and confidential basis, for the aggregation and analysis of patient safety events.

The Patient Safety Act authorizes the listing of PSOs, which are entities or component organizations whose mission and primary activity are to conduct activities to improve patient safety and the quality of health care delivery.

HHS issued the Patient Safety Rule to implement the Patient Safety Act. AHRQ administers the provisions of the Patient Safety Act and Patient Safety Rule relating to the listing and operation of PSOs. The Patient Safety Rule authorizes AHRQ to list as a PSO an entity that attests that it meets the statutory and regulatory requirements for listing. A PSO can be ''delisted'' if it is found to no longer meet the requirements of the Patient Safety Act and Patient Safety Rule, when a PSO chooses to voluntarily relinquish its status as a PSO for any reason, or when a PSO's listing expires. Section 3.108(d) of the Patient Safety Rule requires AHRQ to provide public notice when it removes an organization from the list of PSOs.

Section 3.104(e)(1) of the Patient Safety Rule specifies that a PSO's listing, unless revoked or relinquished earlier, automatically expires at midnight of the last day of the three-year listing period if, prior to this deadline, the required certifications for a new three-year listing are not submitted by the PSO and accepted by AHRQ . FailSafe PSO, a component entity of Newsura, Inc., did not seek continued listing. Accordingly, FailSafe PSO was delisted effective at 12:00 Midnight ET (2400) on September 21, 2020.

More information on PSOs can be obtained through AHRQ's PSO website at *http://www.pso.ahrq.gov.*

Dated: October 5, 2020.

Marquita Cullom-Stott,

Associate Director.

[FR Doc. 2020–22484 Filed 10–9–20; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–21–0910]

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 Message Testing for Tobacco Communication Activities (MTTCA) 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 February 25, 2020 to obtain comments from the public and affected agencies. CDC received two 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

Message Testing for Tobacco Communication Activities (MTTCA) (OMB Control No. 0920–0910, Exp. 05/31/2021)—Revision—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Since 2012, OMB approval of a generic clearance of Message Testing for Tobacco Communication Activities (MTTCA) (OMB Control No. 0920–0910), has been continuously maintained. CDC's authority to collect information for public health purposes is provided by the Public Health Service Act (41 U.S.C. 241) Section 301.

CDC has employed the MTTCA clearance to collect information about adult smokers' and nonsmokers' attitudes and perceptions, and to pretest draft messages and materials for clarity, salience, appeal, and persuasiveness. The MTTCA clearance has been used to obtain OMB approval for a variety of message testing activities, with particular emphasis on communications supporting CDC's National Tobacco Education Campaign (NTEC) called the *Tips from Former Smokers*® campaign. This national campaign is designed to increase public awareness of the health consequences of tobacco use and exposure to secondhand smoke. The MTTCA clearance has also supported formative research relating to the development of health messages that are not specifically associated with the national campaign.

Information collection modes under the MTTCA clearance that are supported include in-depth interviews; in-person focus groups; online focus groups; in-person, or telephone interviews; and online surveys. Each project approved under the MTTCA framework is outlined in a project-specific Information Collection Request that describes its purpose and methodology. Messages developed from MTTCA data collection have been disseminated via multiple media channels including television, radio, print, out-of-home, and digital formats.

CDC requests OMB approval to extend the MTTCA clearance, with changes, for three years. Requested changes are to increase the number of respondents and burden hours, and to expand testing of messages on non-combustible products to include heated tobacco products. These changes are needed to support CDC's planned information collections and to accommodate additional needs that CDC may identify during the next three years. There are no changes other than adjustments to projected usage of this generic, specifically to expand message testing for additional products such as heated, non-combustible tobacco products. The MTTCA generic clearance may be used to facilitate the development of tobacco-related health communications of interest for CDC's collaborative efforts with other federal partners including, but not limited to, the Food and Drug Administration's Center for Tobacco Products. The MTTCA clearance does not replace the need for additional generic clearance mechanisms of HHS and other federal partners that may need to test tobacco messages related to their campaigns and initiatives.

CDC is requesting increases to accommodate planned message testing needs for the NTEC as well as ad hoc testing activities that may involve other CDC/ATSDR programs. CDC will continue to use the MTTCA clearance to develop and test messages and materials using data collection methodologies including online surveys, in-person or online focus groups, and in-depth interviews. Electronic data collection methods will be employed where possible to minimize COVID–19 exposure risk. Any in-person data collection will be conducted consistent with current guidance for mitigating the risk of transmitting COVID–19. Participation is voluntary and there are no costs to respondents, other than their time. The total estimated annualized burden hours are 10,458.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
General Public and Special Populations	Screening	36,267	1	2/60
	In-Depth Interviews (In Person)	67	1	1
	Focus Groups (In Person)	288	1	1.5
	Surveys (Online, Short)	36,667	1	10/60
	Surveys (Online, Medium)	2,733	1	25/60
	Surveys (In-Depth Telephone and Online)	1,500	1	1

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2020–22488 Filed 10–9–20; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–21–1129; Docket No. CDC–2020–0103]

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 Improving Fetal Alcohol Spectrum Disorders Prevention and Practice through National Partnerships. The purpose of this information collection is to assess and address the knowledge, attitude, skills and practice behaviors of healthcare professionals to prevent, identify, and treat fetal alcohol spectrum disorders (FASDs).

DATES: CDC must receive written comments on or before December 14, 2020.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2020–0103 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: 404–639–7118; 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

Improving Fetal Alcohol Spectrum Disorders Prevention and Practice through National Partnerships (OMB Control No. 0920–1129, Exp. 8/31/2019)—Reinstatement with Change—National Center for Birth Defects and Developmental Disabilities (NCBDDD), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The National Center on Birth Defects and Developmental Disabilities (NCBDDD) seeks to collect training and evaluation data from healthcare practitioners and staff in health systems where FASD-related practice and systems changes are implemented, and from grantees of national partner organizations related to prevention, identification, and treatment of fetal alcohol spectrum disorders (FASDs).

Prenatal exposure to alcohol is a leading preventable cause of birth defects and developmental disabilities. The term fetal alcohol spectrum disorders (FASD) describes the full continuum of effects that can occur in an individual exposed to alcohol in utero. These effects include physical, mental, behavioral, and learning disabilities. All of these have lifelong implications. The purpose of this program is to build upon previous efforts from FASD training programs and shift the perspective from individual training for practicing healthcare professionals to one that capitalizes on prevention opportunities and the ability to impact health care practice at the systems level.

Since 2002, CDC funded FASD Regional Training Centers (RTCs) to provide education and training to healthcare professionals and students about FASD prevention, identification, and treatment. In July 2013, CDC convened an expert review panel to evaluate the effectiveness of the RTC program overall and to make recommendations about the program. The panel highlighted several accomplishments of the RTCs and proposed several changes for future programming: (1) The panel identified a need for more comprehensive coverage nationally with discipline-specific trainings, increased use of technology, greater collaboration with medical societies, and stronger linkages with national partner organizations to increase the reach of training opportunities, and (2) The panel suggested that the training centers focus on demonstrable practice change and sustainability and place a stronger emphasis on primary prevention of FASDs. In addition, it was recommended that future initiatives have stronger evaluation components.

Based on the recommendations of the expert review panel, CDC is placing increased focus on prevention, demonstrating practice change, achieving national coverage, and strengthening partnerships between medical societies and national partner organizations. While a major focus of

the grantees' work will be national, regional approaches will be used to develop new content and to test out feasibility and acceptability of materials, especially among healthcare providers and medical societies.

CDC requests OMB approval to collect program evaluation information from; (1) healthcare practitioners from disciplines targeted by each grantee, including training participants, and (2) health system staff.

Healthcare practitioners will complete surveys to provide information on whether project trainings impacted their knowledge and practice behavior regarding FASD

identification, prevention, and treatment. The information will be used to improve future trainings and assess whether knowledge and practice changes occurred. Some participants will also complete qualitative key informant interviews to gain additional information on practice change. Health system employees will be interviewed or complete surveys as part of activities to assess readiness of healthcare systems to implement recommended practice changes.

It is estimated that 16,938 respondents will participate in the evaluation each year, for a total estimated burden of 2,338 hours annually. There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number responses per respondent	Average burden per response (in hours)	Total burden hours
Health Professionals	Health Professionals Survey	4013	1	9/60	602
FASD Core Training Participants	FASD Core Training Survey—Pre-Test.	4013	1	9/60	602
FASD Core Training Participants	FASD Core Training Survey—Post-Test.	4013	1	5/60	335
Nurses	Health Professionals Survey (Nursing).	667	1	9/60	101
Nurses	Key Informant Interviews with Champions.	14	2	45/60	21
Certified Medical Assistants and students.	Medical Assistant—Pre-Test Survey	334	1	10/60	56
Certified Medical Assistants and students.	Medical Assistant—Post-Test Survey.	334	1	10/60	56
Certified Medical Assistants and students.	Medical Assistants Change in Practice Survey.	250	1	15/60	63
Pediatricians	Pre-Test Screening, Assessment, and Diagnosis.	120	1	10/60	20
Pediatricians	Post-Test Screening, Assessment, and Diagnosis.	120	1	10/60	20
Pediatricians	Pre-Test ND–PAE	120	1	10/60	20
Pediatricians	Post-Test ND–PAE	120	1	10/60	20
Pediatricians	Pre-Test Treatment Across the Lifespan.	120	1	7/60	14
Pediatricians	Post-Test Treatment Across the Lifespan.	120	1	7/60	14
Family medicine physicians, social workers, social work students.	Social Work and Family Physicians Pre-training Survey.	1167	1	8/60	156
Family medicine physicians, social workers, social work students.	Social Work and Family Physicians 6-Month Follow Up Survey.	1167	1	8/60	156
Health Systems Professionals	TCU Organizational Readiness Survey.	246	2	10/60	82
Total					2,338

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2020–22492 Filed 10–9–20; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day-21–0728; 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 The National Notifiable Diseases Surveillance System (NNDSS). The NNDSS is the nation's public health surveillance system that monitors the occurrence and spread of diseases and

conditions that are nationally notifiable or under standard surveillance.

DATES: CDC must receive written comments on or before December 14, 2020.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2020–0096 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, 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

National Notifiable Diseases Surveillance System (NNDSS) (OMB Control No. 0920–0728, Exp. 4/30/2023)—Revision—Center for Surveillance, Epidemiology and Laboratory Services (CSELS), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Public Health Services Act (42 U.S.C. 241) authorizes CDC to disseminate nationally notifiable condition information. The National Notifiable Diseases Surveillance System (NNDSS) is based on data collected at the state, territorial and local levels as a result of legislation and regulations in those jurisdictions that require health care providers, medical laboratories, and other entities to submit health-related data on reportable conditions to public health departments. These reportable conditions, which include infectious and non-infectious diseases, vary by jurisdiction depending upon each jurisdiction's health priorities and needs. Each year, the Council of State and Territorial Disease Epidemiologists (CSTE), supported by CDC, determines which reportable conditions should be designated nationally notifiable or under standardized surveillance.

CDC requests a three-year approval for a Revision to the NNDSS (OMB Control No. 0920–0728). This Revision includes requests for approval to: (1) Receive case notification data for Blastomycosis which is now under standardized surveillance; and (2) receive disease-specific data elements for Carbon Monoxide (CO) Poisoning, Congenital Syphilis, and Sexually Transmitted Disease (STD, not congenital).

The NNDSS currently facilitates the submission and aggregation of case notification data voluntarily submitted to CDC from 60 jurisdictions: Public health departments in every U.S. state, New York City, Washington DC, five U.S. territories (American Samoa, the Commonwealth of Northern Mariana Islands, Guam, Puerto Rico, and the U.S. Virgin Islands), and three freely associated states (Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau). This information is shared across jurisdictional boundaries and both surveillance and prevention and control activities are coordinated at regional and national levels.

Approximately 90% of case notifications are encrypted and submitted to NNDSS electronically from already existing databases by automated electronic messages. When automated transmission is not possible, case notifications are faxed, emailed, uploaded to a secure network or entered into a secure website. All case notifications that are faxed, emailed, and uploaded are done so in the form of an aggregate weekly or annual report, not individual cases. These different mechanisms used to send case notifications to CDC vary by the jurisdiction and the disease or condition. Private personally identifiable information (PII) is collected from automated electronic messages and information can be retrieved by PII. In addition, some combinations of submitted data elements could potentially be used to identify individuals. Private information is not be disclosed unless otherwise compelled by law. All data are treated in a secure manner consistent with the technical, administrative, and operational controls required by the Federal Information Security Management Act of 2002 (FISMA) and the 2010 National Institute of Standards and Technology (NIST) Recommended Security Controls for Federal Information Systems and Organizations. Weekly tables of nationally notifiable diseases are available through CDC WONDER and *data.cdc.gov.* Annual summaries of finalized nationally notifiable disease data are published on CDC WONDER and *data.cdc.gov* and disease-specific data are published by individual CDC programs.

The burden estimates include the number of hours that the public health department uses to process and send case notification data from their jurisdiction to CDC. Specifically, the burden estimates include separate burden hours incurred for automated and non-automated transmissions, separate weekly burden hours incurred for modernizing surveillance systems as part of NNDSS Modernization Initiative (NMI) implementation, separate burden hours incurred for annual data reconciliation and submission, and separate one-time burden hours incurred for the addition of new diseases and data elements. The burden estimates for the one-time burden for reporting jurisdictions for the addition

of case notification data for Blastomycosis and disease-specific data elements for CO Poisoning, Congenital Syphilis, and Sexually Transmitted Disease (not congenital). The estimated annual burden for the 257 respondents is 18,354 hours. The total burden hours increased from 18,414 to 18,954 since the last revision due to an increase in diseases and disease-specific data elements added in this revision as compared to the last revision.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
States	Weekly (Automated)	50	52	20/60	867
States	Weekly (Non-automated)	10	52	2	1,040
States	Weekly (NMI Implementation)	50	52	4	10,400
States	Annual	50	1	75	3,750
States	One-time Addition of Diseases and Data Elements.	50	1	2	100
Territories	Weekly (Automated)	5	52	20/60	87
Territories	Weekly, Quarterly (Non-automated)	5	56	20/60	93
Territories	Weekly (NMI Implementation)	5	52	4	1,040
Territories	Annual	5	1	5	25
Territories	One-time Addition of Diseases and Data Elements.	5	1	2	10
Freely Associated States	Weekly (Automated)	3	52	20/60	52
Freely Associated States	Weekly, Quarterly (Non-automated)	3	56	20/60	56
Freely Associated States	Annual	3	1	5	15
Freely Associated States	One-time Addition of Diseases and Data Elements.	3	1	2	6
Cities	Weekly (Automated)	2	52	20/60	35
Cities	Weekly (Non-automated)	2	52	2	208
Cities	Weekly (NMI Implementation)	2	52	4	416
Cities	Annual	2	1	75	150
Cities	One-time Addition of Diseases and Data Elements.	2	1	2	4
Total					18,954

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2020–22490 Filed 10–9–20; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–21–0109]

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 Respiratory Protective Devices—42 CFR 84—Regulation 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 July 20, 2020 to obtain comments from the public and affected agencies. CDC did not receive comments related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570. 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

Respiratory Protective Devices—42 CFR part 84—Regulation (OMB Control No. 0920–0109, Exp. 10/31/2020) — Revision — National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The regulatory authority for the National Institute for Occupational Safety and Health (NIOSH) certification program for respiratory protective devices is found in the Mine Safety and Health Amendments Act of 1977 (30 U.S.C. 577a, 651 *et seq.,* and 657(g)) and the Occupational Safety and Health Act of 1970 (30 U.S.C. 3, 5, 7, 811, 842(h), 844). These regulations have, as their basis, the performance tests and criteria for approval of respirators used by millions of American construction workers, miners, painters, asbestos removal workers, fabric mill workers, and fire fighters.

Regulations of the Environmental Protection Agency (EPA) and the Nuclear Regulatory Commission (NRC) also require the use of NIOSH-approved respirators. These regulations also establish methods for respirator manufacturers to submit respirators for testing under the regulation and have them certified as NIOSH-approved if they meet the criteria given in the above regulation. This data collection was formerly named Respiratory Protective Devices 30 CFR part 11 but in 1995, the respirator standard was moved to 42 CFR part 84.

NIOSH, in accordance with 42 CFR part 84: (1) Issues certificates of approval for respirators which have met specified construction, performance, and protection requirements; (2) establishes procedures and requirements to be met in filing applications for approval; (3) specifies minimum requirements and methods to be employed by NIOSH and by applicants in conducting inspections, examinations, and tests to determine effectiveness of respirators; (4) establishes a schedule of fees to be charged applicants for testing and certification, and (5) establishes approval labeling requirements. Information is collected from those who request services under 42 CFR part 84 in order to properly establish the scope and intent of request.

Information collected from requests for respirator approval functions includes contact information and information about factors likely to affect respirator performance and use. Such information includes, but is not necessarily limited to, respirator design, manufacturing methods and materials, quality assurance plans and procedures, and user instruction and draft labels, as specified in the regulation.

The main instrument for data collection for respirator approval functions is the Standard Application Form for the Approval of Respirators (SAF) (currently Version 9). Respirator manufacturers are the respondents (estimated to average 140 each year over the years 2020–2023) and upon completion of the SAF their requests for approval are evaluated. A total of 375 applications were submitted in CY2019. To date, 300 applications have been submitted in CY2020. The increased submission rate is due to the publication of a new respirator class, PAPR100, as well certification requests due to COVID 19. No survey was conducted to more thoroughly analyze the reasons for the change in number of respondents. The applications are submitted at will and taking into account both historical conditions and as well as the current situation, our prediction of the number of respondents each year between CY2020 and CY2022 is 140. A $200 fee is required for each application. Respondents requesting respirator approval or certain extensions of approval are required to submit additional fees for necessary testing and evaluation as specified in 42 CFR parts 84.20–22, 84.66, 84.258 and 84.1102.

Applicants are required to provide test data that shows that the manufacturer is capable of ensuring that the respirator is capable of meeting the specified requirements in 42 CFR part 84. The requirement for submitted test data is likely to be satisfied by standard testing performed by the manufacturer, and is not required to follow the relevant NIOSH Standard Test Procedures. As additional testing is not required, providing proof that an adequate test has been performed is limited to providing existing paperwork.

42 CFR part 84 approvals offer corroboration that approved respirators are produced to certain quality standards. Although 42 CFR part 84 Subpart E prescribes certain quality standards, it is not expected that requiring approved quality standards will impose an additional cost burden over similarly effective quality standards that are not approved under 42 CFR part 84.

Manufacturers with current approvals are subject to site audits by the Institute or its agents. Audits may occur periodically, typically every second year, or as a result of a reported issue. Sixty-four site audits from 90 respirator approval holders were scheduled for the 2020 fiscal year. There is an average fee of $12,656 for each audit to align with fee collection provisions of the Independent Offices Appropriations Act of 1952 (31 U.S.C. 9701), and OMB Circular A–25 Revised. It is estimated that the average over the next three years (FY21–FY23) will be seventy. The total estimated burden hours are 129,920.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Business or other for-profit	Standard Application Form for the Approval of Respirators.	140	4	229
Business or other for-profit	Audit	70	1	24

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2020–22487 Filed 10–9–20; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–21–0931; Docket No. CDC–2020–0106]

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 ''Blood Lead Surveillance System (BLSS)'' (OMB Control No. 0920–0931, Exp. Date 05/31/2021). The National Center for Environmental Health (NCEH) is leading a three-year extension information collection request (ICR) for two CDC information collections, one for childhood blood lead surveillance by NCEH and another for adult blood lead surveillance by the National Institute for Occupational Safety and Health (NIOSH).

DATES: CDC must receive written comments on or before December 14, 2020.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2020–0106 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: 404–639–7118; 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

Blood Lead Surveillance System (OMB Control No. 0920–0931, Exp. Date 05/31/2021)—Extension—National Center for Environmental Health (NCEH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

This is a request for a three-year Extension for an existing Paperwork Reduction Act (PRA) clearance titled ''Blood Lead Surveillance System (BLSS)'' (OMB Control No.0920–0931; Expiration date 05/31/2021). The National Center for Environmental Health (NCEH) is leading this ICR for two Centers for Disease Control and Prevention (CDC) information collections, one for childhood blood lead surveillance by NCEH and another for adult blood lead surveillance by the National Institute for Occupational Safety and Health (NIOSH).

The goal of the NCEH Childhood Blood Lead Surveillance (CBLS) Program is to support blood lead screening and to promote primary prevention of exposure to lead. Also, the CBLS Program supports secondary prevention of adverse health effects when lead exposures occur in children, through improved program management and oversight in respondent jurisdictions.

The goal of the NIOSH Adult Blood Lead Epidemiology and Surveillance (ABLES) Program is to build state capacity for adult blood lead surveillance programs to measure trends in adult blood lead levels and to prevent lead over-exposures.

NCEH has a three-year cooperative agreement, titled ''Lead Poisoning Prevention—Childhood Lead Poisoning Prevention—financed partially by Prevention and Public Health Funds'' (Funding Opportunity Announcement [FOA] No. CDC–RFA–EH17–1701PPHF17) and a two-year cooperative agreement, titled ''Childhood Lead Poisoning Prevention Projects, State and Local Childhood Lead Poisoning Prevention and Surveillance of Blood Lead Levels in Children''—(Notice of Funding Opportunity [NOFO] No. CDC–RFA–EH18–1806). Both have one-year extensions (CDC–RFA–EH17–1701SUPP20 and CDC–RFA–EH18–1806 SUPP20, respectively). The first year of this ICR will extend through the first eight months of FY21 and thus will be covered by the one-year extensions, while funding for the second and third years of this ICR will be determined in the future. Data submission to the ABLES Program is voluntary and completed through data sharing agreements with state agencies or their bona fide agents.

Blood lead surveillance over the human lifespan is covered under this single ICR, specifically for children younger than 16 years through CBLS at NCEH, and for adults 16 years and

older, through ABLES at NIOSH. Over the past several decades there have been substantial efforts in environmental lead abatement, improved protection from occupational lead exposure, and a reduction in the prevalence of population blood lead levels (BLLs) over time. The U.S. population BLLs have substantially decreased over the last four decades. For example, the CDC has reported the 1976–1980 U.S. mean BLL in children 6 months to 5 years was 16.0 micrograms per deciliter (mcg/dL), and 14.1 mcg/dL among adults 18 to 74 years. More recently, the CDC reported the 2009–2010 U.S. BLL geometric means among children 1 to 5 years and among adults 20 years and older as 1.2 mcg/dL for both age groups.

In 2012, the National Toxicology Program (NTP) concluded that there is sufficient evidence that even BLLs less than 5 mcg/dL are associated with adverse health effects in both children and adults. Despite the reduction in the overall population BLL over four decades, lead exposures continue to occur at unacceptable levels for individuals in communities and workplaces across the nation. Surveillance will continue through CBLS and ABLES to identify cases of elevated BLLs when primary prevention is not achieved. As of 2015, NCEH defines its reference level for children at 5 mcg/dL. NIOSH defines an elevated BLLs as greater than or equal to 5 mcg/dL for adults.

Respondents are defined as state, local, and territorial health departments with lead poisoning prevention programs. The estimated annual time burden for NCEH CBLS is 946 hours. The estimated annual time burden for NIOSH ABLES is 280 hours. In total, CDC is requesting approval for a total annual time burden of 1,226 hours.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hr)	Total burden (in hr)
State, Local and Territorial Health Departments, or their Bona Fide Agents.	CBLS Variables (ASCII Text Files) ..	59	4	4	944
	CBLS Aggregate Records Form (Excel).	1	1	2	2
	ABLES Case Records Form and Brief Narrative Report.	32	1	8	256
	ABLES Aggregate Records Form and Brief Narrative Report.	8	1	3	24
Total	.....	.....	.....	.....	1,226

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2020–22491 Filed 10–9–20; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–21–0888; Docket No. CDC–2020–0102]

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 Factors Influencing the Transmission of Influenza. This proposed collection is intended to further our understanding of how respiratory viruses like influenza are transmitted from person to person.

DATES: CDC must receive written comments on or before December 14, 2020.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2020–0102 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: 404–639–7118; 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

Factors Influencing the Transmission of Influenza (OMB Control No. 0920–0888, Exp. 2/28/2021)—Extension—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The National Institute for Occupational Safety and Health (NIOSH) is authorized to conduct research to advance the health and safety of workers under Section 20(a)(1) of the 1970 Occupational Safety and Health Act. NIOSH is requesting an extension to an existing ICR (expiring February 28, 2021) because the ongoing COVID–19 pandemic has temporarily halted the study due to staff safety concerns and an inability to access healthcare facilities in order to recruit test subjects.

Influenza continues to be a major public health concern because of the substantial health burden from seasonal influenza and the potential for a severe pandemic. Although influenza is known to be transmitted by infectious secretions, these secretions can be transferred from person to person in many different ways, and the relative importance of the different pathways is not known. The likelihood of the transmission of influenza virus by small infectious airborne particles produced during coughing and breathing is particularly unclear. The question of airborne transmission is especially important in healthcare facilities, where influenza patients tend to congregate during influenza season, because it directly impacts the infection control and personal protective measures that should be taken by healthcare workers.

The purpose of this study is to gain a better understanding of the production of infectious aerosols by patients with influenza, and to compare this to the levels of biomarkers of influenza infection in the blood of these patients. To do this, airborne particles produced by volunteer subjects with influenza will be collected and tested for influenza virus, and the levels of influenza infection-associated biomarkers will be measured in blood samples from these subjects.

Volunteer adult participants will be recruited by a test coordinator using a poster and flyers describing the study. Interested potential participants will be screened verbally to verify that they have influenza-like symptoms and that they do not have any medical conditions that would preclude their participation. A matching number of healthy control participants will also be recruited. Qualified participants who agree to participate in the study will be asked to read and sign an informed consent form, and then to complete a short health questionnaire. After completing the forms, the participant's oral temperature will be measured, and two nasopharyngeal mucus samples and five ml of blood will be collected. The participant then will be asked to don an elastomeric mask and breathe and cough normally for 40 minutes into an aerosol particle collection system. The total time from initial verbal screening to completion will be about 95 minutes. The study will require 90 volunteer test subjects each year for three years, for a total of 270 test participants. There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hrs.)	Total burden (in hrs.)
Potential participant	Initial verbal screening	180	1	3/60	9
Qualified participant	Informed consent form	90	1	15/60	23
Qualified participant	Health questionnaire	90	1	5/60	8
Qualified participant	Medical testing	90	1	72/60	108
Total					148

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2020–22489 Filed 10–9–20; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–21–1243; Docket No. CDC–2020–0105]

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 a proposed information collection entitled ''Rapid Response Suicide Investigation Data Collection.'' CDC will use the information collected to continue providing rapid responses to urgent requests for CDC assistance in the investigation of an apparent or unexplained potential cluster or increase in suicidal behavior.

DATES: Written comments must be received on or before December 14, 2020.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2020–0105 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

Rapid Response Suicide Investigation Data Collection (OMB Control No. 0920–1243, Exp. 09/30/2021)—Extension—National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

CDC is frequently called upon to respond to urgent requests from one or more external partners (*e.g.,* local, state, territory, and tribal health authorities; other federal agencies; local and state leaders; schools; or other partner organizations) to conduct investigations of suicide. Supporting rapid investigations to inform the implementation of effective suicide prevention strategies is one of the most important ways CDC can serve to protect and promote the health of the public.

Rapid Response Suicide Investigation Data Collections are specifically designed to inform the implementation of prevention strategies in a state, county, community, or vulnerable population where a possible suicide cluster or increasing trend has been observed. This generic clearance will not be used to conduct research studies or to collect data designed to draw conclusions about the United States or areas beyond the defined geographic location or vulnerable population that is the focus of the investigation. CDC in collaboration with external partners (*e.g.,* local, state, territory, and tribal health authorities; other federal agencies; local and state leaders; schools; or other partner organizations), will identify the respondent universe for each Rapid Response Suicide Investigation Data Collection. The respondent universe will be determined based on the information needed to understand potential suicide clusters, significant increases in suicidal behavior and suicide, risk and protective factors, and vulnerable populations in order to inform the implementation of suicide prevention strategies. When the goal is generalizability, CDC will submit the sampling methods to OMB as part of the GenIC package. The estimated annual burden hours are 1,000. There are no costs 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 burden hours
Rapid Response Suicide Investigation Data Collection Participants.	Rapid Response Suicide Investigation Protocol.	2,000	1	30/60	1,000

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2020–22493 Filed 10–9–20; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–21–20KN]

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 ''Promoting Adolescent Health through School-Based HIV/STD Prevention Reporting Templates.'' 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 March 9, 2020 to obtain comments from the public and affected agencies. CDC did not receive comments related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the 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;

(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

Promoting Adolescent Health through School-Based HIV/STD Prevention Reporting Templates—New—Division of Adolescent and School Health (DASH), National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

PS18–1807 Promoting Adolescent Health through School-Based HIV/STD Prevention was awarded August 1, 2018 with a five-year project period. It is funded through the Division of Adolescent and School Health (DASH).

Health behaviors during adolescence set the stage for behaviors and health into adulthood. In 2017, 40% of high school students in the US had ever had sexual intercourse and 29% were currently sexually active. Among currently sexually active students, 46% did not use a condom, and 14% did not use any method to prevent pregnancy the last time they had sexual intercourse. In 2016, young people aged 13–24 accounted for an estimated 21% of all new HIV diagnoses in the United States. Half of the nearly 20 million new STDs reported each year were among young people aged 15–24.

Schools have direct contact with over 50 million students for at least six hours a day over 13 key years of their social, physical, and intellectual development. Schools can help understand and prevent adolescent risk for HIV, STD and teen pregnancy. Schools play an important role in HIV/STD prevention. Schools can influence students' risk for HIV infection and other STD through parental engagement, health education, connection to physical and mental health services, and connecting youth to each other and important adults.

The PS18–1807 award supports implementation of activities at multiple levels of the education system to achieve health goals. School curricula, policies, and services are generally locally determined by local education agencies (LEA), or local school districts, with guidance from state education agencies (SEA). LEA and SEA both provide training, resources, and technical assistance to schools. SEA establish supportive state environments for local decision making about school policies and practices. LEA support implementation of school-based strategies through district level actions and decisions. Recognizing the importance of locally tailoring approaches, PS18–1807 uses priority schools within a district, or LEA, as a natural laboratory for working through program implementation details before scaling up—or diffusing—activities to all schools in a district. This approach supports close connections with decision-makers responsible for educational options and school environments at each of these levels. Additional support from organizations with specialized expertise and capacity for national reach will be used to increase the impact of SEA and LEA strategies. They provide a range of highly trained experts for professional development and technical assistance to advance HIV/STD prevention work.

The Centers for Disease Control and Prevention requests a three-year OMB approval to conduct three (3) information collections entitled, ''Promoting Adolescent Health through School-Based HIV/STD Prevention Reporting Templates.'' There are separate reporting templates and work plan templates for Component 1 reporting and for Component 2 reporting. Eighty (80) sites will be filling out the Component 1 reporting template and work plan template; twenty-five (25) sites will be filling out the Component 2 reporting template and two work plan templates (required programmatic activities work plan and professional development work plan).

The Component 1 information collection uses a self-administered reporting template to assess surveillance activities conducted by recipient education and health agencies funded by the Centers for Disease Control and Prevention, Division of Adolescent and School Health under Component 1 of PS18–1807 Promoting Adolescent Health through School-Based HIV/STD Prevention. This data collection will provide DASH with data to generate internal reports that will identify successful and problematic surveillance areas. In addition, the information collection will allow DASH to determine if recipient agencies are

completing the required activities of the NOFO on time, as well as identifying problems in implementation. With this information, DASH can ascertain if additional technical assistance is needed to help recipients improve their surveillance implementation if necessary. The reporting template will include questions on the following topics: Youth Risk Behavior Survey completion and School Health Profiles (Profiles) completion. No personally identifiable information will be collected.

The Component 2 information collection uses a self-administered reporting template to assess HIV and STD prevention efforts conducted by local education agencies (LEA) funded by the Centers for Disease Control and Prevention, Division of Adolescent and School Health under Component 2 of PS18–1807 Promoting Adolescent Health through School-Based HIV/STD Prevention. This data collection will provide DASH with data to generate internal reports that will identify successful and problematic programmatic areas. In addition, both information collections will allow DASH to determine if recipient agencies are completing the required activities of the NOFO on time, as well as identifying problems in implementation. With this information, DASH can ascertain if additional technical assistance is needed to help recipients improve their program implementation if necessary. In addition, the findings will allow CDC to determine the potential impact of currently recommended strategies and make changes to those recommendations if necessary. The reporting template will include sections on the following topics: Sexual health education (SHE), sexual health services (SHS), safe and supportive environments (SSE) required and additional activities. No personally identifiable information will be collected.

The estimated burden per response ranges from eight (8) hours for Component 1 to fourteen (14) hours for Component 2. Recipients will complete the reporting templates every six months and the work plan templates once a year under this approval. Annualizing the collection over one-year results in an estimated annualized burden of 3,320 hours for respondents. There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Surveillance recipients	Promoting Adolescent Health through School-Based HIV/STD Prevention Component 1 Reporting Template and Work Plan.	80	3	8
Local education agency HIV prevention recipients.	Promoting Adolescent Health through School-Based HIV/STD Prevention Component 2 Reporting Template and Work Plans (required programmatic activities work plan and professional development work plan).	25	4	14

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2020–22486 Filed 10–9–20; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

A National Elastomeric Half Mask Respirator (EHMR) Strategy for Use in Healthcare Settings During an Infectious Disease Outbreak/Pandemic

AGENCY: National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Extension of comment period.

SUMMARY: On September 14, 2020, the National Institute for Occupational Safety and Health (NIOSH), within the Centers for Disease Control and Prevention (CDC), published a request for information to obtain public input on the deployment and use of elastomeric half mask respirators in healthcare settings and emergency medical services (EMS) organizations during the COVID–19 crisis. Comments were to be received by October 14, 2020. NIOSH is extending the comment period to close on December 14, 2020, to allow stakeholders and other interested parties additional time to respond.

DATES: The comment period for the document published on September 14, 2020 (85 FR 56618) is extended. Comments must be received on or before December 14, 2020.

ADDRESSES: Responses should be submitted to Dr. Lee Greenawald, NIOSH, 626 Cochrans Mill Road, Building 141, Pittsburgh, PA 15236, or *ppeconcerns@cdc.gov.*

FOR FURTHER INFORMATION CONTACT: Lee Greenawald, NIOSH, 626 Cochrans Mill Road, Building 141, Pittsburgh, PA 15236; phone: (412) 386–6465 (not a toll-free number); email: *ppeconcerns@cdc.gov.*

SUPPLEMENTARY INFORMATION: NIOSH published a notice requesting public input and potential participation in a nationwide deployment program for elastomeric half mask respirators in healthcare settings and first responder organizations in the **Federal Register** on September 14, 2020 (85 FR 56618). This notice announces the extension of the comment period until December 14, 2020.

John J. Howard,

Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention, Department of Health and Human Services.

[FR Doc. 2020–22537 Filed 10–9–20; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket No. CDC–2020–0100]

Advisory Committee on Immunization Practices (ACIP); Amended Notice of Meeting

SUMMARY: Notice is hereby given of a change in the meeting of the Advisory Committee on Immunization Practices (ACIP); October 28–29, 2020, 10:00 a.m.–5:30 p.m., EDT (times subject to change), in the original **Federal Register** notice. The meeting, which was published in the **Federal Register** on September 21, 2020, Volume 85, Number 183, pages 59317–59318, is being amended and should read as follows:

DATES: The virtual meeting will be held on October 28–30, 2020, from 10:00 a.m.–5:30 p.m., EDT (times subject to change). The meeting is open to the public.

Written comments must be received on or before October 30, 2020.

ADDRESSES: For more information on ACIP please visit the ACIP website: *http://www.cdc.gov/vaccines/acip/index.html.*

You may submit comments, identified by Docket No. CDC–2020–0100 by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Docket No. CDC–2020–0100, c/o Attn: October ACIP Meeting, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H24–8, Atlanta, GA 30329–4027.

Instructions: All submissions received must include the Agency name and Docket Number. All relevant comments received in conformance with the *https://www.regulations.gov* suitability policy will be posted without change to *https://www.regulations.gov,* including any personal information provided. For access to the docket to read background documents or comments received, go to *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Stephanie Thomas, ACIP Committee Management Specialist, Centers for Disease Control and Prevention, National Center for Immunization and Respiratory Diseases, 1600 Clifton Road NE, MS–H24–8, Atlanta, GA 30329–4027; Telephone: 404–639–8367; Email: *ACIP@cdc.gov.*

SUPPLEMENTARY INFORMATION: The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2020–22464 Filed 10–9–20; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Formative Data Collections for ACF Program Support (OMB #0970–0531)

AGENCY: Office of Planning, Research, and Evaluation, Administration for Children and Families, HHS.

ACTION: Request for public comment.

SUMMARY: The Administration for Children and Families (ACF) proposes to revise the existing overarching generic clearance for Formative Data Collections for ACF Program Support (OMB #0970–0531) to increase the estimated number of respondents and, therefore, the overall burden estimate.

DATES: *Comments due within 60 days of publication.* In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, ACF is soliciting public comment on the specific aspects of the information collection described above.

ADDRESSES: Copies of the proposed collection of information can be obtained and comments may be forwarded by emailing *OPREinfocollection@acf.hhs.gov.* Alternatively, copies can also be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 330 C Street SW, Washington, DC 20201, Attn: OPRE Reports Clearance Officer. All requests emailed or written should be identified by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: The goals of the generic information collections under this approval are to obtain information about program and grantee processes or needs, and to inform the following types of activities, among others:

- Delivery of targeted assistance and workflows related to program and grantee processes, and the development and refinement of recordkeeping and communication systems.
- Planning for provision of programmatic or evaluation-related training or technical assistance (T/TA).
- Obtaining grantee or other stakeholder input on the development of program performance measures.
- Use of rapid-cycle testing activities to strengthen programs in preparation for summative evaluations.

ACF uses a variety of techniques such as semi-structured discussions, focus groups, surveys, templates, open-ended requests, and telephone or in-person interviews, in order to reach these goals.

Following standard OMB requirements, OPRE will submit a change request for each individual data collection activity under this generic clearance. Each request will include the individual instrument(s), a justification specific to the individual information collection, and any supplementary documents. OMB should review requests within 10 days of submission.

Respondents: Example respondents include: Current or prospective service providers, training or T/TA providers, grantees, contractors, current and potential participants in ACF programs or similar comparison groups, experts in fields pertaining to ACF programs, key stakeholder groups involved in ACF projects and programs, individuals engaged in program re-design or demonstration development for evaluation, state or local government officials, or others involved in or prospectively involved in ACF programs.

ANNUAL BURDEN ESTIMATES

Instrument	Estimated total number of respondents	Number of responses per respondent	Average burden hours per response	Annual burden hours
Semi-Structured Discussions and Focus Groups	5,000	1	2	10,000

ANNUAL BURDEN ESTIMATES—Continued

Instrument	Estimated total number of respondents	Number of responses per respondent	Average burden hours per response	Annual burden hours
Interviews	2,500	1	1	2,500
Questionnaires/Surveys	2,500	1.5	.5	1,875
Templates and Open-ended Requests	650	1	10	6,500

Estimated Total Annual Burden Hours: 20,875.

Comments: The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Authority: Social Security Act, Sec 1110 [42 U.S.C. 1310].

John M. Sweet Jr.

ACF/OPRE Certifying Officer.

[FR Doc. 2020–22499 Filed 10–9–20; 8:45 am]

BILLING CODE 4184–79–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–N–1736]

Potential Approach for Ranking of Antimicrobial Drugs According to Their Importance in Human Medicine: A Risk Management Tool for Antimicrobial New Animal Drugs; Public Meeting; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting; request for comments.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is hosting a virtual public meeting entitled ''Potential Approach for Ranking of Antimicrobial Drugs According to Their Importance in Human Medicine: A Risk Management Tool for Antimicrobial New Animal Drugs.'' The purpose of the meeting is to obtain early input from the public on a potential revised approach for considering the human medical importance of antimicrobial new animal drugs when assessing and managing the antimicrobial resistance risks associated with the use of antimicrobial drugs in animals. The Agency is seeking public input on a potential revised process for ranking antimicrobials according to their relative importance in human medicine, on the potential criteria for their ranking, and on the resulting ranked list of antimicrobial drugs. A concept paper describing this potential revised process will be made available for discussion at the public meeting and can be obtained at the website listed in section II of this notice.

DATES: The public meeting will be held on November 16, 2020. Submit either electronic or written comments on this topic by January 15, 2021. Further information regarding the meeting, including the time the meeting will start, the agenda, and how to register to attend the meeting, can be found at *https://www.fda.gov/animal-veterinary/workshops-conferences-meetings/fda-public-meeting-potential-approach-ranking-antimicrobial-drugs-according-their-importance-human.* See the **SUPPLEMENTARY INFORMATION** section for registration dates and information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before January 15, 2021. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of January 15, 2021. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- Mail/Hand Delivery/Courier (for written/paper submissions): Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked, and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2020–N–1736 for ''Potential Approach for Ranking of Antimicrobial Drugs of According to Their Importance in Human Medicine: A Risk Management Tool for Antimicrobial New Animal Drugs.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' be 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.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

Transcripts of the meeting will be available on the FDA website at: *https://www.fda.gov/animal-veterinary/workshops-conferences-meetings/fda-public-meeting-potential-approach-ranking-antimicrobial-drugs-according-their-importance-human* approximately 30 days after the meeting.

FOR FURTHER INFORMATION CONTACT: Kelly Covington, Center for Veterinary Medicine (HFV–6), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–402–5661, *Kelly.Covington@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Antimicrobial drugs have been used since the mid-20th century to control and cure infectious diseases in humans. Since their discovery, these drugs have prevented millions of human deaths worldwide, they have helped to promote animal health, and they have helped to provide an abundant and affordable supply of meat, milk, and eggs. Soon after antimicrobial drugs became widely available, scientists noted that their use could contribute to the emergence and selection of antimicrobial resistance in bacteria, thereby reducing the effectiveness of the antimicrobial drugs. To address the human health risks surrounding the use of antimicrobial new animal drugs, in 2003, FDA issued Guidance for Industry (GFI) #152, entitled ''Evaluating the Safety of Antimicrobial New Animal Drugs with Regard to their Microbiological Effects on Bacteria of Human Health Concern.'' [1] GFI #152 outlines a qualitative risk assessment methodology as a process for evaluating foodborne antimicrobial resistance concerns related to the use of antimicrobial drugs in food-producing animals. One component of the risk assessment is the consequence assessment, which considers the medical importance of an antimicrobial drug or drug class used in human medicine.

GFI #152 also contains an appendix, commonly referred to as ''Appendix A,'' in which FDA ranks antimicrobial drugs according to their relative importance to human medicine: ''critically important,'' ''highly important,'' or ''important.'' In GFI #152, FDA recommends that sponsors of antimicrobial new animal drugs refer to Appendix A to initially assess the importance of the antimicrobial drug or drug class in question to human medicine and base their consequence assessment conclusion on this human medical importance ranking.

The current list of medically important antimicrobial drugs in Appendix A reflects FDA's thinking at the time of publication, in 2003.

As noted in GFI #152, the development of new antimicrobial drugs for human therapy, the emergence or re-emergence of diseases in humans, and changes in prescribing practices, are some factors that may cause the human medical importance rankings to change over time. It was envisioned at the time of publication of GFI #152 that the Agency would reassess the rankings provided in Appendix A periodically to confirm that the rankings are consistent with contemporary practices and needs.

Given the considerable advances in science that have taken place since 2003, new relevant information has become available. The purpose of the public meeting is to obtain early input on a potential revised process for ranking antimicrobial drugs according to their relative importance in human medicine, as well as potential criteria for their ranking.

II. Topics for Discussion at the Public Meeting

We will publish the public meeting agenda and related information, including a concept paper describing a potential revised ranking process, at *https://www.fda.gov/animal-veterinary/workshops-conferences-meetings/fda-public-meeting-potential-approach-ranking-antimicrobial-drugs-according-their-importance-human.* We do not intend for this meeting to produce any decisions or new positions on specific regulatory questions. However, we expect this meeting to be an important step in our efforts to gather information and public feedback on a potential revised process for ranking antimicrobial drugs according to their relative importance in human medicine, on the criteria for their ranking, and on a ranked list of antimicrobial drugs.

We are specifically interested in receiving public comments on the following questions:

1. Are the criteria and the tier-based framework described in the potential revised process for ranking antimicrobial drugs according to their relative human medical importance clear, complete, and consistent?
2. What changes do you think are needed to the criteria or tiers, if any?
3. Have the potential criteria been applied correctly to the antimicrobial classes as reflected in the resulting rankings?
4. Are there other issues we should consider regarding these criteria and the tier-based framework?
5. How often and by what process should FDA update the ranking of medically important antimicrobials?

III. Participating in the Public Meeting

Registration: Persons interested in attending this public meeting must register no later than 11:59 p.m. Eastern Time on November 12, 2020, by emailing complete contact information for each attendee, including name, title, affiliation, address, email, telephone number, and if you need reasonable accommodations due to a disability (*e.g.,* Closed Captioning) to Kelly Covington at *kelly.covington@fda.hhs.gov.* Early registration is recommended. Registrants will receive confirmation when their registration has been received and will be provided the webcast link.

Requests for Oral Presentations: During online registration you may indicate if you wish to make an oral presentation during the public meeting. To facilitate agenda development,

[1] *https://www.fda.gov/media/69949/download.*

registrants requesting to present will be contacted to provide information regarding which topics they intend to address and the title of their presentation. We will do our best to accommodate requests to make an oral presentation. Individuals and organizations with common interests are urged to consolidate or coordinate their presentations, and request time for a joint presentation, or submit requests for designated representatives to participate. All requests to make oral presentations must be received by October 23, 2020.

We will determine the amount of time allotted to each presenter and the approximate time each oral presentation is to begin, and we will notify participants by October 27, 2020. Selected presenters planning to use an electronic slide deck must submit an electronic copy of their PowerPoint presentation to Kelly Covington (see **FOR FURTHER INFORMATION CONTACT**) with the subject line ''Potential Approach for Ranking of Antimicrobial Drugs According to Their Importance in Human Medicine: A Risk Management Tool for Antimicrobial New Animal Drugs'' on or before November 9, 2020. If presenters choose not to use a slide deck, they are requested to submit a single slide with their name, affiliation, title of their presentation, and contact information. No commercial or promotional material will be permitted to be presented or distributed at the public meeting.

Transcripts: Please be advised that as soon as a transcript of the public meeting is available, it will be accessible at *https://www.regulations.gov.* It may also be viewed at the Dockets Management Staff (see **ADDRESSES**). A link to the transcript will also be available on the Agency's website at *https://www.fda.gov/animal-veterinary/workshops-conferences-meetings/fda-public-meeting-potential-approach-ranking-antimicrobial-drugs-according-their-importance-human.*

Dated: October 7, 2020.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2020–22581 Filed 10–9–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

[Cfda Number: 93.164]

Loan Repayment Program for Repayment of Health Professions Educational Loans

Announcement Type: Initial

Key Dates: February 15, 2021, first award cycle deadline date; August 15, 2021, last award cycle deadline date; September 15, 2021, last award cycle deadline date for supplemental loan repayment program funds; September 30, 2021, entry on duty deadline date.

I. Funding Opportunity Description

The Indian Health Service (IHS) estimated budget for fiscal year (FY) 2021 includes $34,800,000 for the IHS Loan Repayment Program (LRP) for health professional educational loans (undergraduate and graduate) in return for full-time clinical service as defined in the IHS LRP policy at *https://www.ihs.gov/loanrepayment/policiesandprocedures/* in Indian health programs.

This notice is being published early to coincide with the recruitment activity of the IHS which competes with other Government and private health management organizations to employ qualified health professionals.

This program is authorized by the Indian Health Care Improvement Act (IHCIA) Section 108, codified at 25 U.S.C. 1616a.

II. Award Information

The estimated amount available is approximately $24,283,777 to support approximately 539 competing awards averaging $45,040 per award for a two-year contract. The estimated amount available is approximately $14,203,650 to support approximately 575 competing awards averaging $24,702 per award for a one-year extension. One-year contract extensions will receive priority consideration in any award cycle. Applicants selected for participation in the FY 2021 program cycle will be expected to begin their service period no later than September 30, 2021.

III. Eligibility Information

A. Eligible Applicants

Pursuant to 25 U.S.C. 1616a(b), to be eligible to participate in the LRP, an individual must:

(1) (A) Be enrolled—

(i) In a course of study or program in an accredited institution, as determined by the Secretary, within any State and be scheduled to complete such course of study in the same year such individual applies to participate in such program; or

(ii) In an approved graduate training program in a health profession; or

(B) Have a degree in a health profession and a license to practice in a State; and

(2) (A) Be eligible for, or hold an appointment as a commissioned officer in the Regular Corps of the Public Health Service (PHS); or

(B) Be eligible for selection for service in the Regular Corps of the PHS; or

(C) Meet the professional standards for civil service employment in the IHS; or

(D) Be employed in an Indian health program without service obligation; and

(3) Submit to the Secretary an application for a contract to the LRP. The Secretary must approve the contract before the disbursement of loan repayments can be made to the participant. Participants will be required to fulfill their contract service agreements through full-time clinical practice at an Indian health program site determined by the Secretary. Loan repayment sites are characterized by physical, cultural, and professional isolation, and have histories of frequent staff turnover. Indian health program sites are annually prioritized within the Agency by discipline, based on need or vacancy. The IHS LRP's ranking system gives high site scores to those sites that are most in need of specific health professions. Awards are given to the applications that match the highest priorities until funds are no longer available.

Any individual who owes an obligation for health professional service to the Federal Government, a State, or other entity, is not eligible for the LRP unless the obligation will be completely satisfied before they begin service under this program.

25 U.S.C. 1616a authorizes the IHS LRP and provides in pertinent part as follows:

(a)(1) The Secretary, acting through the Service, shall establish a program to be known as the Indian Health Service Loan Repayment Program (hereinafter referred to as the Loan Repayment Program) in order to assure an adequate supply of trained health professionals necessary to maintain accreditation of, and provide health care services to Indians through, Indian health programs.

For the purposes of this program, the term ''Indian health program'' is defined in 25 U.S.C. 1616a(a)(2)(A), as follows:

(A) The term Indian health program means any health program or facility

funded, in whole or in part, by the Service for the benefit of Indians and administered—

(i) Directly by the Service;

(ii) By any Indian Tribe or Tribal or Indian organization pursuant to a contract under—

(I) The Indian Self-Determination Act, or

(II) Section 23 of the Act of April 30, 1908, (25 U.S.C. 47), popularly known as the Buy Indian Act; or

(iii) By an urban Indian organization pursuant to Title V of the Indian Health Care Improvement Act.

25 U.S.C. 1616a, authorizes the IHS to determine specific health professions for which IHS LRP contracts will be awarded. Annually, the Director, Division of Health Professions Support, sends a letter to the Director, Office of Clinical and Preventive Services, IHS Area Directors, Tribal health officials, and Urban Indian health programs directors to request a list of positions for which there is a need or vacancy. The list of priority health professions that follows is based upon the needs of the IHS as well as upon the needs of American Indians and Alaska Natives.

(a) Medicine—Allopathic and Osteopathic doctorate degrees.

(b) Nursing—Associate Degree in Nursing (ADN) (Clinical nurses only).

(c) Nursing—Bachelor of Science (BSN) (Clinical nurses only).

(d) Nursing (NP, DNP)—Nurse Practitioner/Advanced Practice Nurse in Family Practice, Psychiatry, Geriatric, Women's Health, Pediatric Nursing.

(e) Nursing—Certified Nurse Midwife (CNM).

(f) Certified Registered Nurse Anesthetist (CRNA).

(g) Physician Assistant (Certified).

(h) Dentistry—DDS or DMD degrees.

(i) Dental Hygiene.

(j) Social Work—Independent Licensed Master's degree.

(k) Counseling—Master's degree.

(l) Clinical Psychology—Ph.D. or PsyD.

(m) Counseling Psychology—Ph.D.

(n) Optometry—OD.

(o) Pharmacy—PharmD.

(p) Podiatry—DPM.

(q) Physical/Occupational/Speech Language Therapy or Audiology—MS, Doctoral.

(r) Registered Dietician—BS.

(s) Clinical Laboratory Science—BS.

(t) Diagnostic Radiology Technology, Ultrasonography, and Respiratory Therapy: Associate and B.S.

(u) Environmental Health (Sanitarian): BS and Master's level.

(v) Engineering (Environmental): BS and MS (Engineers must provide environmental engineering services to be eligible.).

(w) Chiropractor: Licensed.

(x) Acupuncturist: Licensed.

B. Cost Sharing or Matching

Not applicable.

C. Other Requirements

Interested individuals are reminded that the list of eligible health and allied health professions is effective for applicants for FY 2021. These priorities will remain in effect until superseded.

IV. Application and Submission Information

A. Content and Form of Application Submission

Each applicant will be responsible for submitting a complete application. Go to *http://www.ihs.gov/loanrepayment* for more information on how to apply electronically. The application will be considered complete if the following documents are included:

- Employment Verification—Documentation of your employment with an Indian health program as applicable:
- Commissioned Corps orders, Tribal employment documentation or offer letter, or Notification of Personnel Action (SF–50)—For current Federal employees.
- License to Practice—A photocopy of your current, non-temporary, full and unrestricted license to practice (issued by any State, Washington, DC, or Puerto Rico).
- Loan Documentation—A copy of all current statements related to the loans submitted as part of the LRP application.
- Transcripts—Transcripts do not need to be official.
- If applicable, if you are a member of a federally recognized Tribe or an Alaska Native (recognized by the Secretary of the Interior), provide a certification of Tribal enrollment by the Secretary of the Interior, acting through the Bureau of Indian Affairs (BIA) (Certification: Form BIA—4432 Category A—Members of federally Recognized Indian Tribes, Bands or Communities or Category D—Alaska Native).

B. Submission Dates and Address

Applications for the FY 2021 LRP will be accepted and evaluated monthly beginning February 15, 2021, and will continue to be accepted each month thereafter until all funds are exhausted for FY 2021 awards. Subsequent monthly deadline dates are scheduled for the fifteenth of each month until August 15, 2021.

Applications shall be considered as meeting the deadline if they are either:

(1) Received on or before the deadline date; or

(2) Received after the deadline date, but with a legible postmark dated on or before the deadline date. (Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks are not acceptable as proof of timely mailing).

Applications submitted after the monthly closing date will be held for consideration in the next monthly funding cycle. Applicants who do not receive funding by September 30, 2020, will be notified in writing. Application documents should be sent to: IHS Loan Repayment Program, 5600 Fishers Lane, Mail Stop: OHR (11E53A), Rockville, Maryland 20857.

C. Intergovernmental Review

This program is not subject to review under Executive Order 12372.

D. Funding Restrictions

Not applicable.

E. Other Submission Requirements

New applicants are responsible for using the online application. Applicants requesting a contract extension must do so in writing by February 15, 2021, to ensure the highest possibility of being funded a contract extension.

V. Application Review Information

A. Criteria

The IHS will utilize the Health Professional Shortage Area (HPSA) score developed by the Health Resources and Services Administration for each Indian health program for which there is a need or vacancy. At each Indian health facility, the HPSA score for mental health will be utilized for all behavioral health professions, the HPSA score for dental health will be utilized for all dentistry and dental hygiene health professions, and the HPSA score for primary care will be used for all other approved health professions.

In determining applications to be approved and contracts to accept, the IHS will give priority to applications made by American Indians and Alaska Natives and to individuals recruited through the efforts of Indian Tribes or Tribal or Indian organizations.

B. Review and Selection Process

Loan repayment awards will be made only to those individuals serving at facilities with have a site score of 17 or above through March 1, 2021, if funding is available.

One or all of the following factors may be applicable to an applicant, and the applicant who has the most of these factors, all other criteria being equal, will be selected.

(1) An applicant's length of current employment in the IHS, Tribal, or Urban program.

(2) Availability for service earlier than other applicants (first come, first served).

(3) Date the individual's application was received.

C. Anticipated Announcement and Award Dates

Not applicable.

VI. Award Administration Information

A. Award Notices

Notice of awards will be mailed on the last working day of each month. Once the applicant is approved for participation in the LRP, the applicant will receive confirmation of his/her loan repayment award and the duty site at which he/she will serve his/her loan repayment obligation.

B. Administrative and National Policy Requirements

Applicants may sign contractual agreements with the Secretary for two years. The IHS may repay all, or a portion, of the applicant's health profession educational loans (undergraduate and graduate) for tuition expenses and reasonable educational and living expenses in amounts up to $20,000 per year for each year of contracted service. Payments will be made annually to the participant for the purpose of repaying his/her outstanding health profession educational loans. Payment of health profession education loans will be made to the participant within 120 days, from the date the contract becomes effective. The effective date of the contract is calculated from the date it is signed by the Secretary or his/her delegate, or the IHS, Tribal, Urban, or Buy Indian health center entry-on-duty date, whichever is more recent.

In addition to the loan payment, participants are provided tax assistance payments in an amount not less than 20 percent and not more than 39 percent of the participant's total amount of loan repayments made for the taxable year involved. The loan repayments and the tax assistance payments are taxable income and will be reported to the Internal Revenue Service (IRS). The tax assistance payment will be paid to the IRS directly on the participant's behalf. LRP award recipients should be aware that the IRS may place them in a higher tax bracket than they would otherwise have been prior to their award.

C. Contract Extensions

Any individual who enters this program and satisfactorily completes his or her obligated period of service may apply to extend his/her contract on a year-by-year basis, as determined by the IHS. Participants extending their contracts may receive up to the maximum amount of $20,000 per year plus an additional 20 percent for Federal withholding.

VII. Agency Contact

Please address inquiries to Ms. Jacqueline K. Santiago, Chief, IHS Loan Repayment Program, 5600 Fishers Lane, Mail Stop: OHR (11E53A), Rockville, Maryland 20857, Telephone: 301/443–3396 [between 8:00 a.m. and 5:00 p.m. (Eastern Standard Time) Monday through Friday, except Federal holidays].

VIII. Other Information

Indian Health Service area offices and service units that are financially able are authorized to provide additional funding to make awards to applicants in the LRP, but not to exceed the maximum allowable amount authorized by statute per year, plus tax assistance. All additional funding must be made in accordance with the priority system outlined below. Health professions given priority for selection above the $20,000 threshold are those identified as meeting the criteria in 25 U.S.C. 1616a(g)(2)(A), which provides that the Secretary shall consider the extent to which each such determination:

(i) Affects the ability of the Secretary to maximize the number of contracts that can be provided under the LRP from the amounts appropriated for such contracts;

(ii) Provides an incentive to serve in Indian health programs with the greatest shortages of health professionals; and

(iii) Provides an incentive with respect to the health professional involved remaining in an Indian health program with such a health professional shortage, and continuing to provide primary health services, after the completion of the period of obligated service under the LRP.

Contracts may be awarded to those who are available for service no later than September 30, 2021, and must be in compliance with 25 U.S.C. 1616a. In order to ensure compliance with the statutes, area offices or service units providing additional funding under this section are responsible for notifying the LRP of such payments before funding is offered to the LRP participant.

Should an IHS area office contribute to the LRP, those funds will be used for only those sites located in that area. Those sites will retain their relative ranking from their Health Professions Shortage Areas (HPSA) scores. For example, the Albuquerque Area Office identifies supplemental monies for dentists. Only the dental positions within the Albuquerque Area will be funded with the supplemental monies consistent with the HPSA scores within that area. Should an IHS service unit contribute to the LRP, those funds will be used for only those sites located in that service unit. Those sites will retain their relative ranking from their HPSA scores.

Michael D. Weahkee,

Assistant Surgeon General, RADM, U.S. Public Health Service, Director, Indian Health Service.

[FR Doc. 2020–22649 Filed 10–9–20; 8:45 am]

BILLING CODE 4165–16–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/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Pediatric Critical Care Research Network.

Date: December 4, 2020.

Time: 11:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Child Health and Human Development, 6710B Rockledge Drive, Bethesda, MD 20892 (Video Assisted Meeting).

Contact Person: Joanna Kubler-Kielb, Ph.D., Scientific Review Officer, Scientific Review Branch, Eunice Kennedy Shriver National Institute of Child Health and

Human Development, NIH, 6710B Rockledge Drive, Rm. 2137B, Bethesda, MD 20817, 301–435–6916, *kielbj@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.865, Research for Mothers and Children, National Institutes of Health, HHS)

Dated: October 6, 2020.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–22495 Filed 10–9–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA–OD–19–022: Secondary Analyses of Existing Datasets of Tobacco Use and Health.

Date: November 4, 2020.

Time: 10:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Steven Michael Frenk, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 3141, Bethesda, MD 20892, (301) 480–8665, *frenksm@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–17–144: Limited Competition: National Primate Research Centers (P51).

Date: November 4–6, 2020.

Time: 2:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Biao Tian, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3089B, MSC 7848 Bethesda, MD 20892, (301) 402–4411, *tianbi@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR18–822: Tuberculosis Meningitis.

Date: November 5–6, 2020.

Time: 10:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Fouad A. El-Zaatari, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3186, MSC 7808, Bethesda, MD 20892, (301) 435–1149, *elzaataf@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–20–114: High-End Instrumentation (HEI) Grant Program.

Date: November 6, 2020.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Yordan Valtchov Kostov, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5126, Bethesda, MD 20817, 301–867–5309, *kostovyv@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Neuroscience Assay, Diagnostics and Animal Model Development.

Date: November 9–10, 2020.

Time: 8:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Joseph G. Rudolph, Ph.D., Chief and Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5186, MSC 7844, Bethesda, MD 20892, 301–408–9098, *josephru@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Fellowships: Oncology.

Date: November 9–10, 2020.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Jian Cao, MD, Scientific Review Officer, Center for Scientific Review, 6701 Rockledge Drive, Rm. 4196, Bethesda, MD 20892, (301) 827–5902, *caojn@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Cell Biology, Developmental Biology, and Bioengineering.

Date: November 9–10, 2020.

Time: 9:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Alexander Gubin, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4196, MSC 7812, Bethesda, MD 20892, 301–435–2902, *gubina@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Cardiovascular and Surgical Devices.

Date: November 9–10, 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: Jan Li, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5106, Bethesda, MD 20892, 301.402.9607, *Jan.Li@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Infectious Diseases, Microbiology, and Immunology Research Enhancement Review.

Date: November 9, 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: Liangbiao Zheng, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3202, MSC 7808, Bethesda, MD 20892, 301–996–5819, *zhengli@csr.nih.gov.*

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group; Virology—B Study Section.

Date: November 9–10, 2020.

Time: 9:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Neerja Kaushik-Basu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3198, MSC 7808, Bethesda, MD 20892, (301)435–1742, *kaushikbasun@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Cancer Biology.

Date: November 9, 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: Charles Morrow, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6202, MSC 7804, Bethesda, MD 20892, 301–451–4467, *morrowcs@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–19–367: Maximizing Investigators' Research Award (R35—Clinical Trial Optional).

Date: November 9–10, 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: Jonathan Arias, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7840 Bethesda, MD 20892, 301–435–2406, *ariasj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Health Services Organization and Delivery.
Date: November 9, 2020.
Time: 12:00 p.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Lauren Fordyce, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3214, Bethesda, MD 20892, (301) 827–8269, *fordycelm@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 6, 2020.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–22523 Filed 10–9–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Investigator Initiated Program Project Applications (P01).
Date: November 4, 2020.
Time: 1:00 p.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G42B, Rockville, MD 20892 (Virtual Meeting).
Contact Person: Louis A. Rosenthal, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health, National Institute of Allergy and Infectious Diseases, 5601 Fishers Lane, Room 3G42B, Bethesda, MD 20892–9834, (240) 669–5070, *rosenthalla@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: October 6, 2020.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–22524 Filed 10–9–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Novel and Exceptional Technology and 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: Novel and Exceptional Technology and Research Advisory Committee.
Date: November 9, 2020.
Time: 10:00 a.m. to 5:15 p.m.
Agenda: The Novel and Exceptional Technology and Research Advisory Committee (NExTRAC) will include a workshop to examine existing biosafety guidance for contained gene drive research and to discuss potential conditions under which NIH could consider supporting field release of gene drive-modified organisms.
Place: National Institutes of Health, 6705 Rockledge Drive, Suite 750, Bethesda, MD 20892, (Virtual Meeting—Link for the meeting will be available at *https://osp.od.nih.gov/biotechnology/main-nextrac/#meetings*).

Name of Committee: Novel and Exceptional Technology and Research Advisory Committee.
Date: November 10, 2020.
Time: 10:00 a.m. to 5:15 p.m.
Agenda: The Novel and Exceptional Technology and Research Advisory Committee (NExTRAC) will include (1) a workshop to examine existing biosafety guidance for contained gene drive research and to discuss potential conditions under which NIH could consider supporting field release of gene drive-modified organisms, and (2) discussion of a draft report conceptualizing a framework for NExTRAC deliberation of issues surrounding emerging biotechnologies.
Place: National Institutes of Health, 6705 Rockledge Drive, Suite 750, Bethesda, MD 20892, (Virtual Meeting—Link for the meeting will be available at *https://osp.od.nih.gov/biotechnology/main-nextrac/#meetings*).
Contact Person: Kinshasa Letts, Office of Science Policy, National Institutes of Health, 6705 Rockledge Drive, Suite 750, Bethesda, MD 20892, 301–496–9838, *SciencePolicy@od.nih.gov.*

To sign up to make an oral public comment, please submit your name, affiliation, and short description of the oral comment to the Contact Person listed above by 5:00 p.m. EST, November 3, 2020. Sign up will be restricted to one sign up per email and oral comments will be limited to two minutes. Once all time slots are filled, only written comments will be accepted. Any interested person may file written comments by forwarding their statement to the Contact Person listed on this notice. The Contact Person should receive any written statements by 5:00 p.m. EST, November 5, 2020.

Information is also available on the NExTRAC web page: *https://osp.od.nih.gov/biotechnology/main-nextrac/#meetings,* where an agenda and any additional information for the meeting will be posted when available. The Draft Report of the Working Group to Establish a NExTRAC Framework will be posted prior to the meeting. Please check this website for updates.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: October 7, 2020.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–22600 Filed 10–9–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Genetic Analysis of Non-human Animal Models to Understand the Genomic Architecture of Substance Use Disorders and Addictive Behaviors (U01 Clinical Trial Not Allowed).

Date: November 5, 2020.

Time: 12:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute on Drug Abuse, 301 North Stonestreet Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Ipolia R. Ramadan, Ph.D., Scientific Review Officer, Office of Extramural Policy and Review, Division of Extramural Research, National Institute on Drug Abuse, NIH, 3 WFN 9th Floor, MSC 6021, 301 North Stonestreet Avenue, Bethesda, MD 20892, (301) 827–4471, *ramadanir@mail.nih.gov.*

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Advancing Exceptional Research on HIV/AIDS and Substance Abuse (R01—Clinical Trial Optional).

Date: November 10, 2020.

Time: 12:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute on Drug Abuse, 301 North Stonestreet Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Trinh T. Tran, Ph.D., Scientific Review Officer, Office of Extramural Policy and Review, Division of Extramural Research, National Institute on Drug Abuse, NIH, 3 WFN 9th Floor, MSC 6021, 301 North Stonestreet Avenue, Bethesda, MD 20892, (301) 827–5843, *trinh.tran@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: October 6, 2020.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–22525 Filed 10–9–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Global Infectious Disease Research Administration Development Award for Low- and Middle-Income Country Institutions (G11-Clinical Trial Not Allowed).

Date: October 30, 2020.

Time: 10:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G62 Rockville, MD 20892 (Telephone Conference Call).

Contact Person: Eleazar Cohen, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G62, Bethesda, MD 20892, (240) 669–5081, *ecohen@niaid.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: October 7, 2020.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–22597 Filed 10–9–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Partnerships for Countermeasures Against Select Pathogens (R01 Clinical Trials Not Allowed).

Date: November 9–10, 2020.

Time: 9:30 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3F21, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: Maryam Feili-Hariri, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3F21, Rockville, MD 20852, 240–669–5026, *haririmf@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: October 7, 2020.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–22596 Filed 10–9–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Heart, Lung, and Blood Initial Review Group; NHLBI Mentored Transition to Independence Review Committee.

Date: November 5–6, 2020.

Time: 9:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge I, 6705 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Giuseppe Pintucci, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, National Institutes of Health, 6705 Rockledge Drive, Room 205–H, Bethesda, MD 20892, (301) 827–7969, *Pintuccig@nhlbi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: October 7, 2020.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–22595 Filed 10–9–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; NSD–K Clinical Trials and Comparative Effectiveness Studies.

Date: November 2–3, 2020.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, NSC Building, 6001 Executive Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Shanta Rajaram, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH, NSC, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892, (301) 435–6033, *rajarams@mail.nih.gov.*

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Blueprint Neurotherapeutics Network (BPN): Small Molecule Drug Discovery and Development for Disorders of the Nervous System.

Date: November 9, 2020.

Time: 9:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate cooperative agreement applications.

Place: National Institutes of Health, NSC Building, 6001 Executive Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Joel A. Saydoff, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH, NSC, 6001 Executive Blvd., Room 3205, MSC 9529, Bethesda, MD 20892, (301) 496–9223, *joel.saydoff@nih.gov.*

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Clinical Trial Readiness for Rare Neurological and Neuromuscular Diseases.

Date: November 19, 2020.

Time: 3:30 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, NSC Building, 6001 Executive Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Ana Olariu, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH, NSC, 6001 Executive Blvd., Room 3208, MSC 9529, Bethesda, MD 20892, (301) 496–9223, *ana.olariu@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: October 7, 2020.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–22599 Filed 10–9–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of meetings of the Board of Scientific Counselors for Basic Sciences, National Cancer Institute and the Board of Scientific Counselors for Clinical Sciences and Epidemiology, National Cancer Institute.

The meetings will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Cancer Institute, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors for Clinical Sciences and Epidemiology, National Cancer Institute.

Date: November 9, 2020.

Time: 11:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate personnel qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Shady Grove, 9609 Medical Center Drive, Conference Room 2E908, Rockville, MD 20850 (Virtual Meeting).

Contact Person: Brian E. Wojcik, Ph.D., Executive Secretary, Institute Review Office, Office of the Director, National Cancer Institute, National Institutes of Health, 9609 Medical Center Drive, Room 3W414, Rockville, MD 20850, 240–276–5660, *wojcikb@mail.nih.gov.*

Name of Committee: Board of Scientific Counselors for Basic Sciences, National Cancer Institute.

Date: November 9, 2020.

Time: 11:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate personnel qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Shady Grove, 9609 Medical Center Drive, Conference Room 2E908, Rockville, MD 20850 (Virtual Meeting).

Contact Person: Mehrdad M. Tondravi, Ph.D., Chief, Institute Review Office, Office

of the Director, National Cancer Institute, National Institutes of Health, 9609 Medical Center Drive, Room 3W302, Rockville, MD 20852, 240–276–5664, *tondravim@mail.nih.gov.*

(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: October 7, 2020.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–22594 Filed 10–9–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; NIDDK Cooperative Centers of Excellence in Hematology (U54).

Date: November 17–19, 2020.

Time: 10:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate cooperative agreement applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Ann A Jerkins, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7119, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–2242, *jerkinsa@niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: October 7, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–22642 Filed 10–9–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Biomaterials, Delivery and Nanotechnology.

Date: November 5–6, 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: Nitsa Rosenzweig, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4152, MSC 7760, Bethesda, MD 20892, (301) 404–7419, *rosenzweign@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowship: Immunology.

Date: November 5–6, 2020.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Audrey O. Lau, MPH, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, RM 4210, Bethesda, MD 20852–9834, (301) 594–4088, *audrey.lau@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Technology Assisted Clinical Informatics.

Date: November 5–6, 2020.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Chittari V. Shivakumar, Ph.D., Scientific Review Officer, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, Bethesda, MD 20892, 301–408–9098, *chittari.shivakumar@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Neuroscience AREA Grant Applications.

Date: November 5–6, 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: Richard D. Crosland, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4190, MSC 7850, Bethesda, MD 20892, 301–694–7084, *crosland@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Sensory and Motor Neuroscience, Cognition and Perception.

Date: November 5–6, 2020.

Time: 10:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Cibu P. Thomas, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, Bethesda, MD 20894, 301–435–1042, *thomascp@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Biochemistry and Biophysics.

Date: November 6, 2020.

Time: 11:00 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: James W. Mack, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4154, MSC 7806, Bethesda, MD 20892, (301) 435–2037, *mackj2@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Pathobiology of Alzheimer's Disease.

Date: November 6, 2020.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Aleksey Gregory Kazantsev, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive,

Room 5201, MSC 7846, Bethesda, MD 20817, (301) 435–1042, *aleksey.kazantsev@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; R15 AREA and REAP: Musculoskeletal, Oral, Skin, Rheumatology and Rehabilitation Sciences.

Date: November 6, 2020.

Time: 12:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Chi-Wing Chow, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4110, Bethesda, MD 20892, 301–402–3912, *chowc2@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 6, 2020.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–22522 Filed 10–9–20; 8:45 am]

BILLING CODE 4140–01–P

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Notice of Issuance of the Department of the Army Program Comment for Inter-War Era Historic Housing, Associated Buildings and Structures, and Landscape Features (1919–1940)

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice of issuance of the Department of the Army Program Comment for Inter-War Era Historic Housing, Associated Buildings and Structures, and Landscape Features (1919–1940).

SUMMARY: The Advisory Council on Historic Preservation has issued a program comment for the U.S. Department of the Army that sets forth the way in which the Army complies with Section 106 of the National Historic Preservation Act for its inventory of Inter-War Era historic housing management actions, including: Maintenance, repair, rehabilitation, renovation, abatement, mothballing, demolition, replacement construction, new construction, lease and conveyance.

DATES: The Program Comment went into effect on September 4, 2020.

ADDRESSES: Address any questions concerning the Program Comment to Rachael Mangum, Office of Federal Agency Programs, Advisory Council on Historic Preservation, 401 F Street NW, Suite 308, Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Rachael Mangum, (202) 517–0214, *rmangum@achp.gov.*

SUPPLEMENTARY INFORMATION: Section 106 of the National Historic Preservation Act, 54 U.S.C. 306108 (Section 106), requires federal agencies to consider the effects of projects they carry out, license, or assist (undertakings) on historic properties and to provide the Advisory Council on Historic Preservation (ACHP) a reasonable opportunity to comment with regard to such undertakings. The ACHP has issued the regulations that set forth the process through which federal agencies comply with these duties. Those regulations are codified under 36 CFR part 800 (Section 106 regulations).

Under Section 800.14(e) of those regulations, agencies can request the ACHP to provide a ''program comment'' on a particular category of undertakings in lieu of conducting individual reviews of each individual undertaking under such category, as set forth in 36 CFR 800.4 through 800.7. An agency can meet its Section 106 responsibilities with regard to the effects of those undertakings by taking into account an applicable program comment and following the steps set forth in that comment. The U.S. Department of the Army (Army) sought a program comment for its management actions related to its inventory of approximately 3,200 Inter-War Era historic housing units. Actions could include maintenance, repair, rehabilitation, renovation, abatement, mothballing, demolition, replacement construction, new construction, lease and conveyance. These actions present a potential for adverse effects to historic properties.

The ACHP issued the Program Comment for Army Inter-War Era Housing, Associated Buildings and Structures, and Landscape Features (1919–1940) (Program Comment) on September 4, 2020. The Section 106 regulations require that such program comments be published in the **Federal Register**.

I. Need for the Program Comment

The need for the Program Comment is based on the Army's obligation to provide quality housing to its Soldiers and their families. The Army has approximately 470,000 Active Duty Soldiers with 650,000 family members, 400,000 of which are children. Housing and associated living conditions are critical factors for military family resiliency in the face of the extraordinary challenges and stressors Soldiers and their families must cope with in their daily lives.

There are health and safety risks to military families living in historic housing that result from hazards such as lead-based paint and asbestos commonly found in historic building materials. The Army must also maintain and improve the living conditions that contribute to the quality of life owed to military families who occupy historic housing. The high costs associated with the use of historic building materials and in-kind building materials and specialized craftsman associated with using those materials have proven to be financially limiting factors to the Army's ability to fully implement planned improvements to historic housing.

Also, due to military mission needs, a military family may be required to move every two or three years. The Army attempts to minimize the impact of these moves on families and school-aged children to the extent possible by its efforts to plan many of the thousands of annual moves during the summer months, when schools are not in session. Many, but not all, required maintenance, repairs, and improvements to all Army housing, both historic and non-historic, occur during this short transition in occupancy during the summer months. While extensive prior historic preservation planning and actions to support these moves occur, the Section 106 project-by-project review process under existing installation-level Programmatic Agreements (PAs) contributes to delays in completing historic housing maintenance, repairs, and improvements needed for the transition in occupancy. Those delays directly impact the ability of reassigned military families to move-in and occupy historic housing.

To provide quality housing for military families, the Army must address the health and safety risks from historic building materials, associated costs, compliance process time, and must also implement actions that address and improve the material living conditions of historic housing to ensure Soldiers and their families have the quality of life they deserve.

II. Army Inter-War Era Housing and the Program Comment

The Army has the largest housing mission in the federal government, managing over 100,000 total housing units for Soldiers and their families. Of this total, the Army has approximately 31,000 historic housing units. Over

3,200 of these historic housing units are from the Inter-War Era (1919–1940). The Army's inventory of Inter-War Era historic housing was, in general, constructed following standardized plans developed by the Army Quartermaster Corps, and is subject to frequent and recurring undertakings. The intent of this Program Comment is to address the Army's National Historic Preservation Act (NHPA) compliance requirements by establishing procedures for management of the Army's nation-wide inventory of over 3,200 Inter-War Era housing units that balances historic preservation requirements with the Army's responsibility to provide the thousands of military families who live in this historic housing with the quality of life, health, and safety they require. The Army acknowledges that its Inter-War Era housing units are historic properties for the purposes of the Program Comment. The Program Comment addresses a category of frequent and repetitive undertakings occurring within this large class of similar historic properties. The category of undertakings addressed by the Program Comment is management actions: Maintenance, repair, rehabilitation, renovation, abatement, mothballing, demolition, replacement construction, new construction, lease and conveyance. These actions present a potential for adverse effects to historic properties.

The Program Comment's treatment measures for Army Inter-War Era housing address the effects of Army management actions through extensive historical research, documentation, and recordation of the properties, establishment of preservation planning documents to guide management actions, and the implementation of new procedures and lifecycle analyses. The purpose is to ensure the historic and architectural character of Inter-War Era Housing, associated buildings and structures, and landscape features (Inter-War Era housing) is maintained and any unavoidable adverse effects resulting from management actions are minimized or otherwise mitigated.

Treatment measures in the Section 106 process often address the effects of undertakings on historic properties through documentation and recordation as part of the historic preservation process. The treatment measures include: extensive existing documentation, research to further develop the Army Inter-War Era housing historic context, development and implementation of *Design Guidelines for Army Inter-War Era Historic Housing (1919–1940)* (Design Guidelines), development and implementation of a *Building Materials Catalog for Army Inter-War Era Historic Housing (1919–1940)* (Building Materials Catalog), an Army Federal Preservation Officer (FPO) NHPA policy statement for Program Comment implementation, development of public information and use of social media for public educational materials, lifecycle tracking of building materials data, and treatment measure monitoring and reporting. In the case of management actions involving removal and replacement of historic building materials or demolition, the documentation records and preserves information about historic housing. The Program Comment, Design Guidelines, and Building Materials Catalog also identify materials, set criteria, and establish step-by-step procedures for consideration and selection of appropriate building materials.

Over 95 percent of Army Inter-War Era housing is managed under housing privatization partnerships that the Army has entered into with various property management entities. While day-to-day housing operations may occur under these partnerships, the Army remains ultimately responsible for compliance with the NHPA for its inventory of historic housing.

III. Building Materials and Methods for Preservation of Inter-War Era Housing

The Army will implement its management actions to address the interconnected issues of health and safety, costs, process, and the material living conditions of Inter-War Era historic housing using appropriate building materials and methods that will maintain the historic and architectural character of Inter-War Era housing, associated buildings and structures, and landscape features. The Army will implement its management actions using historic building materials, in-kind building materials, and imitative substitute building materials. *Historic building materials* means building materials that are 50 years old and older. *In-kind building materials* means new building materials that are identical to historic building materials in all possible respects including their composition, design, color, texture, and other physical and visual properties. The term *imitative substitute building materials* means modern, industry standard, natural, composite, and synthetic building materials that simulate the appearance of and substitute for more costly historic building materials. These materials do not necessarily meet the *Secretary of the Interior's Standards for the Treatment of Historic Properties.*

Planning for the selection and use of appropriate building materials on historic housing is critical. Specific overarching planning criteria are established in the Program Comment for the selection of appropriate building materials that consider the need to maintain the historic and architectural character of Inter-War Era housing in a balanced priority with health, safety, and quality of life considerations for military families. To further ensure that proper planning for and use of appropriate building materials occurs, the Army developed two preservation planning documents associated with the Program Comment: The Design Guidelines, and the Building Materials Catalog. These two preservation planning documents are incorporated into the Program Comment as Appendices A and B, respectively. These documents can be accessed at: *https://www.denix.osd.mil/army-pchh/home/.*

The methods for selection and use of appropriate building materials is set forth in the Program Comment, Design Guidelines, and the Building Materials Catalog. The primary focus of these documents is on preservation of the historic and architectural design integrity of the housing, associated buildings and structures, and landscape features. The Design Guidelines provide specific information regarding Inter-War Era housing architectural styles and identify the overall character-defining features and design elements associated with the specific Inter-War Era architectural styles. The Guidelines also provide methods and approaches to Inter-War Era housing routine maintenance, emergency repairs and disasters, rehabilitation, renovation, new additions, new construction, replacement construction, and improvements to windows and doors, entrances, porches and details, roofs, foundations and walls, interiors, and interior structural systems. The Guidelines also address mothballing and layaway of housing and provide guidelines for demolition; historic designed landscapes and features, historic districts containing Inter-War Era housing, circulation systems and paving patterns, and associated buildings and structures; and actions related to force protection requirements.

The Building Materials Catalog is used in concert with the Design Guidelines. The Building Materials Catalog provides additional specificity on building materials and their use. The Building Materials Catalog establishes the methodology for selecting specific building materials that will maintain the historic and architectural character of

the housing, associated buildings and structures, and landscape features. Catalog entries are provided for major components of the house design. Design considerations for each catalog entry are derived from the design fundamentals of scale, mass, proportion, and materials. This provides the guidance for selection of appropriate materials and component designs that factor location, type, size, finish and maintenance into their selection. Focus is on appropriate design, applicable materials, and performance characteristics. Emphasis is placed on retention of the housing design integrity. It is intended that by following the Design Guidelines and the Building Materials Catalog, the management actions implemented under the Program Comment will preserve the historic and architectural character of Inter-War Era housing.

IV. Consultation on the Program Comment

The Army sought participation from the public, State Historic Preservation Officers (SHPOs), Indian tribes, Native Hawaiian Organizations (NHOs), and other interested parties in the Program Comment's development prior to formally submitting its request for a Program Comment to the ACHP. The Army published a Notification of Intent in the **Federal Register** and issued a nation-wide media release on October 28, 2019, giving the public a 45-day period to submit comments. To host technical and administrative documents, consultation conference information, and status reports on the Program Comment development, the Army also activated a website in October 2019 at *https://www.denix.osd.mil/army-pchh/home/*. This website will remain active for the 35-year duration of the Program Comment. In September and October 2019, the Army conducted consultation meetings with the National Conference of State Historic Preservation Officers (NCSHPO), the National Association of Tribal Historic Preservation Officers (NATHPO), and the National Trust for Historic Preservation (NTHP). These meetings solicited input to develop a Program Comment that considered the consulting parties' perspectives. In November 2019, the Army provided a briefing to the ACHP membership regarding the Program Comment's purpose, intent, process, and schedule in November 2019.

In October 2019, the Army published an invitation for consultation on its website and invited over 900 individuals representing key stakeholder organizations including SHPOs, Tribal Historic Preservation Offices (THPOs), Indian tribes, and NHOs, to a series of monthly consultation conference calls from November 2019 through June 2020 to provide for the participation by all interested parties and the opportunity to inform all aspects of the Program Comment and related documents. Call topics included Army privatized housing operations, undertaking and property types, treatment measures and effects, housing design guidelines, demolition, properties of particular importance, public education materials, treatment measure monitoring and reporting, and a building materials catalog. Drafts of the Design Guidelines and Building Materials Catalog were provided to consulting parties for review and comment. All comments and Army responses are included in the Army's Administrative Record for the Program Comment provided to the ACHP and available on the Program Comment website.

Major outcomes of this consultation were the development of a treatment measure for the Army to track the lifecycle of select in-kind and imitative substitute building materials on over 300 housing units during the next 35 years; the development of robust demolition procedures, including an opportunity for relevant consulting party and ACHP review of each demolition proposal as well as Army headquarters level decisions for all proposed demolitions; and guidelines specifying that new and replacement construction will be compatible with existing historic housing, and avoid obstructing views out from or in to any historic district(s). A further enhancement during this period of consultation was the removal of National Historic Landmarks (NHLs) from consideration under the Program Comment. Undertakings involving NHLs will continue to be handled on a case-by case basis.

In May 2020, the Army FPO provided a Program Comment update and status report to the ACHP membership. The status report identified consulting party concerns that arose during consultation and discussed how the Army had addressed those concerns.

During this period, the Army FPO also coordinated internally with commands and installation commanders and provided briefings at the Army world-wide Garrison Commander's Conference in November 2019 and at an Army Residential Communities Initiative (RCI) Partner Conference in February 2020.

On July 15, 2020, the Army submitted its formal request for a Program Comment to the ACHP, starting the ACHP's 45-day regulatory clock, which was originally set to end on August 31, 2020. The request included the Army's Section I. Overview of the Program Comment, portions of which are being used in this, and the two companion documents, the Design Guidelines (Appendix A) and the Building Materials Catalog (Appendix B). The full Section I of the Army's submittal to the ACHP is available on the Army's Program Comment website.

Following the Army's formal request, the ACHP carried out its own consultation. The ACHP hosted two consultation meetings with its members on July 22 and 23, 2020 to discuss the draft documents sent with the Army's formal request. Thirteen members or their representatives attended two meetings. The ACHP also conducted calls with SHPOs and NCSHPO on July 27, 28, and 31, 2020, and with Indian tribes and NHOs on July 30 and 31, 2020. Comments provided during the meetings were noted and any additional comments were requested by August 17, 2020.

ACHP created a web page to host the text of the Program Comment and appendices, highlighted it on its News web page and its Twitter and Facebook web pages, and sent a broadcast email announcing the posting of the Program Comment and availability for public review and comment. ACHP sent the email to Senior Policy Officials and Senior Policy Official Representatives (SPOs & SPO Reps), ACHP alumni, Federal Preservation Officers and Federal Preservation Officer Representatives (FPOs & FPO Reps), State Historic Preservation Officers (SHPOs), NTHP, National Preservation Organizations, Preservation Partners, Statewide and Local Preservation Organizations, Native Hawaiian Organizations (NHOs), and Tribal 106 Contacts. The public review period began August 3, 2020 and ended August 17, 2020.

By the close of the comment period, the ACHP received comments from 26 respondents. The primary concerns expressed in the comments focused on (1) objections to including demolition, new construction, transfer, sale and lease in the management actions, as these may result in adverse effects to historic properties; (2) lack of SHPO and Tribal consultation for most actions, including ground disturbing activities based on the Army's assumption that prior disturbance limits the potential for intact archaeological resources; (3) the use of imitative substitute materials and the lack of a hierarchy for its selection only after historic or in-kind materials were considered; (4) insufficient

mitigations to offset potential adverse effects; (5) requirements for professional assistance to be provided by Secretary of the Interior (SOI) qualified professionals.

ACHP staff held a conference call with ACHP members on August 17, 2020, to discuss the comments received and to seek any comments or recommendations for revisions to the draft that ACHP members wished to provide. Sixteen ACHP members participated. ACHP staff hosted a follow up consultation meeting August 19, 2020, with NCSHPO and NTHP to discuss specific revisions to address the comments received during the public comment period and those raised during the ACHP member teleconference. ACHP staff conducted a meeting with the Army FPO and Deputy Assistant Secretary of the Army on August 19, 2020, to provide an overview of comments and recommended changes to the Program Comment. To allow additional time for consideration of changes in response to comments received, the ACHP requested and obtained a 4-day extension from the Army on August 20, 2020, to extend the period for ACHP comment until September 4, 2020. Based on this feedback, the ACHP staff and the Army then worked together to revise the draft in the following ways:

1. Sales and transfers were removed from the list of management actions (category of undertakings) covered by the Program Comment;

2. Conveyance was added to the list of management actions covered by the Program Comment. A new process was added in Section 3.2 to clarify that lease and conveyance are limited solely to leasing or otherwise conveying Inter-War Era housing for the purposes of possession, management, and operation as housing and associated ancillary purposes that support housing operations. New definitions for ''lease and conveyance,'' ''associated ancillary purposes that support housing operations,'' and ''privatized housing'' were added to Section 2.3 to explain the unique situation of the existing legal partnerships between the Army and privatized housing partners as part of the Residential Communities Initiative (RCI), that is, the land is leased and ownership of the housing is conveyed but only for the term of the ground lease; no conveyances under this partnership extend beyond the land lease agreement;

3. Revisions to proposals and procedures for demolition in Section 3.2.5 specify that the section of the Program Comment applying to demolition may be removed or amended at any time at the ACHP's discretion, following procedures in Section 8. The use of demolition was limited to housing that is highly deteriorated, and/or vacant for 12 months or longer due to underutilization, and/or where potentially hazardous materials or unsafe conditions are present. The demolition procedures were updated to require that the Building Disposition Report will include analysis on the likelihood for re-utilization as housing in the next five years and the feasibility and costs of long-term layaway and mothballing; analysis on whether the costs to rehabilitate or renovate the housing exceed the combined costs of demolition and new or replacement construction on a per square foot basis; the preparation of the appropriate state/SHPO-specific inventory form; and is sent to appropriate Indian tribes, NHOs, and the ACHP in addition to the SHPO. The requirements for reporting demolition decisions were updated to include that the Army will provide the ACHP a summary of each demolition decision within 30 days of a decision in addition to the Annual Report for the first five years (2021–2025). Reporting on demolition was also extended to every 5 years for the duration of the Program Comment to ensure the ACHP has sufficient information to monitor use of the demolition procedure;

4. The definitions for ''new construction'' and ''replacement construction'' were clarified to indicate that these actions can only occur within existing Inter-War Era housing neighborhoods;

5. The procedures for discovery of historic properties and Native American and Native Hawaiian human remains and funerary objects were updated in a major revision to Section 4.2 to address concerns about the lack of an explicit process that will be followed in the event of inadvertent discoveries during ground disturbing activities that may occur during demolition, new and replacement construction, and landscaping;

6. Section 2.2.5 Applicability and Exclusions was amended to specify that the Program Comment does not apply to Inter-War Era housing located at Fort Meade, MD which will remain subject to a Deed of Easement;

7. A new definition was added to Section 2.3 for ''professional assistance'' that means assistance from an individual who meets the SOI Professional Qualification Standards in the appropriate field (*e.g.,* architectural history, historic architecture, or archeology); and

8. Revisions to the Building Materials Selection Procedure (3.2.2.4) set forth that in-kind building materials will be selected if they are determined to be the appropriate replacement material in accordance to the analysis of performance, costs, short and long-term cost/benefit, and impacts on the ability to fully implement quality of life improvements to the housing. Revisions to the procedure set further limits on the use of vinyl siding by specifying that it will only be selected and used after other replacement building materials are evaluated and determined not to be the appropriate replacement building material.

With the Army's request for a Program Comment that allows a federal agency flexibility in being able to use imitative substitute building materials in the treatment of its historic properties, the ACHP considered whether the decision would set a precedent for other federal agencies. Considering the entirety of the approach presented by the Army, modified based on comments received, the ACHP considers the use of this material to be appropriate for the Army's inventory of Inter-War Ear housing but finds that it may not be suitable for historic properties owned by other federal agencies, and therefore does not set a precedent, based on the following key factors:

1. The Army operates and manages the largest inventory of housing among all federal agencies. The Program Comment would apply to approximately 3,200 Army housing units. With this volume of inventory, the Program Comment assists the Army and its privatized housing partners with the scale and repetitive nature of its management actions to repair and maintain standardized housing by following a standardized process and using standard materials as specified in the Design Guidelines and Building Materials Catalog;

2. The Program Comment assists the Army in addressing the nature of housing occupancy and need for quick turnover of housing for Soldiers and their families. Renovations often occur in a limited window (summer months) between occupancies;

3. Applying standardized management actions keeps these historic properties occupied/in use following their original function, military housing;

4. There is limited public access and enjoyment of these historic properties, located in military housing areas on restricted-access Army installations;

5. The Program Comment will provide greater consistency in the application of NHPA compliance requirements which currently vary by installation and SHPO under the existing PAs for privatized

housing that have been in effect for about 15 years; and

6. The Army has committed to various treatment measures appropriate to mitigate the adverse effects of using imitative substitute building materials, such as lifecycle tracking analysis, which will be publicly available and provide data now lacking in this field. Other agencies considering a similar approach to the use of imitative substitute materials would need to present their own mitigations appropriate to minimize those effects.

The Army Program Comment was submitted to the ACHP membership for a vote on August 28, 2020. In a vote that closed on September 4, 2020, the ACHP members voted in favor of issuing the Program Comment reproduced below.

While NCSHPO, NTHP and several other ACHP members were supportive of the overall goal of the Program Comment—to improve the condition of military housing—they remain opposed to some of the provisions of the Program Comment such as the inclusion of demolition, new construction or replacement construction. They believe those activities are not necessary to meet the overall goal and do not warrant a programmatic solution.

V. More Information

For further information on the Program Comment and the Army's analysis and process leading to its proposal, and a copy of the Design Guidelines and the Building Materials Catalog, please go to: *https://www.denix.osd.mil/army-pchh/home/.*

VI. Clarification Regarding Army Housing Partners

The ACHP interprets the Program Comment to allow the Army to ensure compliance with its terms regarding privatized housing by imposing such requirements on its housing partners.

VII. Text of the Program Comment

What follows is the text of the issued Program Comment (again, the text of Appendices A and B, the Design Guidelines and the Building Materials Catalog, can be found at *https://www.denix.osd.mil/army-pchh/home/*):

Program Comment for Department of the Army Inter-War Era Historic Housing, Associated Buildings and Structures, and Landscape Features (1919–1940)

1.0 Introduction

This Program Comment for Department of the Army (Army) Inter-War Era Historic Housing, Associated Buildings and Structures, and Landscape Features (1919–1940) (Program Comment) provides the Army with an alternative means to comply with Section 106 of the National Historic Preservation Act (NHPA), 54 U.S.C. 306108, and its implementing regulations at 36 CFR part 800 (Section 106) regarding management of its Inter-War Era housing, associated buildings and structures, and landscape features (hereinafter referred to as Inter-War Era housing). Section 106 requires federal agencies to take into account the effects of projects they carry out, license, or assist (undertakings) on historic properties, and to provide the Advisory Council on Historic Preservation (ACHP) a reasonable opportunity to comment with regard to such undertakings. The ACHP has issued the regulations that set forth the process through which federal agencies comply with these duties. Those regulations are codified under 36 CFR part 800 (Section 106 regulations).

Under Section 800.14(e) of those regulations, agencies can request the ACHP provide ''program comments'' on a category of undertakings that may have adverse effects. An agency can meet its Section 106 responsibilities with regard to the effects of those undertakings by following the steps set forth by the ACHP in a program comment, in lieu of conducting individual reviews of those undertakings as set forth in 36 CFR 800.3–800.7. In managing the largest inventory of historic housing in the federal government, the Army has an obligation to Soldiers and their families to provide housing that is safe, healthy, and affords the quality of life that is owed to our Soldiers and their families. The Army's obligation to military families, in the context of management of this large inventory of historic military housing, presents the Army with unique and significant challenges including: Providing for the well-being and quality of life for our Soldiers and their families living in historic housing; managing maintenance and repair costs for the large historic building inventory; addressing historic building materials that present lead-based paint, asbestos, and other hazards to housing occupants; rapidly turning around homes for reassigned military families in the context of the project-by-project review processes under 36 CFR 800 and the Section 106 Programmatic Agreements (PAs) at each installation; and preserving the historic and architectural character of its historic housing, associated buildings and structures, and landscape features.

In order to ensure positive historic preservation outcomes, the Program Comment requires the Army to implement management actions for Inter-War Era housing following the *Design Guidelines for Army Inter-War Era Historic Housing (1919–1940) (Appendix A)* (Design Guidelines), and the *Building Materials Catalog for Army Inter-War Era Historic Housing (1919–1940) (Appendix B)* (Building Materials Catalog), and also requires other treatment measures.

2.0 Program Comment Intent, Scope, and Definitions

2.1 Statement of Intent

The intent of this Program Comment is to address the Army's National Historic Preservation Act (NHPA) compliance requirements by establishing procedures for management of the Army's nation-wide inventory of over 3,200 Inter-War Era housing units that balance historic preservation requirements with the Army's responsibility to provide the thousands of military families who live in this historic housing with the quality of life, health, and safety they require.

In balancing the management of its Inter-War Era housing with historic preservation requirements, the Program Comment includes a set of management actions that address health and safety risks from historic building materials containing hazardous substances, the costs and benefits associated with various building materials, compliance process time, the material living conditions of historic housing, and the state of the Army's overall Inter-War Era housing inventory.

This Program Comment recognizes that standardized plans developed by the Army Quartermaster Corps were followed for the design and construction of the vast majority Army Inter-War Era housing, and that this housing is characterized by simplified architectural styles lacking character-defining design features often associated with the similar architectural styles ubiquitous in the civilian sector. In consideration of the standardized and simplified design of Army Inter-War Era housing, this Program Comment applies standardized criteria and approaches in the Design Guidelines and Building Materials Catalog, including step-by-step procedures for consideration and selection of appropriate building materials and for other activities associated with Inter-War Era housing management.

This Program Comment acknowledges that certain actions are required to improve the material living conditions for the military families who live in historic Inter-War Era housing such as: Addressing restrictive floorplans and

the need for additional bedrooms and expanded living space, expansion and improvement of kitchen areas, additional bathrooms and bathroom improvements, modernization of heating and ventilation systems, and modernization of plumbing and electrical systems and fixtures. This Program Comment also recognizes the Army's need to manage the state of its overall inventory of Inter-War Era housing by at times, removing housing from its inventory (through demolition) that is deteriorated, underutilized and vacant, and/or presents potentially hazardous materials or unsafe conditions; and by replacing or adding housing to its inventory through the construction of compatible designed housing within existing Inter-War Era neighborhoods. This Program Comment ensures that the Army will maintain the historic character of Inter-War Era housing by implementing these and other management actions in accordance with established criteria and procedures in the Design Guidelines, Building Materials Catalog, and other Program Comment treatment measures.

The management actions addressed by this Program Comment directly improve the material living conditions and the quality of life, health and safety of the Army's Soldiers and families who live in Inter-War Era housing, while the treatment measures ensure the management actions are implemented in a manner that maintains the historic and architectural character of this housing or that minimize or mitigate any unavoidable adverse effects. The terms of this Program Comment make certain the Army will conduct Inter-War Era housing management actions in compliance with NHPA requirements and in balance with historic preservation considerations. In this manner, the intent of this Program Comment will be met and historic preservation will be integrated as part of the solution to some of the Army's most critical military family housing issues.

2.2 Scope

2.2.1 Summary

The scope of the Program Comment includes all Army Inter-War Era housing built between 1919 and 1940, with the exception of Army Inter-War Era housing formally designated by the National Park Service (NPS) as a National Historic Landmark (NHL) or as a contributing property within an NHL District, and Inter-War Era housing at Fort Meade, MD that remains subject to a Deed of Easement (see Section 2.2.5). The Army will treat its inventory of Inter-War Era housing as historic properties as defined by the NHPA, for the purposes of this Program Comment.

2.2.2 Category of Undertaking and Assessment of Effects

The category of undertaking addressed by this Program Comment is *management actions.* Management actions are defined as maintenance, repair, rehabilitation, renovation, abatement, mothballing, demolition, replacement construction, new construction, and lease and conveyance. The Army will implement management actions using historic building materials, in-kind building materials, and imitative substitute building materials, as set forth in the Design Guidelines and Building Materials Catalog at Appendices A and B, respectively.

The Army's implementation of management actions and its use of imitative substitute materials on Army Inter-War Era housing may have an adverse effect on historic properties. The Army will implement the treatment measures in Section 3 to avoid, reduce, and mitigate the adverse effects of its management actions.

2.2.3 Description of Property Types

Standardized plans developed by the Army Quartermaster Corps were followed for the design and construction of the vast majority of Army Inter-War Era housing. Army Quartermaster Corps standardized plans reflected prevailing civilian architectural designs, construction techniques, and community planning trends of the time, with certain regional style variations and use of locally available materials. Army Inter-War Era housing falls into the categories of *Eclectic* and *Modern* houses and includes Colonial Revival, Spanish Colonial, Mission, Tudor, and Craftsman styles. Each style has its own particular character-defining design elements that express the style. The predominating regional styles of Quartermaster Corps designed Inter-War Era housing are: Colonial Revival in the northeast, mid-Atlantic and northwest; Spanish Colonial in the southeast and southwest; and Colonial Revival, Mission, and Craftsman styles in Hawaii. Regional style variations among Quartermaster Corps designed Inter-War Era housing are exterior in nature; the interior layouts are generally similar and originally corresponded to military rank. The housing is manifest as single-family units, duplexes, quadplexes, and multi-unit apartment buildings.

Army Quartermaster Corps housing standardization was driven by cost and efficiency of construction, so that Army Inter-War Era housing is characterized by a simplified architectural style and lacks some of the more costly distinctive design features associated with similar architectural styles in the civilian sector. In addition, many have been modified over time and Army Inter-War Era housing may exhibit features of several different architectural styles in a single housing unit.

Following community planning trends of the time, the Army Quartermaster Corps also developed standardized plans for landscaping, neighborhood design and layout, circulation patterns, and the design of entire installations, all of which may now constitute or be part of a historic district or districts. The result of Army Quartermaster Corps standardization is that the same general housing designs, administrative buildings, landscapes, neighborhood designs, and overall installation designs are repeated, one after the other, on Army installations. See Section 3.1 for additional information and references regarding the history and property types for Inter-War Era and other historic Army housing.

2.2.4 Inventory of Inter-War Era Housing

The Army's current inventory of 3,235 Inter-War Era housing units indicates the following locations and number of housing units: Fort Benning, GA—492 Inter-War Era housing units; US Army Garrison, HI—386 units; Joint Base Lewis-McChord, WA—330 units; Fort Sam Houston, TX—296 units; Fort Sill, OK—259 units; Fort Bragg, NC –230 units; US Army Military Academy at West Point, NY—206 units; Fort Knox, KY—202 units; Fort Belvoir, VA—164 units; Fort Bliss, TX—147 units; Fort Riley, KS –143 units; Fort Meade, MD—112 units; Aberdeen Proving Ground, MD—97 units; Carlisle Barracks, PA—75 units; Hawthorne Army Depot, NV—34 units; Fort Myer, VA—26 units; Camp Parks, CA—9 units; Picatinny Arsenal, NJ—8 units; Rock Island Arsenal, IL—7 units; McAlester Army Ammunition Plant, OK—5 units; Presidio of Monterey, CA—4 units; Fort Campbell, KY—2 units; Arlington National Cemetery, VA—1 unit. This inventory represents the best available Inter-War Era housing inventory information as of the date of this Program Comment.

2.2.5 Applicability and Exclusions

This Program Comment applies to all Army Inter-War Era housing, with the exception of Army Inter-War Era housing formally designated by the Department of the Interior, National Park Service (NPS) as an NHL or as a

contributing property within an NHL District. Section 110(f) of the NHPA requires that Federal agencies exercise a higher standard of care when considering undertakings that may directly and adversely affect NHLs and, to the maximum extent possible, undertake such planning and actions as may be necessary to minimize harm to NHLs. To exercise a higher standard of care for these NHLs, all Army Inter-War Era housing formally designated as an NHL, or housing formally designated as a NHL contributing property within a designated NHL District are not covered by this Program Comment. Undertakings that may affect designated NHL Inter-War Era housing will be addressed following the procedures in 36 CFR 800.3–800.7, and 36 CFR 800.10, and under the terms of applicable Section 106 Programmatic Agreements (PAs) or Memoranda of Agreement (MOAs).

The Army reviewed its NHL documentation to confirm that there are no Army Inter-War Era housing units that are designated by NPS as individual, stand-alone NHLs. All Inter-War Era housing units that are designated as NHLs are contributing properties to NHL Districts. A total of 213 Army Inter-War Era housing units are designated by the NPS as contributing properties in NHL Districts. Those NHL housing units are located at three installations: The US Army Military Academy at West Point, NY; Fort Myer, VA; and Fort Shafter, HI. The specific NHL housing units are: West Point NHL District, US Army Military Academy, West Point, NY, all 206 Inter-War Era housing units; Fort Myer NHL District, Fort Myer, VA, six Inter-War Era housing units identified as Quarters 17, 19, 20, 21, 22, and 28, located on Lee Ave; and Palm Circle NHL District, Fort Shafter, HI, one Inter-War Era housing unit identified as Quarters 18, the Hospital Commanding Officer's Quarters.

In addition to Army Inter-War Era housing already designated as NHL properties, any Army Inter-War Era housing that may be formally designated in the future by the NPS as an individual NHL or as a contributing property to a NHL District will not be covered by this Program Comment.

This Program Comment does not apply to effects on the following properties that are listed, or eligible for listing, on the National Register of Historic Places (NRHP): Archeological sites; properties and landscapes of traditional religious and cultural importance to federally-recognized Indian tribes or Native Hawaiian Organizations; human remains, funerary objects, sacred objects, objects of cultural patrimony to federally-recognized Indian tribes and Native Hawaiian Organizations, and Indian Sacred Sites.

Finally, this Program Comment does not apply to the 112 Inter-War Era housing units located at Fort Meade, MD. The Inter-War Era housing at Fort Meade is not a NHL. Rather, the Inter-War Era housing at Fort Meade is subject to a Deed of Easement dated 27 March 2003, between Mead Communities LLC (limited liability corporation) and the Maryland Historical Trust. Nothing in this Program Comment affects Deeds of Easement, which will continue to operate in accordance with applicable state and local laws. The Fort Meade, MD housing is the Army's only privatized historic housing subject to a Deed of Easement.

2.2.6 Methodology for Determining Appropriate Use of Historic, In-Kind, or Imitative Substitute Building Materials

Management of this large inventory of historic housing requires the Army to balance historic preservation considerations with the quality of life, health, and safety concerns of military families. The high costs of historic building materials and in-kind building materials impact the Army's ability to fully implement improvements to housing for military families. To achieve this balance, the Army will use the full range of available building materials including historic building materials, in-kind building materials, and imitative substitute building materials in its management actions, and will follow preservation planning documents and criteria that are specifically tailored to Inter-War Era housing in determining which materials are used. The planning documents are the Design Guidelines and Building Materials Catalog described below and included herein as Appendices A and B. With proper planning and materials selection, as provided for under this Program Comment, the Army's management actions will maintain the historic and architectural character of its Inter-War Era historic housing in balance with the quality of life, health, and safety concerns of military families who live in the housing.

Specified criteria are established in Section 3.2 for the selection of historic building materials, in-kind building materials, and imitative substitute building materials for use in Inter-War Era housing. The criteria for selection of a specific building material considers the need to maintain the historic and architectural character of the historic housing in balanced priority with the health, safety, and quality of life of the military families living in Inter-War Era housing.

The methodology for determining appropriate building materials in the context of Program Comment management actions is set forth in Section 3.2 and in the appended planning documents. Selection of appropriate building materials will follow the established criteria, and will be based on the unique circumstances of each housing unit. The focus of the criteria and planning documents is on preservation of the historic and architectural design characteristics of the housing, associated buildings and structures, and landscape features.

The Design Guidelines at Appendix A identify the character-defining features and design elements associated with the specific Inter-War Era architectural styles. Character-defining features include the overall housing style and design, decorative details, interior spaces and features, as well as associated buildings and structures, and landscape features. The Guidelines also provide the appropriate methods and approach for Inter-War Era housing management actions.

The Building Materials Catalog at Appendix B is used in concert with the Design Guidelines. The Building Materials Catalog provides additional specificity on building materials, their selection, and use. The Building Materials Catalog establishes the methodology for selecting specific building materials to include the evaluation process for determining the appropriate material to select in any given rehabilitation or repair. The evaluation process factors in availability, initial cost, lifecycle costs, historic significance, quality of life, health, safety, and material living conditions in determining use of appropriate materials. Catalog entries are provided for major components of the house design. Design considerations for each catalog entry are derived from the design fundamentals of scale, mass, proportion, and materials, to develop guidance for materials and component design that factor location, type, size, finish and maintenance in their selection. Focus is on appropriate design, applicable materials, and performance characteristics. Emphasis is placed on retention of the design integrity of the housing, associated buildings and structures, and landscape features. The Design Guidelines and the Building Materials Catalog ensure that the Army's management actions will occur in a manner that maintains the historic and architectural character of Inter-War Era housing.

2.2.7 Implementation

The Army will implement this Program Comment in lieu of conducting individual case-by-case reviews under 36 CFR 800.3–800.7. This Program Comment supersedes and replaces the requirements in Army PAs and MOAs for Army Inter-War era housing, associated buildings and structures, and landscape features. The Army will implement this Program Comment in lieu of all PA or MOA requirements and procedures applicable to Army Inter-War Era housing. The Army will also implement the Program Comment in lieu of any procedures, development agreements, lease and conveyance documents, environmental management plans, guidelines, reporting requirements, Integrated Cultural Resources Management Plans, and any and all other installation documents, standards, procedures, or guidelines pertaining to the preservation and management of Inter-War Era housing, associated buildings and structures, and landscape features.

2.3 Definitions

The following definitions apply for the purposes of this Program Comment:

Abatement means actions to eliminate, lessen, reduce, or remove hazardous and toxic materials, and unsafe conditions.

Army Inter-War Era housing (and *Inter-War Era housing*) means all housing constructed during the period 1919–1940 that is located on an Army installation or operated and managed by the Army or an Army privatized housing partner on a joint base. For Hawaii, *Army Inter-War Era housing* includes housing constructed from 1919–1943, in order to include housing built from 1941–1943 that are of similar design, construction, and location as Inter-War Era housing in this Program Comment. The term *Inter-War Era housing* is used throughout this Program Comment to refer to Inter War Era housing, associated buildings and structures, landscape features.

Associated buildings and structures includes detached garages, carports, storage buildings, and other buildings, structures, and objects associated with Army Inter-War Era housing.

Associated ancillary purposes that support housing operations (reference *Lease and conveyance*) refers to the limited use of Inter-War era housing, buildings, and structures for purposes such as rental offices for privatized housing partners, community centers, and temporary public safety offices that service the housing areas.

Highly deteriorated means there are major structural and/or mechanical system failures and the resulting costs to rehabilitate or renovate Inter-War Era housing exceeds the combined costs of demolition and new or replacement construction, on a per square foot basis.

Historic building materials are building materials that are 50 years old and older.

Historic properties means buildings, sites, structures, objects, landscapes, and districts that are eligible for inclusion or that are included in the NRHP.

In-kind building materials are new building materials that are identical to historic building materials in all possible respects including their composition, design, color, texture, and other physical and visual properties.

Imitative substitute building materials (also *imitative materials*) are modern, industry standard, natural, composite, and synthetic building materials that simulate the appearance of and substitute for historic building materials.

Inter-War Era Neighborhood means a defined geographical area, district, or locality on an installation that is characterized by and comprised predominantly of Inter-War Era housing, associated buildings and structures, and landscape features.

Landscapes and Landscape features means the overall design and layout of the Inter-War Era housing communities including circulation systems and patterns, plantings and landscaping, open spaces, playgrounds, parking areas, signage, site furnishings, parade grounds, lighting, sidewalks, setbacks, other associated landscape features, and viewsheds into Inter-War Era historic properties and districts and out from Inter-War Era historic properties and districts into other historic properties and districts.

Lease and conveyance means the execution of lease and conveyance documents for the purposes of possession, management, and operation of Inter-War era housing solely for the purposes of and use as housing and for associated ancillary purposes that support housing operations.

Maintenance and repair means routine activities required to maintain buildings, building systems (such as heating and ventilation, plumbing, and electrical systems), building fixtures, and other building features or materials in an operational state, or to bring them back to operating condition by repair or replacement of broken, damaged, or deteriorated elements of building systems, fixtures, materials, and features.

Major Decision refers to the Army decision-making process regarding proposed demolition of Inter-War Era housing.

Major deficiency means that a required, numbered or lettered step in an identified procedure in this Program Comment has been entirely omitted, not reasonably addressed, or is substantially incomplete.

Management actions means maintenance, repair, rehabilitation, renovation, abatement, mothballing, demolition, replacement construction, new construction, lease and conveyance actions that may have an adverse effect on Army Inter-War Era housing, associated buildings and structures, and landscape features.

Mothballing means slowing and controlling long-term deterioration of housing while it is unoccupied, and protecting it from sudden loss.

National Historic Landmarks (NHL) are historic properties that have been formally designated as NHLs by the Secretary of the Interior. NHLs possess exceptional value as commemorating or illustrating the history of the United States (reference the Historic Sites Act of 1935).

New construction means construction of housing, associated buildings and structures, and landscape features within existing Inter-War Era housing neighborhoods.

Public educational materials means new and existing Inter-War Era housing historic contexts, Design Guidelines, and other historical documentation containing plans and designs of Inter-War Era housing, neighborhoods, historic landscape plans, and the overall historical development of Army installation designs.

Privatized housing means military-owned housing that has been privatized under the Army's Residential Communities Initiative (RCI). The RCI operates on Army installations through the operation of legal partnerships between the Army and private sector developers. At each installation where RCI housing is located, the Army conveys ownership of existing housing and leases land to the RCI partnership. The RCI partnership then operates and manages the conveyed housing and leased lands for military housing purposes. Upon termination of the ground lease, ownership of all RCI partnership owned improvements (including all housing) that is located within the boundaries of the ground lease is automatically conveyed back to the Army.

Professional assistance means assistance from an individual who meets the Secretary of the Interior's Professional Qualification Standards in the appropriate field (*e.g.,* architectural

history, historic architecture, or archeology).

Quality of Life means the general wellbeing and material living conditions of individuals, families, and social groups such as military families living in historic housing.

Rehabilitation means repairs, additions, and other alterations and modifications to a building that preserve, to the greatest extent possible, historic building materials, historic building design, and other historic building features which convey its cultural, historical, and architectural values.

Renovation means improvements to housing including alterations; modifications; additions that increase the square footage; interior floor plan changes; large scale replacement of out of date, damaged, deteriorated, or defective building systems and materials; and other alterations that modernize housing to improve the quality of life of residents.

Replacement construction means housing, associated buildings and structures, and landscape features constructed within existing Inter-War Era housing neighborhoods in the immediate area of demolished housing, associated buildings and structures, and landscape features.

Treatment measure or treatment means any existing, new, or updated materials or actions that serve to address, reduce, minimize, or otherwise mitigate adverse effects on historic properties, and may include research reports, historical documentation, recordation, and other materials and activities.

Viewshed means all of the area visible from a particular location, viewing point, or series of viewing points. Includes all surrounding points that are in the line of sight from a particular location, viewing point, or series of viewing points. Excludes all points and locations that are not visible and/or are obstructed by terrain, other natural features, man-made features, and points beyond the horizon.

3.0 Treatment Measures for Army Inter-War Era Historic Housing

The Army will implement treatment measures to address, reduce, minimize, or otherwise mitigate adverse effects on Army Inter-War Era historic housing resulting from its management actions. The treatment measures include: Extensive existing documentation, research to further develop the Army Inter-War Era housing historic context, development and implementation of Design Guidelines, development and implementation of a Building Materials Catalog, an Army policy statement for Program Comment implementation, development of public information and use of social media, lifecycle tracking of building materials data, preservation of the Army's most significant Inter-War Era housing, and monitoring and reporting of treatment measures.

3.1 Existing Documentation and Recordation Applicable as Treatment Measures

3.1.1 Army-Wide Historic Context. Documentation, and Recordation of Inter-War Era Housing, Associated Buildings and Structures, Landscape Features

The Army has extensive existing documentation and recordation on the Army-wide history and historic context of the Inter-War Era housing, its exterior designs and architectural styles, interior designs and floorplans, factors influencing design variations, and its associated buildings and structures, and landscape features.[ENDNOTE 1] This existing set of Army-wide documentation serves as a Program Comment treatment measure because it provides comprehensive documentation and recordation of Inter-War Era housing, associated buildings and structures, and landscape features. This documentation has been consolidated in a single location and is available on the Army's Inter-War Era Housing Program Comment website located at: *https://denix.osd.mil/army-pchh/home/.*

Army installations are part of the country's built environment. Similar to civilian towns and cities, Army installations are a record of their time and development history, and represent the planning and architectural concepts associated with the times in which they were established and modified. The Army's existing documentation represents an extensive inventory and recordation of the planning, architectural concepts, and development history associated with Inter-War Era housing, associated buildings and structures, and landscape features. The existing documentation provides a detailed account and historic context for Army Inter-War Era housing, it records its place in the history of Army housing evolution and development of Army Quartermaster Corps standardized planning; includes a comprehensive inventory of Quartermaster Corps Inter-War Era housing designs and interior floor-plans; provides detailed explanations of the Inter-War Era designs and their variations; provides descriptions of the various Inter-War Era housing forms, architectural styles, and their regional style variations; includes plans for their designed landscapes and neighborhoods; and provides overall historic context information regarding the historical development, designs, and plans of Army installations, landscapes, and neighborhoods over time.

3.1.2 Installation-Specific Historic Contexts and Documentation and Recordation of Inter-War Era Housing, Associated Buildings and Structures, and Landscape Features

Individual Army installations have also documented and recorded Inter-War Era housing in specific installation-level documents for NHPA compliance purposes. Installation-level documentation includes installation Cultural Resource Management Plans that contain relevant historic contexts, an inventory of historic properties on each installation, electronic recordation of the location of these housing areas and historic districts in installation Geographic Information Systems and often, detailed documentation prepared in the context of installation NHPA Section 106 compliance activities. Several examples of such detailed installation-level documentation of Inter-War Era housing are provided on the Army's Inter-War Era Housing Program Comment website. Examples of this documentation include detailed documentation and recordation of specific Inter-War Era housing to the standards of the Historic American Buildings Survey and similar detailed documentation and recordation of specific Inter-War Era historic landscapes to the standards of the Historic American Landscapes Survey. Such installation-specific records are recognized as part of the overall set of Army historical information directly relevant to the recordation and documentation of Army Inter-War Era housing.

3.2 Additional Treatment Measures

The Army will carry out the following additional treatment measures for Inter-War Era Housing, associated buildings and structures, and landscape features.

3.2.1 Army Inter-War Era Housing Historic Context

The Army will conduct additional historic context research by the end of calendar year 2021, that will:

a. Expand on existing Inter-War Era housing historic context information.

b. Address the precedents on which Army Quartermaster Corps Inter-War Era house styles are based.

c. Examine Army Inter-War Era housing design in the context of

architectural design trends in the civilian sector.

d. Further describe the architectural styles present in the Army's inventory of Inter-War Era housing.

e. Examine Army Inter-War Era housing in the context of social and economic changes during the Inter-War Era.

f. The Army will ensure the information is publicly available on the Army's Inter-War Era Housing Program Comment website.

3.2.2 Design Guidelines, Building Materials Catalog, and Building Materials Selection Criteria and Procedures for Army Inter-War Era Housing

The Army will carry out management actions in accordance with the Design Guidelines, the Building Materials Catalog, and building materials selection criteria and procedures to ensure that the historic and architectural character of Inter-War Era housing is maintained.

3.2.2.1 Design Guidelines (see Appendix A)

The scope of the Design Guidelines includes all Army Inter-War Era housing and its associated buildings and structures, and landscape features subject to this Program Comment. The purpose of the Design Guidelines is to ensure the historic and architectural character-defining features of Inter-War Era housing and its associated buildings and structures, and landscape features are maintained in the context of Army management actions affecting Inter-War Era housing. The Design Guidelines provide specific information regarding Inter-War Era housing architectural styles and historic districts containing Inter-War Era housing, and identify the overall character-defining features and design elements associated with the specific Inter-War Era architectural styles. Character-defining features of the housing include the overall shape, style and design of the building, decorative details, interior spaces and features, as well as its associated buildings and structures, and landscape features.

The Guidelines also provide methods and approach for Inter-War Era housing routine maintenance, emergency repairs and disasters, rehabilitation, renovation, new additions, new construction, replacement construction, and improvements to windows and doors, entrances, porches and details, roofs, foundations and walls, interiors, and interior structural systems. The Guidelines also address mothballing and layaway of housing and provide specific guidelines for demolition. The Guidelines address historic designed landscapes and features, historic districts containing inter-war era housing, circulation systems and paving patterns, and associated buildings and structures. The Design Guidelines also address force protection requirements.

3.2.2.2 Building Materials Catalog (see Appendix B)

The Building Materials Catalog establishes a methodology for selecting specific building materials for use in rehabilitation or renovation of Inter War Era housing that will maintain the historic and architectural character of the housing. The Army will select materials specified in the Building Materials Catalog. Catalog entries are provided for major components of the house design. Design considerations for each entry are derived from the design fundamentals of scale, mass, proportion, and materials to develop guidance for materials and component design that factor location, type, size, finish and maintenance in their selection. Emphasis is placed on retention of the design integrity of the dwelling and other aspects of integrity. The Building Materials Catalog may be amended to include new building materials as they become available following the procedures in Section 8.

3.2.2.3 Building Materials Selection Criteria

The Army will apply these overarching criteria for the selection of building materials. These criteria address the need to maintain the historic and architectural character of Inter-War Era housing in balanced priority with the health, safety, and quality of life considerations for military families living in this housing. The overarching criteria for building materials selection are: When health and safety of military families is of concern, or when the initial or on-going use of historic building materials and in-kind building materials impacts the Army's ability to fully implement quality of life improvements to housing for military families, imitative substitute building materials will be considered for use only in a manner that maintains the historic and architectural character of the historic housing and when consistent with the results of the following building materials selection procedure.

3.2.2.4 Building Materials Selection Procedure

The Army will implement the following step-by-step procedure for the selection of appropriate building materials for the rehabilitation or renovation of Inter-War Era housing. Where Inter-War Era housing has been privatized, Army housing partners will implement the procedure. The building materials selection procedure will also be applied to purchases of bulk or stock materials used in maintenance and repair actions. This will facilitate implementation of maintenance and repair actions and will appropriately standardize the materials used in this standardized design housing stock. The step-by-step procedure for selection of building materials is:

a. Characterize historic building materials currently present in terms of: Design, material properties, condition, performance, safety, and presence of hazards such as lead-based paint, asbestos, and other hazardous materials.

b. Determine if the health and safety of housing occupants is a concern due to unsafe or hazardous historic building materials.

c. Determine if the costs associated with initial or continued use of historic building materials impacts the ability to fully implement quality of life improvements to the housing.

d. Determine if a historic building material must be replaced due to deterioration, health and safety considerations, or financial impacts to quality of life improvements. (If historic building material replacement is required due to the material's deterioration, determine the cause of the failure to ensure that the new replacement in-kind or imitative substitute material will not fail for the same reasons that caused the historic building material to fail).

e. If replacement of historic building materials is required, determine if there are material characteristics of the historic building materials that should be improved upon with use of in-kind building materials or imitative substitute building materials.

f. Evaluate replacement in-kind building materials and imitative substitute building materials (*i.e.,* replacement building materials) with respect to design and material properties using the Design Guidelines and Building Materials Catalog. Evaluate the expected performance, costs, and short and long-term cost/benefit considerations of the replacement building materials. Determine if the costs associated with use of in-kind building materials impacts the ability to fully implement planned quality of life, health, and safety improvements to the housing.

g. Based on the analysis in f. above, compile a short list of replacement building materials from the Building Materials Catalog.

h. Determine and select the appropriate replacement building material from the short list of materials. When an in-kind building material is determined to be the appropriate replacement building material, the in-kind building material will be selected and used. Exterior vinyl siding will only be selected and used after other replacement building materials are evaluated and determined not to be the appropriate replacement building material in accordance with these procedures.

i. Document the evaluation and selection process.

j. Write specifications for design and installation, and oversee project planning and implementation.

Before removing interior walls that are original to the historic floorplan or that would result in a loss of original historic features such as mantels, staircases, and molding, the Army or Army housing partner will first consider options to retain those original historic walls and features. If the Army or Army housing partner decides to proceed with the removal of such interior walls, they will consider retaining original historic features. If these features and materials will be retained, the selection of building materials for management actions subsequently affecting them will proceed in accordance with the process outlined above in this section. When such original historic features are not retained, the Army or Army housing partner will consider salvage of such historic features for possible reuse on other similar housing at that location.

3.2.2.5 Ensure Management Actions Follow the Design Guidelines, Building Materials Catalog, Building Materials Selection Criteria, and Building Materials Selection Procedure

To implement this requirement, the Army will:

a. Ensure installations and Army privatized housing partners with Inter-War Era housing have access to and implement the Design Guidelines (at Appendix A), Building Materials Catalog (at Appendix B), and the Building Materials Selection Criteria and Selection Procedure in this Program Comment for management actions affecting Army Inter-War Era housing.

b. Ensure the availability of historic preservation professional assistance for Design Guidelines and Building Materials Catalog implementation.

c. Monitor and report on the implementation of the Design Guidelines, and Building Materials Catalog, Building Materials Selection Criteria, and Building Materials Selection Procedure.

d. Maintain oversight of Design Guideline and Building Materials Catalog implementation through the Army Federal Preservation Officer (FPO).

e. Make the Design Guidelines and Building Materials Catalog publicly available on the Army's Inter-War Era Housing Program Comment website.

f. Update the Building Materials Catalog as new, applicable building materials become available, or as needed based on building materials lifecycle tracking and analysis following the process for amendments in Section 8 (b).

3.2.3 Public Educational Materials and Social Media Distribution

All documentation prepared under this Program Comment regarding the history of Army Inter-War Era housing are considered public educational materials and the Army will consolidate and maintain it at a single publicly accessible website located at *https://denix.osd.mil/army-pchh/home,* ongoing from the date of issuance of the Program Comment through 2055. Public educational materials include new and existing Inter-War Era housing historic contexts, Design Guidelines, Building Materials Catalog, and other historical documentation containing plans and designs of Inter-War Era housing, neighborhoods, historic landscape plans, the overall historical development of Army installation designs, lifecycle building materials information, and other Program Comment reports.

The Army will use social media hosted by the Defense Environmental Information Exchange platform at *https://twitter.com/DENIXnews,* to provide historic preservation information to the public. Specifically, the Army will develop and distribute monthly social media content using the information developed for the Program Comment for Inter-War Era housing and general information pertaining to Army historic preservation activities and other Army historic property types through 2025.

3.2.4 Lifecycle Data Tracking for In-Kind Building Materials and Imitative Substitute Building Materials Used in Army Inter-War Era Housing

The Army conducted a lifecycle cost/benefit analysis focused on three different types of building materials that have been used on Army Inter-War Era housing: (1) Historic building materials that were rehabilitated and reused, (2) in-kind building materials, and (3) imitative substitute building materials. The analysis compared lifecycle quantitative and qualitative factors associated with rehabilitated historic windows on 43 Inter-War Era housing units, in-kind wood windows on 127 Inter-War Era housing units, and vinyl windows used on 202 Inter-War Era housing units. The analysis also compared the lifecycle factors for in-kind natural stone slate roofing with synthetic slate roofing used on 76 Inter-War Era housing units. The costs used in the analysis were the actual cost estimates and expenditures on Army Inter-War Era housing from two installations in the eastern United States, incurred within the last 5 years for all analyzed categories of windows and roofing.

The results of the lifecycle analysis of both windows and roofing indicated that, for one-half the cost of either the rehabilitated historic building materials or the in-kind building materials, the imitative substitute materials would deliver the same 100 year to 125 year service-life expected from the historic building materials. The results of this cost/benefit analysis indicate that, in consideration of lifecycle, quantitative, and qualitative factors, the imitative substitute building materials analyzed would deliver a better lifecycle cost/benefit solution than rehabilitate historic building materials or in-kind building materials. The results of this analysis suggest that the expanded use of imitative substitute building materials for Army Inter-War Era housing may achieve a significant lifecycle cost/benefit.

An estimate of the years of service for in-kind building materials and imitative substitute materials was required for the cost/benefit analysis due to the lack of systematically collected, quantifiable, lifecycle data regarding the longevity of these materials. Estimated years of service used in the cost/benefit analysis for in-kind building materials and imitative substitute building materials were based on the manufacturer's material replacement warranty period.

In recognition that the historic preservation knowledge base regarding long-term performance for in-kind building materials and imitative substitute building materials is underdeveloped, the Army will conduct lifecycle tracking of in-kind building materials and imitative substitute materials in Inter-War Era housing as follows:

a. The Army will track data on in-kind and imitative substitute building material types (identified in the Building Materials Catalog) on approximately 300 Inter-War Era housing units.

b. All data will be from materials used in Army Inter-War Era housing units.

c. Data will be collected at the individual housing unit level.

d. The following in-kind and imitative substitute building material types will be tracked:

i. Vinyl replacement windows
ii. In-kind wood replacement windows
iii. PVC window trim
iv. Synthetic slate roofing
v. Fiber cement siding

e. The following data points will be collected on each in-kind and imitative substitute building material type:

i. Year Building Material Installed
ii. Year Building Material Replaced
iii. Lifespan (number of years from year installed to year replaced)
iv. Materials warranty period

f. Data will be collected and reported annually from 2020 to 2025, and will then be collected and reported at five-year intervals, in 2030, 2035, 2040, 2045, 2050, and 2055, as specified in Section 5, and be made available to the public through the Army's Program Comment website.

g. The Army will assess the lifecycle data at five year intervals to identify significant new information pertaining to the lifecycle of in-kind building materials and imitative building materials used on Inter-War Era housing.

h. The Army will ensure distribution of significant new information pertaining to the lifecycle of in-kind building materials and imitative building materials used on Inter-War Era housing to installation housing managers and housing privatization partners responsible for the selection of appropriate building materials.

i. The Army will use significant new information to update the Building Materials Catalog and the Inter-War Era housing lifecycle cost/benefit analysis, as needed.

3.2.5 Demolition Proposals, Criteria, Procedures, and Decision-Making

Section 3.2.5, and its subsections, pertaining to demolition proposals, criteria, procedures, and decision-making may be removed or amended at any time, at the ACHP's discretion, following the procedures in Section 8. Upon removal, the Army will no longer conduct demolition of Inter-War Era housing under this Program Comment. Upon amendment, the Army will conduct demolition of Inter-War Era housing under the Program Comment amended procedures.

The Army will apply specific overarching criteria when considering Inter-War Era housing for demolition. These criteria address health, safety, and quality of life considerations for military families living in this housing. The overarching criteria are: Inter-War Era housing will be considered for demolition when it is highly deteriorated, and/or vacant for 12 months or longer due to underutilization, and/or if potentially hazardous materials or unsafe conditions are present.

3.2.5.1 Demolition Procedure

A specific decision-making procedure will be followed to address demolition proposals for Inter-War Era housing. The Army or, where Inter-War Era housing has been privatized, Army housing partners, will implement the following step-by-step procedure when proposing the demolition of Inter-War Era housing:

a. Determine and characterize the housing unit's current condition and use, including if it is in a highly deteriorated condition, and/or vacant for 12 months or longer due to underutilization, and/or if potentially hazardous materials or unsafe conditions are present.

b. Evaluate prudent and feasible alternatives to demolition including: Rehabilitation, renovation, reuse, layaway and mothballing, or return of privatized housing to Army ownership. Develop a cost estimate associated with each evaluated alternative. Cost estimates will include the costs of abatement of potentially hazardous materials and unsafe conditions, costs to layaway and mothball the housing, per square foot, costs to rehabilitate or renovate the housing, per square foot, and costs to demolish the housing and to construct new or replacement housing. Determine if the costs to rehabilitate or renovate the Inter-War Era housing that is highly deteriorated exceeds the combined costs of demolition and new or replacement construction, on a per square foot basis.

c. Determine if there are, or are not, any prudent and feasible alternatives to demolition based on the evaluation of alternatives.

d. Prepare a Building Disposition Report (Report) if it is determined that there are no prudent and feasible alternatives to demolition. The Report will evaluate each prudent and feasible alternative to demolition and will include: The housing unit's current condition including if it is in a highly deteriorated condition; determination if it has been vacant due to underutilization for 12 months or longer, the likelihood for re-utilization as housing in the next five years, and the feasibility and costs of long-term layaway and mothballing; the presence of potentially hazardous materials or unsafe conditions and cost estimates for remediation; estimates of the costs to rehabilitate or renovate housing that is highly deteriorated and estimates of the costs for demolition and new or replacement construction of such housing on a per square foot basis; a determination if the costs to rehabilitate or renovate housing that is highly deteriorated exceeds the combined costs of demolition and new or replacement construction on a per square foot basis; preparation of appropriate state/SHPO-specific historic property inventory form; interior and exterior photographic documentation of the housing by means of digital photography meeting the standards in 3.2.5.3; plans for salvage, inventory, and storage (in a manner that prevents deterioration) of any significant architectural elements for reuse elsewhere on similar housing units; measures for protection of adjacent historic buildings, sites, landscape features, and archeological resources from damage during demolition activities; the procedures defined in Section 4.2 to address the discovery of archeological resources or human remains during ground disturbing activities (discovery procedures in Section 4.2 may be cited and incorporated by reference for this purpose); and basic design concept for any new construction or replacement construction to ensure that it will be in accordance with Design Guidelines for new and replacement construction.

e. Publish a public notice of availability for the Report in appropriate local media. The public notice will also elicit public comments regarding the action. The public notice will specify a 30-day comment period and a deadline date for receipt of any comments. The public notice must describe any steps required to obtain the Report; this can include a reference to a website location, a POC and mailing address, an email, phone number, or other equivalent mechanism for Report distribution.

f. Provide the Report to the responsible SHPO, ACHP, and appropriate Indian tribes or NHOs for a 30 day comment period. The 30-day SHPO, Indian tribe and NHO comment period should coincide with the public comment period. The Report and request to the SHPO, Indian tribes and NHOs for their comments will be provided by the installation where the housing has not been privatized, or by the privatized housing partner holding title to the housing where the housing has been privatized.

g. SHPO, ACHP, Indian tribe, NHO, and interested public party comments should identify if they believe there is a major deficiency in following the Program Comment Demolition Procedure specified in Section 3.2.5.1 a–f.

h. Where a SHPO, ACHP, Indian tribe, NHO, or interested party comment indicates that there may be a major deficiency in following the Demolition Procedure specified in Section 3.2.5.1a–f, the installation or privatized housing partner (as applicable) will coordinate with the commenting party and take appropriate action, as necessary, to resolve the deficiency. The installation, or privatized housing partner where housing has been privatized, will notify the commenting party in writing regarding how the major deficiency has been or will be addressed.

i. ACHP review. If any interested public party or relevant SHPO, Indian tribe, or NHO believes that a major deficiency has not been addressed in accordance with Section 3.2.5.h, they may request ACHP review and comment regarding the major deficiency. The ACHP will notify the Army FPO when it has received a request for ACHP review under this Section within 3 days of its receipt of the request. The Army FPO will consult with the ACHP regarding the major deficiency and will provide any additional documentation requested by the ACHP. Within 30 days after receipt of a request for ACHP review under this Section, the ACHP will either provide the Army FPO with recommendations which the Army will take into account in reaching a decision on the proposed demolition, or will notify the Army FPO that it will not comment pursuant to the Program Comment. The Army FPO will respond, as appropriate to any ACHP comments and indicate how the Army has or will take ACHP recommendations into account in reaching its final decision. The ACHP will notify the interested public party or relevant SHPO, Indian tribe, or NHO regarding the results of the ACHP review.

3.2.5.2 Decision-Making for Proposed Demolition of Inter-War Era Housing

a. Demolition proposals for Inter-War Era housing require preparation of a Major Decision (MD) package and its submission to Headquarters, Department of the Army for final decision. The MD package will include: An executive overview; scope of the demolition action with cost and justification/rationale for demolition; financial assessment of the impacts on development costs for the overall housing project; a schedule; the Building Disposition Report; all public, SHPO, Indian tribe, or NHO comments and how each comment has been addressed or adjudicated; a summary of any major deficiency in following Demolition Procedure Section 3.2.5.1a–f identified in the public, SHPO, Indian tribe, or NHO review and actions taken to resolve the deficiency.

b. Army FPO Review. The MD package shall include the Army FPO's concurrence that the Program Comment Demolition Procedure Section 3.2.5.1 has been followed. If the FPO determines that a major deficiency in following Demolition Procedure Section 3.2.5.1 identified by a SHPO, Indian tribe, NHO, or interested party has not been adequately resolved, the MD package will be returned for further resolution of the deficiency and re-submission.

c. Army Decision. MD packages with Army FPO concurrence will be provided to the Deputy Assistant Secretary of the Army for Installations, Housing and Partnerships, or an equivalent or higher Army authority, for the final decision to approve or disapprove the proposed demolition (demolition decision). The Army will provide a summary of each demolition decision to the ACHP within 30 days of such a decision, and will include a summary of all demolition decisions in the relevant Annual Report (see Section 5). The summaries will include the location of the housing proposed for demolition, reason for proposing demolition, alternatives considered, summary of comments by SHPO, Indian tribe, NHO, and other interested parties, and how such comments were addressed.

3.2.5.3 Digital Photographic Standards

The Army will implement the following National Park Service standards for digital photography:

a. Digital photographic documentation of housing proposed for demolition will use Tag Image File format (TIFF), RAW format images, or JPEGs converted to TIFFs for the best image resolution. RGB color digital TIFFs are preferred.

b. Digital camera resolution will be set to the maximum or largest pixel dimension the camera allows, two megapixels (1200 × 1600 pixel image) to six megapixels or greater (2000 × 3000 pixel image) is recommended.

c. Photographs will be clear, well-lit, well-composed, include each façade, and provide an accurate visual representation of the housing and its significant features.

d. The number of photographs depends on the size and complexity of the housing, but will include as many as needed to depict the current condition and significant features of the property. A few photographs may be sufficient to document a single house; larger or multi-unit housing may require a number of photos.

e. Photographs will show the principal facades and the setting in which the property is located. Additions, alterations, and associated structures will appear in the photographs. The photographs will include views of interiors, outbuildings, landscaping, or unusual features of the property.

f. All digital photographs will be archived on site with either the installation or housing partner (as appropriate), as part of the administrative record for the project.

3.2.6 Lease and Conveyance of Inter-War Era Housing for Use as Housing

This provision applies to ground lease and conveyance of Inter-War Era housing associated with the Army's privatized housing program, currently referred to as the Residential Communities Initiative. The applicability of this provision is limited solely to leasing or otherwise conveying Inter-War Era housing for the purposes of possession, management, and operation as housing and associated ancillary purposes that support housing operations. The Army will ensure that entities to which it leases or otherwise conveys Inter-War Era housing for the purposes of possession, management, and operation as housing and associated ancillary purposes follow this Program Comment for all management actions associated with these properties. This provision also applies to the reversion of leased or otherwise conveyed Inter-War Era housing from a management entity back to the Army, whereby the Army will follow this Program Comment for all management actions associated with these properties.

3.3 New Construction and Replacement Construction Procedures

New construction and replacement construction activities under this Program Comment are limited to existing Inter-War Era neighborhoods. The Design Guidelines include guidelines for new construction and replacement construction of housing, associated buildings and structures, and landscape features within Inter-War Era neighborhoods. The Army will, in accordance with the Design Guidelines:

a. Ensure new and replacement construction is compatible with the mass, form, character-defining features, and architectural style of the existing

housing, associated buildings and structures, and landscape features.

b. Ensure new and replacement construction does not completely obstruct views out from or into a historic district.

c. Maintain compatibility of the front elevation of housing with the scale, setback, and spacing of the surrounding historic housing.

d. Ensure that any new and replacement construction associated with or affecting historic circulation patterns occurs in accordance with Design Guideline, Guidelines for Circulation Systems and Paving Patterns.

3.4 Preservation of the Army's Most Significant Inter-War Era Housing

The Army will set aside and give special consideration to protecting and preserving its most significant Inter-War Era housing. The Army's full set of 213 Inter-War housing units designated as NHLs (as identified in Section 2.2.5), are set aside from this Program Comment for a higher standard of care and preservation by the Army. This Program Comment does not apply to and excludes the 213 Army Inter-War Era housing units formally designated as a NHL or as a contributing property within a NHL District, or to Inter-War Era housing that may be designated as a NHL in the future. To implement a higher standard of care and preservation the Inter-War Era NHL housing, the Army will:

a. To the maximum extent possible, undertake planning and actions in a manner to minimize harm to Inter-War Era NHL properties.

b. Address the effects of its undertakings on Army Inter-War Era NHL housing by following Section 110(f) of the NHPA, and the procedures in 36 CFR 800.3–800.7 and 36 CFR 800.10, or under the terms of applicable Section 106 agreements.

c. Implement the special requirements for protecting NHLs at 36 CFR 800.10.

d. Ensure the ACHP is invited to participate in any consultation to resolve adverse effects to Inter-War Era NHL housing.

e. Notify the Secretary of the Interior of any consultation involving Inter-War Era NHL housing and invite the Secretary of the Interior to participate in consultation where there may be an adverse effect.

f. The Army FPO will issue an Army-wide NHPA policy memorandum within 45 days from the date of issuance of this Program Comment indicating that the Army's formally designated Inter-War Era NHL Housing requires special consideration and a higher standard of care and preservation by the Army. The memorandum will state: All 213 Army Inter-War Era NHL Housing units are excluded from this Program Comment; undertakings that may affect formally designated Inter-War Era NHL housing units will be managed following the procedures in 36 CFR 800.3–800.7, and 36 CFR 800.10, and under the terms of existing Section 106 MOAs or PAs, as appropriate; and Army Inter-War Era housing that may be formally designated in the future by the NPS as a NHL will not be covered by this Program Comment.

4.0 No Further Historic Property Identification and Evaluation Efforts Required, and Historic Property Discovery Procedures

4.1 No Further Historic Property Identification and Evaluation Efforts Required

The Army's Inter-War Era housing has been extensively identified, assessed, documented, and recorded on a nation-wide and local basis (see Section 3.1). The Army will not conduct any further historic property identification and evaluation efforts in connection with the management actions covered by this Program Comment. This is based on the: Acknowledgement that its inventory of Inter-War Era housing are historic properties; extensive existing information pertaining to the identification, assessment, documentation, and recordation of Inter-War Era housing on a nation-wide and local basis; extensive prior ground disturbance associated with Inter-War Era housing tract development and the resulting low probability for the presence of NRHP eligible archeological properties; and no indication from Federally-recognized Indian Tribes or Native Hawaiian Organizations of concern for known archeological properties or properties of religious or cultural significance in Army Inter-War Era housing areas.

The Army's Inter-War Era housing areas are the equivalent of urban/suburban housing development tracts in the civilian sector. As such, there is significant prior ground disturbance in Army Inter-War Era housing areas resulting from the construction of the housing tracts including overall grading of the entire development sites, housing construction, construction of associated buildings and structures, road and sidewalk construction, installation of above and below ground utilities, landscaping, construction of recreational structures, and subsequent ground disturbing actions that have occurred after the original construction. Such areas of extensive ground disturbance associated with housing tract development are generally considered to have a low probability for the presence of NRHP eligible archeological properties.

4.2 Discovery Procedures for Historic Properties and Native American and Native Hawaiian Human Remains and Funerary Objects

The Army will provide sufficient information to contractors and staff involved in implementing management actions on Inter-War Era housing regarding these procedures for discovery of historic properties, and Native American or Native Hawaiian human remains and funerary objects. If there is a discovery of or unanticipated effects to historic properties during the conduct of management actions for Inter-War era housing, a report of findings describing the events leading to and immediately following the reporting of the inadvertent discovery will be prepared within thirty (30) calendar days of each inadvertent discovery. This report shall be provided to the SHPO and, as appropriate, Indian tribes and NHOs.

Procedures for discovery are also incorporated in the Design Guidelines (Appendix A) for Inter-War Era housing management actions involving ground disturbing activities. Ground disturbing activities may include but are not limited to housing additions, new construction, replacement construction, demolition, large-scale landscaping activities, and water and sewer line maintenance.

4.2.1 Discoveries of and Unanticipated Effects to Historic Properties

The following procedures will be followed during the implementation of a management action under this Program Comment where there is a discovery of or unanticipated effects to historic properties.

a. Should the Army or, where Inter-War Era housing has been privatized, Army housing partners, find that a management action is having an adverse effect that was not anticipated, make a discovery of archeological artifacts, archeological features or other archeological materials, human remains, or other previously unknown properties that, in the opinion of the Army agency official (Army installation commander, garrison commander, or their official designee), may be a historic property, the agency official will ensure: All work activity is immediately stopped within a 75 foot radius buffer zone around the discovered property; the discovered property is protected from looting and vandalism; and the relevant SHPO,

Indian tribes or NHOs are notified of the discovery within twenty four (24) hours. All management actions may continue outside the 75 foot buffer zone.

b. If human remains and/or funerary objects that may be Native American or Native Hawaiian in origin are discovered, Section 4.2.2 will be followed. If discovered human remains are historic but are not of Native American or Native Hawaiian origin, and are not part of a crime scene, the Army agency official, in consultation with the SHPO, will have an archeologist assess the area where the remains were found to determine the nature and extent of the remains, determine if a cemetery is present, and will evaluate the feasibility of preserving remains in place or whether they will be exhumed and re-located. The Army acknowledges that the respectful treatment of all human remains is a paramount concern and that an appropriate treatment is to protect and preserve human remains in situ, if possible.

c. The Army agency official has five working days following notification of the discovery to consult with the SHPO and, as applicable, Indian tribes or NHOs to determine if the discovered property is a historic property eligible for listing in the NRHP. The Army may also assume the newly discovered property to be eligible for the NRHP for the purposes of Section 106 pursuant to 36 CFR 800.13(c).

d. If the Army agency official determines, in coordination with the SHPO and, as applicable, Indian tribes or NHOs that the discovered property is not a historic property eligible for listing in the NRHP, all management actions and construction activities may immediately resume within the area of the discovery and the buffer zone upon such determination.

e. If the Army agency official determines that the discovery is a historic property, the Army will consult with the SHPO and (as appropriate) Indian tribes or NHOs regarding appropriate treatment measures to avoid, minimize, or mitigate adverse effects that may occur once the management actions are resumed. The SHPO, and Indian Tribes or NHOs will have five working days to review and comment on the proposed treatment measures. The Army agency official shall take all comments received into account in finalizing and implementing the treatment plan. Treatment measures may include, but are not limited to archeological evaluation of the site, exploration of potential alternatives to avoid the site; and preparation and implementation of a limited data recovery plan to retrieve important information from the site.

4.2.2 Discovery of Native American and Native Hawaiian Human Remains and Funerary Objects

The Army acknowledges that the respectful treatment of Native American and Native Hawaiian human remains and funerary objects is a paramount concern and that an appropriate treatment is to protect and preserve Native American or Native Hawaiian human remains and funerary objects in situ, if possible.

If human remains and/or funerary objects that may be Native American or Native Hawaiian in origin are discovered during the conduct of management actions under this Program Comment, the Army agency official will immediately apply the provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), implement NAGPRA compliance procedures, and will notify the relevant SHPO, Indian tribe(s) or NHO(s), and the Army FPO of the discovery within 24 hours.

5.0 Annual Reporting and Annual Meeting

The Army will monitor and report on its implementation of the treatment measures for the Program Comment for Army Inter-War Era Housing.

5.1 Annual Report

On or before January 31st of each year from 2021 to 2025, the Army will provide an Annual Report to the ACHP and, at least two weeks prior to an Annual Meeting, post the Report on its Inter-War Era Housing Program Comment website. The Annual Report will provide the status of the following treatment measures:

a. Inter-War Era Historic Context.

b. Design Guidelines and Building Materials Catalog.

c. Design Guidelines Professional Assistance and Monitoring Activities.

d. Army FPO NHPA Policy Memorandum.

e. Army's Inter-War Era Housing Program Comment website Activities.

f. Public Educational/Social Media Activities.

g. Imitative Substitute Building Materials Lifecycle Data reporting special provisions:

i. Imitative Substitute Building Materials Lifecycle data will be reported annually from 2021 to and including 2025.

ii. Following 2025, the lifecycle data will be reported at five-year intervals, in 2030, 2035, 2040, 2045, 2050, and 2055, for a total of 35 years.

iii. The necessity for continuation of lifecycle data collection and reporting will be re-evaluated by the Army in consultation with the ACHP at each five-year reporting interval from 2030–2055 (see Section 6).

h. Following 2025, the summary of each demolition decision, and any known future demolition proposals, will be reported to the ACHP at five-year intervals, in 2030, 2035, 2040, 2045, 2050, and 2055, for a total of 35 years. The necessity for continuation of demolition reporting will be re-evaluated by the Army in consultation with the ACHP at each five-year reporting interval from 2030–2055

The Army's Annual Report will also include a summary review of decisions made for housing demolition; any known future demolition proposals; significant issues or misunderstandings that may have arisen in the course of applying the Program Comment, how those were addressed, and how they may be avoided in the future; and an assessment of the overall effectiveness of the Program Comment in meeting its intent and purpose.

5.2 Annual Meeting

The Army will conduct an Annual Meeting with the ACHP and invite participation from the National Trust for Historic Preservation, National Conference of State Historic Preservation Officers, and the National Association of Tribal Historic Preservation Officers. The Army and the ACHP may also invite other parties to the Annual Meeting, as each deems appropriate. The purpose of the Annual Meeting is to review and discuss the status of the Army's implementation of the Program Comment treatment measures, the Army's assessment of the effectiveness of the Program Comment in meeting its stated intent, and how it has addressed issues or misunderstandings that may have arisen in the course of implementing the Program Comment. The Army intends to conduct the annual meeting in February of each year from 2021 to and including 2025.

The Army will post its Annual Report on the Army's Inter-War Era Housing Program Comment website at least two weeks prior to each Annual Meeting and will notify the ACHP and any ACHP identified participants. The Army will specifically include discussion pertaining to Design Guideline and Building Materials Catalog implementation, Major Decisions regarding demolition, any anticipated future demolitions, and imitative substitute building materials lifecycle data tracking. The Annual Meeting will also include discussion of any significant issues or misunderstandings

that have arisen in the course of applying the Program Comment and how those problems were addressed and may be avoided in the future. The Annual Meeting will also provide an opportunity for attendees to provide their views assessing the overall effectiveness of the Program Comment in meeting its intent and purpose. The Army will document the occurrence of the meeting and participants, discussion topics agenda, and will document its response to recommendations by the ACHP as an outcome of the Annual Meeting. Annual Meetings may take place in-person, by phone, by videoconferencing, or any combination of such methods.

6.0 Schedule for Treatment Measures

The Army may immediately carry out all management actions in accordance with this Program Comment, and prior to the completion of the treatment measures specified in Sections 3.2.1, 3.2.3, and 3.2.4. The Army will stop carrying out management actions under this Program Comment when any of the schedules provided below (a. through g.) are not met and will not resume until such treatment measure is finished, unless the schedule has been adjusted in accordance with Section 8. The schedule for the Army's submission of materials associated with treatment measures to the ACHP is as follows:

a. Army FPO NHPA Policy Memorandum—within 45 days from the date of issuance of the Program Comment.

b. Design Guidelines and Building Materials Catalog for Army Inter-War Era Historic Housing—complete on date of issuance of the Program Comment.

c. Design Guidelines Professional Assistance and Monitoring Activities—ongoing from the date of issuance of the Program Comment through 2025, and reported in each Annual Report.

d. Inter-War Era Housing Historic Context Report—end of calendar year 2021.

e. Army's Inter-War Era Housing Program Comment website activities—ongoing from the date of issuance of the Program Comment through 2025, and reported in each Annual Report.

f. Public Educational/Social Media activities—website active from the date of issuance of the Program Comment through 2055, and reported in each Annual Report. The Army will develop and distribute monthly social media content using the information developed for the Program Comment for Inter-War Era housing and general information pertaining to Army historic preservation activities and other Army historic property types through 2025.

g. Imitative Substitute Building Materials Lifecycle Data Collection and Reporting—in each Annual Report from 2021–2025. These data will then be independently reported to the ACHP at five-year intervals from 2030–2055. Imitative substitute building materials lifecycle data collection and reporting is contingent on the duration of the Program Comment, and is subject to re-evaluated by the Army in consultation with the ACHP at each five-year reporting interval from 2030–2055. If the ACHP and the Army determine after 2030 that further reporting is not necessary, the requirement for such data collection and reporting will be waived in writing by the Chairman of the ACHP in accordance with Section 8.

7.0 Effect and Duration of the Program Comment

By adhering to the terms of this Program Comment, the Army meets its responsibilities for compliance with Section 106 of the NHPA for management actions associated with Inter-War Era housing, associated buildings and structures, and landscape features. The Program Comment will remain in effect for 35 years from the date of issuance unless, prior to that time, the Army determines that such comments are no longer needed and notifies the ACHP in writing, or the ACHP withdraws the Program Comment in accordance with 36 CFR 800.14(e)(6). Following such withdrawal, the Army will be required to comply with Section 106 through the process in 36 CFR 800.3–800.7, or an applicable program alternative under 36 CFR 800.14, for each individual undertaking formerly covered by this Program Comment. During the first six months of the 34th year after issuance of this Program Comment, the Army and the ACHP will meet to determine whether to consider an extension to its term.

8.0 Program Comment Amendment and Technical Adjustment

The ACHP membership may formally amend this Program Comment after consulting with the Army, and other parties as it deems appropriate. However:

a. The Chairman of the ACHP, after notice to the rest of the ACHP membership and the Army, may amend this Program Comment to extend its duration, and may waive further building materials lifecycle data collection and reporting requirements.

b. The Executive Director of the ACHP, after notice to the ACHP membership and the Army may amend this Program Comment to: Add or remove materials from the Building Materials Catalog (after consulting with subject matter experts and ACHP members as the Executive Director deems appropriate); adjust due dates associated with annual reporting in Section 5, adjust due dates for treatment measures in Section 6; and to correct typographical errors.

The ACHP will notify the Army in writing regarding all amendments per 8.0.b., within 30 days of their issuance. The ACHP will publish notice in the **Federal Register** regarding all other amendments within 30 days after their issuance.

9.0 Appendices

Appendix A Design Guidelines for Army Inter-War Era Historic Housing [see *https://www.denix.osd.mil/army-pchh/home/*].

Appendix B Building Materials Catalog for Army Inter-War Era Historic Housing [see *https://www.denix.osd.mil/army-pchh/home/*].

Endnotes

1. A. National Historic Context for Department of Defense Installations, 1790–1940, Volumes I–4. DoD Legacy Resource Management Program Project 92–0075 (1995).
B. A Study of United States Army Family Housing Standardized Plans, Volumes 1–5., Grashof, B. (1986).
C. Context Study of the United States Quartermaster General Standardized Plans 1866–1942. Army Corps of Engineers, Seattle District (1997).
D. Historic Context Study of Historic Military Family Housing in Hawaii. DoD Legacy Resource Management Program Project 115 (2003).
E. Design Guidelines for Department of Defense Historic Buildings and Districts. DoD Legacy Resource Management Program Project 07–382 (2008).

Authority: 36 CFR 800.14(e)

Dated: October 7, 2020.

Javier Marqués,

General Counsel.

[FR Doc. 2020–22572 Filed 10–9–20; 8:45 am]

BILLING CODE 4310–K6–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2020–0622]

Information Collection Request to Office of Management and Budget; OMB Control Number: 1625–0084

AGENCY: Coast Guard, DHS.

ACTION: Sixty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information: 1625–0084, Audit Reports under the International Safety Management Code; without change. Our ICR describes the information we seek to collect from the public. Before submitting this ICR to OIRA, the Coast Guard is inviting comments as described below.

DATES: Comments must reach the Coast Guard on or before December 14, 2020.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2020–0622] to the Coast Guard using the Federal eRulemaking Portal at *https://www.regulations.gov.* See the ''Public participation and request for comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

A copy of the ICR is available through the docket on the internet at *https://www.regulations.gov.* Additionally, copies are available from: COMMANDANT (CG–6P), ATTN: PAPERWORK REDUCTION ACT MANAGER, U.S. COAST GUARD, 2703 MARTIN LUTHER KING JR. AVE. SE, STOP 7710, WASHINGTON, DC 20593–7710.

FOR FURTHER INFORMATION CONTACT: A.L. Craig, Office of Privacy Management, telephone 202–475–3528, or fax 202–372–8405, for questions on these documents.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. Consistent with the requirements of Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs, and Executive Order 13777, Enforcing the Regulatory Reform Agenda, the Coast Guard is also requesting comments on the extent to which this request for information could be modified to reduce the burden on respondents.

In response to your comments, we may revise this ICR or decide not to seek an extension of approval for the Collection. We will consider all comments and material received during the comment period.

We encourage you to respond to this request by submitting comments and related materials. Comments must contain the OMB Control Number of the ICR and the docket number of this request, [USCG–2020–0622], and must be received by December 14, 2020.

Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

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

Information Collection Request

Title: Audit Reports under the International Safety Management Code.

OMB Control Number: 1625–0084.

Summary: This information helps to determine whether U.S. vessels, subject to SOLAS 74, engaged in international trade, are in compliance with that treaty. Organizations recognized by the Coast Guard conduct ongoing audits of vessels' and companies' safety management systems.

Need: Title 46 U.S.C. 3203 authorizes the Coast Guard to prescribe regulations regarding safety management systems. Title 33 CFR part 96 contains the rules for those systems and hence the safe operation of vessels.

Forms: None.

Respondents: Owners and operators of vessels, and organizations authorized to issue ISM Code certificates for the United States.

Frequency: On occasion.

Hour Burden Estimate: The estimated burden has increased from 10,221 hours to 15,512 hours a year due to an increase in the estimated annual number of responses.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended.

Dated: October 6, 2020.

Kathleen Claffie,

Chief, Office of Privacy Management, U.S. Coast Guard.

[FR Doc. 2020–22469 Filed 10–9–20; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2020–0172]

Port Access Route Study: Seacoast of New Jersey Including Offshore Approaches to the Delaware Bay, Delaware

AGENCY: Coast Guard, DHS.

ACTION: Notice of public meeting; request for comments.

SUMMARY: The Coast Guard is announcing two public meetings to discuss our notice of study entitled ''Port Access Route Study: Seacoast of New Jersey including the offshore approaches to the Delaware Bay, Delaware'' that was published in the **Federal Register** on May 5, 2020, (USCG–2020–0172) and our notice of inquiry entitled ''Anchorage Grounds; Delaware Bay and Atlantic Ocean, Delaware'' that was published in the **Federal Register** on November 29, 2019, (USCG–2019–0822). Because the public may have similar comments on both topics we have decided to hold joint public meetings to discuss both notices. To ensure adequate opportunity to address concerns raised at the meetings and any subsequent questions, the Coast Guard is reopening the comment period.

DATES: Interested members of the public can attend either session, via teleconference, on Thursday October 29, 2020, from 1 p.m. to 3 p.m. or on Wednesday November 4, 2020, from 6 p.m. to 8 p.m. All comments and related material must be received by the Coast Guard on or before November 10, 2020. If you want your comments to be considered before the public meetings, comments must be received by the Coast Guard on or before October 15, 2020.

ADDRESSES: The public meeting will be held via a web-enabled interactive, online format and teleconference line. To join the web-based meeting and teleconference or to request special accommodations, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section no later than 1 p.m. on October 20, 2020, to obtain the needed information.

You may submit written comments identified by docket number USCG–2020–0172 using the Federal eRulemaking Portal at *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice, call or email Captain Maureen Kallgren, Fifth Coast Guard District, Waterways Management Branch, U.S. Coast Guard; telephone (757) 398–6250, email *Maureen.R.Kallgren@uscg.mil* or Mr. Jerry Barnes, Fifth Coast Guard District, Waterways Management Branch, U.S. Coast Guard; telephone (757) 398–6230, email *Jerry.R.Barnes@uscg.mil.* If you encounter technical difficulties accessing the online meeting please call LTJG John Frank, (757) 398–6298.

SUPPLEMENTARY INFORMATION:

I. Background

The Coast Guard is conducting the Port Access Route Study (PARS) to determine whether existing or additional vessel routing measures are necessary along the seacoast of New Jersey and approaches to the Delaware Bay. The PARS will consider whether existing or additional routing measures are necessary to improve navigational safety due to factors such as planned or potential offshore development, current port capabilities and planned improvements, increased vessel traffic, existing and potential anchorage areas, changing vessel traffic patterns, weather conditions, or navigational difficulty. We published a notice of study (NOS) in the **Federal Register** on May 5, 2020, entitled ''Port Access Route Study: Seacoast of New Jersey Including Offshore Approaches to the Delaware Bay, Delaware. Previously, we published a notice of inquiry (NOI) in the **Federal Register** on November 29, 2019, entitled ''Notice of Inquiry, Anchorage Grounds, Delaware Bay and Atlantic Ocean Delaware. As discussed in the NOI, the Coast Guard is considering amending its regulations to establish new anchorage grounds in the Delaware Bay and Atlantic Ocean. You may view the NOS and NOI in our online docket, in addition to comments submitted thus far by going to *https://www.regulations.gov.* Once there, insert ''USCG–2020–0172'' or ''USCG–2019–0822'' in the ''Keyword'' box and click ''Search.''

The Coast Guard received several requests for a public meeting to discuss the NOS and NOIs. We have concluded that a public meeting would inform both of these studies; therefore, we are publishing this notice. We are placing a document into the docket for the NOI, USCG–2019–0822, alerting followers of that docket of this notice and the opportunity to submit comments.

The Coast Guard is seeking additional public input on current waterway uses in the study area. These comments will help inform and direct any future rulemaking as well as inform our input as a cooperating agency to the Bureau of Ocean Energy Management for offshore renewable energy installations.

II. Public Participation and Request for Comments

We encourage you to participate by submitting comments either orally at the meeting or in writing. Oral comments at the public meetings may be limited to 3 minutes per speaker based on registration. You can provide written comments by submitting them directly to the docket online or by emailing Captain Maureen Kallgren, *Maureen.r.kallgren@uscg.mil.* All comments received will be posted without change to *https://www.regulations.gov* and will include any personal information you have provided. We are particularly interested in specific comments on the following questions:

1. What proposed routing measures would you suggest to preserve shipping safety around and within the offshore wind energy areas?
2. What areas within the study area have you traditionally used for anchoring and why?
3. If fully developed, how will the offshore wind energy projects in the study area impact your anchoring practices or other waterway uses?
4. What other navigational concerns do you have regarding the proposed wind energy projects in the study area?
5. What alternatives for mitigating anchor damage to underground cables are available, and is it possible for underground cables to coexist within the anchorages?
6. Which fisheries do you primarily target that cause you to transit or fish in the study area?
7. While fishing offshore, how much time do you spend underway, making way versus how much time do you spend underway, not making way as a percentage of the overall time frame (for example, I spend 10% of the trip transiting to and from port, 70% engaged in fishing, and 20% setting or hauling back gear)?
8. What risk control measures would you propose during the construction and operations of the wind energy areas?
9. Where is the predominant recreational boating traffic within the study area? Is there a time of year that traffic is more prevalent?

Suggested comments are most helpful when they are specific and supported by industry data or consensus. We are seeking to ensure the data we have collected from past public comments, such as current vessel AIS data and stakeholder input, reflects the status of waterway use today. We suggest commenters review current data found on the Mid Atlantic Ocean Data Portal found at *www.portal.midatlanticocean.org.* This data portal collects and prepares a variety of source data for public use and analysis. All comments will inform our way forward to ensure a measured approach to balance the different uses of the waterway in the future.

Comments submitted after the meeting must reach the Coast Guard on or before November 10, 2020. We encourage you to submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For more about privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

The Coast Guard will hold public meetings regarding these studies via a webinar and teleconference. The Coast Guard prefers and highly encourages all comments and related material be submitted directly to the online public docket; however two virtual public meetings will be held to provide an opportunity for oral comments. The first virtual public meeting will be held on Thursday, October 29, 2020, at 1 p.m. The second virtual public meeting will be held on Wednesday, November 4,

2020 at 6 p.m. To join the web-based meeting and teleconference or to request special accommodations, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section no later than 1 p.m. on October 20, 2020, to obtain the needed information. Access information for the virtual public meetings will be posted at *https://www.navcen.uscg.gov.* If you encounter technical difficulties, contact LTJG John Frank at 757–398–6298 or *JohnR.Frank@uscg.mil.* We will provide a written summary of the meeting and comments and will place that summary in the docket.

Dated: October 7, 2020.

L.M. Dickey,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 2020–22540 Filed 10–9–20; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2020–0621]

Information Collection Request to Office of Management and Budget; OMB Control Number: 1625–0081

AGENCY: Coast Guard, DHS.

ACTION: Sixty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information: 1625–0081, Alternate Compliance Program; without change.

Our ICR describes the information we seek to collect from the public. Before submitting this ICR to OIRA, the Coast Guard is inviting comments as described below.

DATES: Comments must reach the Coast Guard on or before December 14, 2020.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2020–0621] to the Coast Guard using the Federal eRulemaking Portal at *https://www.regulations.gov.* See the ''Public participation and request for comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

A copy of the ICR is available through the docket on the internet at *https://www.regulations.gov.* Additionally, copies are available from: COMMANDANT (CG–6P), ATTN: PAPERWORK REDUCTION ACT MANAGER, U.S. COAST GUARD, 2703 MARTIN LUTHER KING JR. AVE. SE, STOP 7710, WASHINGTON, DC 20593–7710.

FOR FURTHER INFORMATION CONTACT: A.L. Craig, Office of Privacy Management, telephone 202–475–3528, or fax 202–372–8405, for questions on these documents.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. Consistent with the requirements of Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs, and Executive Order 13777, Enforcing the Regulatory Reform Agenda, the Coast Guard is also requesting comments on the extent to which this request for information could be modified to reduce the burden on respondents.

In response to your comments, we may revise this ICR or decide not to seek an extension of approval for the Collection. We will consider all comments and material received during the comment period.

We encourage you to respond to this request by submitting comments and related materials. Comments must contain the OMB Control Number of the ICR and the docket number of this request, [USCG–2020–0621], and must be received by December 14, 2020.

Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

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

Information Collection Request

Title: Alternate Compliance Program.

OMB Control Number: 1625–0081.

Summary: This information is used by the Coast Guard to assess vessels participating in the voluntary Alternate Compliance Program (ACP) before issuance of a Certificate of Inspection.

Need: Sections 3306 and 3316 of 46 U.S.C. authorize the Coast Guard to establish vessel inspection regulations and inspection alternatives. Part 8 of 46 CFR contains the Coast Guard regulations for recognizing classification societies and enrollment of U.S.-flag vessels in ACP.

Forms: None.

Respondents: Owners and operators of U.S.-flag inspected vessels.

Frequency: On occasion.

Hour Burden Estimate: The estimated burden has increased from 174 hours to 198 hours a year due to an increase in the estimated annual number of respondents.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended.

Dated: October 6, 2020.

Kathleen Claffie,

Chief, Office of Privacy Management, U.S. Coast Guard.

[FR Doc. 2020–22468 Filed 10–9–20; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2020–0488]

National Commercial Fishing Safety Advisory Committee; Vacancy

AGENCY: U.S. Coast Guard, Department of Homeland Security.

ACTION: Request for applications; re-solicitation for members.

SUMMARY: The Coast Guard is re-soliciting applications from persons interested in membership on the National Commercial Fishing Safety Advisory Committee (Committee). This recently established Committee will advise the Secretary of the Department of Homeland Security on matters relating to national commercial fishing safety. Please read this notice for a description of the 18 Committee positions we are seeking to fill.

DATES: Your completed application should reach the Coast Guard on or before December 14, 2020.

ADDRESSES: Applicants should send a cover letter expressing interest in an appointment to the National Commercial Fishing Safety Advisory Committee and a resume detailing the applicant's experience and which specific position(s) applying for. We will not accept a biography. Applications should be submitted via one of the following methods:

- *By Email: CGfishsafe@uscg.mil* (preferred).
- *By Mail:* Commandant (CG–CVC–3), Attn: NCFSAC ADFO, U.S. Coast Guard Stop 7501, 2703 Martin Luther King Jr. Avenue SE, Washington, DC 20593–7501.

FOR FURTHER INFORMATION CONTACT: Mr. Jonathan Wendland, Alternate Designated Federal Officer of the National Commercial Fishing Safety Advisory Committee; Telephone 202–372–1245 or Email at *CGfishsafe@uscg.mil.*

SUPPLEMENTARY INFORMATION: On February 21, 2020, the U.S. Coast Guard published the initial request for applications in the **Federal Register** (85 FR 10179) for membership in the National Commercial Fishing Safety Advisory Committee. On June 1, 2020, the deadline for applications for membership was extended. Due to a lack of applications received from the initial request for applications and the June 1, 2020 extension notice, the Coast Guard is re-soliciting applications. Applicants who responded to either the initial request for applications or to the June 1, 2020 extension notice do not need to reapply.

The National Commercial Fishing Safety Advisory Committee is a federal advisory committee. It will operate under the provisions of the *Federal Advisory Committee Act,* 5 U.S.C. Appendix, and the administrative provisions contained in Section 601 of the *Frank LoBiondo Coast Guard Authorization Act of 2018* (specifically, 46 U.S.C. 15109).

The Committee was established on December 4, 2018, by the *Frank LoBiondo Coast Guard Authorization Act of 2018,* which added section 15102, National Commercial Fishing Safety Advisory Committee, to Title 46 of the U.S. Code (46 U.S.C. 15102). The Committee will advise the Secretary of Homeland Security on matters relating to national commercial fishing safety.

In accordance with 46 U.S.C. 15109(a), the Committee is required to hold meetings at least once a year, but it may meet more frequently as needs may require. The meetings are held at a location selected by the U.S. Coast Guard.

All members will serve at their own expense and receive no salary or other compensation from the Federal Government, with the exception that members may be reimbursed for travel and per diem in accordance with Federal Travel Regulations.

Under 46 U.S.C. 15109(f)(6), membership terms expire on December 31 of the third full year after the effective date of appointment. The Secretary may require an individual to have passed an appropriate security background examination before appointment to the Committee, 46 U.S.C. 15109(f)(4). In this re-solicitation for Committee members, we will consider applications for the following positions:

(A) Ten members shall represent the commercial fishing industry and—

(i) as a group, shall together reflect a regional and representational balance; and

(ii) as individuals each shall have experience—

(I) in the operation in which chapter 45 of this title applies; or

(II) as a crew member or processing line worker on a fish processing vessel.

(B) One member shall represent naval architects and marine engineers.

(C) One member shall represent manufacturers of equipment for vessels to which Chapter 45 of this title applies.

(D) One member shall represent education and training professionals related to fishing vessels, fish processing vessels, and fish tender vessels safety and personnel qualifications.

(E) One member shall represent underwriters that insure vessels to which chapter 45 of this title applies.

(F) One member shall represent owners of vessels to which chapter 45 of this title applies.

(G) Three members shall represent the general public and to the extent possible, shall include—

(i) an independent expert or consultant in maritime safety,

(ii) a marine surveyor who provides services to vessels to which chapter 45 of this title applies; and

(iii) a person familiar with issues affecting fishing communities and the families of fishermen.

Each member of the Committee must have particular expertise, knowledge, and experience in matters relating to the function of the Committee, which is to advise the Secretary of Homeland Security on matters related to national commercial fishing safety.

If you are selected as a member drawn from the general public, you will be appointed and serve as a Special Government Employee as defined in 18 U.S.C. 202(a). Applicants for appointment as a Special Government Employee are required to complete a Confidential Financial Disclosure Report (OGE Form 450) for new entrants and if appointed as a member must submit a new entrant OGE Form 450 annually. The Coast Guard may not release the reports or the information in them to the public except under an order issued by a Federal Court or as otherwise provided under the Privacy Act (5 U.S.C. 552a). Only the Designated U.S. Coast Guard Ethics Official or his or her designee may release a Confidential Financial Disclosure Report. Applicants can obtain this form by going to the website of the Office of Government Ethics (*www.oge.gov*), or by calling or emailing the individual listed above in the **FOR FURTHER INFORMATION CONTACT** section. Applications for members drawn from the general public must be accompanied by a completed OGE Form 450.

Registered lobbyists are not eligible to serve on Federal Advisory Committees in an individual capacity. See ''Revised Guidance on Appointment of Lobbyists to Federal Advisory Committees, Boards and Commissions'' (79 FR 47482, August 13, 2014). Registered lobbyists are ''lobbyists,'' as defined in 2 U.S.C. 1602, who are required by 2 U.S.C. 1603 to register with the Secretary of the Senate and the Clerk of the House of Representatives.

The Department of Homeland Security does not discriminate in

selection of Committee members on the basis of race, color, religion, sex, national origin, political affiliation, sexual orientation, gender identity, marital status, disabilities and genetic information, age, membership in an employee organization, or any other non-merit factor. The Department of Homeland Security strives to achieve a widely diverse candidate pool for all of its recruitment selections.

If you are interested in applying to become a member of the Committee, send your cover letter and resume to Mr. Jonathan Wendland, Alternate Designated Federal Officer of the National Commercial Fishing Safety Advisory Committee via one of the transmittal methods in the **ADDRESSES** section by the deadline in the **DATES** section of this notice.

If you send your application to us via email, we will send you an email confirming receipt of your application.

Dated: October 6, 2020.

Wayne R. Arguin, Jr.,

Captain, U.S. Coast Guard, Director of Inspections and Compliance.

[FR Doc. 2020–22571 Filed 10–9–20; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2020–0005]

Privacy Act of 1974; System of Records

AGENCY: Department of Homeland Security.

ACTION: Notice of a modified system of records.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Homeland Security (DHS) proposes to modify a current DHS system of records titled, ''Department of Homeland Security/ALL–023 Personnel Security Management System of Records.'' This system of records describes DHS's collection and maintenance of records related to the processing of personnel security-related clearance actions, suitability determinations, fitness determinations, whether security clearances are issued or denied, and the verification of eligibility for access to classified information or assignment to a sensitive position.

DATES: Submit comments on or before November 12, 2020. This modified system will be effective upon publication. New or modified routine uses will be effective November 12, 2020.

ADDRESSES: You may submit comments, identified by docket number DHS–2020–0005 by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–343–4010.
- *Mail:* Constantina Kozanas, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528–0655.

Instructions: All submissions received must include the agency name and docket number DHS–2020–0005. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For general and privacy questions, please contact: Constantina Kozanas, 202–343–1717, *Privacy@hq.dhs.gov,* Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528–0655.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Homeland Security requires certain individuals, such as employees and contractors, to undergo a background investigation prior to being granted access to DHS information and facilities. Some DHS components have delegated authority from the Office of Personnel Management as the Suitability Executive Agent and the Office of the Director of National Intelligence as the Security Executive Agent to conduct their own personnel security investigations. This system of records covers background investigations completed by those DHS components with delegated authority (*e.g.,* CBP, ICE), and adjudications of background investigations for all DHS personnel.[1] DHS is modifying and reissuing DHS/ALL–023 Personnel Security Management SORN. DHS and its components and offices rely on this SORN for the collection and maintenance of records that pertain to personnel security management. The DHS/ALL–023 Personnel Security Management System of Records is the baseline system for personnel security activities, as led by the DHS Office of the Chief Security Officer, for the Department. DHS is updating the purpose of this SORN to include:

- Adding the use of personnel security records to assess eligibility for Law Enforcement Officers Safety Act (LEOSA) Photographic identification cards.
- Adding the Prison Rape Elimination Act of 2003 (PREA) as an authority for collection.
- Updating the category of individuals to include those individuals who are seeking a credential that requires review of information contained in this system of records.
- Updating the categories of records to include publicly available information, such as information obtained from social media, that may be collected as part of the background investigation process, as described in Office of the Director of National Intelligence (ODNI) Security Executive Agent Directive (SEAD) 5; address and phone number for individuals; polygraph records; fingerprints and fingerprint records; and information about an individual's character reference(s). Additionally, DHS is updating the category of records to include information collected as part of the Department's compliance with the Prison Rape Elimination Act of 2003.
- Modifying routine uses E and F as required by OMB Memorandum M–17–12, modifying routine use J to clarify when DHS may share information from this SORN with a potential or current employer; and adding routine use M to document sharing with the National Counterintelligence and Security Center (NCSC) for the purpose of continuous evaluation.
- Updating the retention schedule to conform to the new General Records Schedule 5.6.

This notice also includes non-substantive changes to simplify the formatting and text of the previously published notice.

Consistent with DHS's information sharing mission, information stored in the DHS/ALL–023 Personnel Management System of Records may be shared with other DHS Components that have a need to know the information to carry out their national security, law enforcement, immigration, intelligence, or other homeland security functions. In addition, DHS may share information with appropriate federal, state, local, tribal, territorial, foreign, or international government agencies consistent with the routine uses set forth in this system of records notice.

There will be no change to the Privacy Act exemptions currently in place for this system of records and therefore they

[1] Background investigations for all other components are conducted by the Department of Defense and fall under Personnel Vetting Records System, DUSDI 02–DoD, 83 FR 52420 (October 17, 2018).

remain in effect. This updated system will continue to be included in DHS's inventory of record systems.

II. Privacy Act

The Privacy Act embodies fair information practice principles in a statutory framework governing the means by which Federal Government agencies collect, maintain, use, and disseminate individuals' records. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass U.S. citizens and lawful permanent residents. Additionally, the Judicial Redress Act (JRA) provides covered persons with a statutory right to make requests for access and amendment to covered records, as defined by the JRA, along with judicial review for denials of such requests. In addition, the JRA prohibits disclosures of covered records, except as otherwise permitted by the Privacy Act.

Below is the description of the DHS/ALL–023 Personnel Security Management System of Records.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this system of records to the Office of Management and Budget and to Congress.

SYSTEM NAME AND NUMBER:

Department of Homeland Security (DHS)/ALL–023 Personnel Security Management System of Records.

SECURITY CLASSIFICATION:

Unclassified and classified.

SYSTEM LOCATION:

Records are maintained at several DHS Headquarters locations and component offices in Washington, DC and field locations. For records on background investigations maintained and adjudicated by the Office of Personnel Management (OPM) or the Department of Defense's (DoD) Defense Counterintelligence and Security Agency, OPM or DoD's DCSA may retain copies of those records and files pursuant to their records retention schedules.

SYSTEM MANAGER(S):

Enterprise Security Services Division (202–447–5010), Office of the Chief Security Officer, Department of Homeland Security, Washington, DC 20528.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

8 U.S.C. 1357(g); 19 U.S.C. 1401(i); Prison Rape Elimination Act of 2003, Public Law 108–79, 117 Stat. 972 (45 U.S.C. 15601 *et seq.*); Executive Order (E.O.) 9397, as amended by E.O. 13478; E.O. 10450; E.O. 12968; E.O. 13467; E.O. 13764; E.O. 13869; 5 CFR 731; 5 CFR 732; 5 CFR 736; Homeland Security Presidential Directive 12; SEAD 2; SEAD 4; SEAD 5; SEAD 6; 6 CFR part 115; and Intelligence Community Directive 704.

PURPOSE(S) OF THE SYSTEM:

The purpose of this system is to collect and maintain records of processing of personnel security-related clearance actions, to record suitability determinations, fitness determinations, whether security clearances are issued or denied, and to verify eligibility for access to classified information or assignment to a sensitive position. Also, records may be used by the Department for adverse personnel actions such as removal from sensitive duties, removal from employment, denial to a restricted or sensitive area, and revocation of security clearance. The system also assists in capturing background investigations and adjudications; directing the clearance process for granting, suspending, revoking, and denying access to classified information; directing the clearance process for granting, suspending, revoking, and denying other federal, state, local, or foreign law enforcement officers the authority to enforce federal laws on behalf of DHS; managing state, local, tribal, and private sector clearance programs and contractor fitness programs; determining eligibility for credentials such as the Law Enforcement Officers Safety Act (LEOSA) Photographic identification card; determining eligibility for unescorted access to DHS-owned, DHS-occupied, or DHS-secured facilities or information technology systems; and/or other activities relating to personnel security management responsibilities at DHS.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Categories of individuals covered by this system include federal employees, applicants, excepted service federal employees, contractor employees, retired employees, and past employees providing support to DHS who require or required: (1) Unescorted access to DHS-owned facilities, DHS-controlled facilities, DHS-secured facilities, or commercial facilities operating on behalf of DHS; (2) access to DHS information technology (IT) systems and the systems' data; or (3) access to national security information, including classified information.

Also covered are: (1) State, local, and tribal government personnel and private sector individuals who serve on an advisory committee or board sponsored by DHS; (2) federal, state, local, and foreign law enforcement personnel who apply for or are granted authority to enforce federal laws on behalf of DHS; and (3) individuals, including state, local, and tribal government personnel and private sector individuals, who are authorized by DHS to access Departmental facilities, communications security equipment, and/or information technology systems that process sensitive or classified national security information.

CATEGORIES OF RECORDS IN THE SYSTEM:

- Individual's name;
- Individual's address;
- Individual's phone number;
- Date and place of birth;
- Social Security number;
- Citizenship;
- Access Control Pass or Credential number;
- Facial photograph;
- Fingerprints and fingerprint records;
- Polygraph reports, polygraph charts, polygraph tapes, and notes from polygraph interviews or activities related to polygraph interviews;
- Records relating to the management and operation of DHS personnel security programs, including but not limited to:
  - Completed standard form questionnaires such as SF–85, SF–85P, and SF–86;
  - Originals or copies of background investigative reports;
  - For individuals covered by the DHS PREA rule, information related to whether the individual has been convicted of engaging or attempting to engage in sexual activity facilitated by force, overt or implied threats of force, or coercion, or if the victim did not consent or was unable to consent or refuse; or who has been civilly or administratively adjudicated to have engaged in such activity;
  - Supporting documentation related to the background investigations and adjudications including criminal background, medical, and financial data;
  - Documentation related to an individual's character reference(s), including names, addresses, telephone numbers, and statements;
  - Publicly available electronic information, including information obtained from social media;

○ Information related to congressional inquiry; and

○ Other information relating to an individual's eligibility for access to classified or sensitive information.

• Records relating to management and operation of DHS programs to safeguard classified and sensitive but unclassified information, including but not limited to:

○ Document control registries;

○ Courier authorization requests;

○ Non-disclosure agreements;

○ Records of security violations;

○ Records of document transmittals; and

○ Requests for secure storage and communications equipment.

• Records relating to the management and operation of DHS special security programs, including but not limited to:

○ Requests for access to sensitive compartmented information (SCI);

○ Contact with foreign officials and foreign travel registries; and

○ Briefing/debriefing statements for special programs, sensitive positions, and other related information and documents required in connection with personnel security clearance determinations.

• Records relating to the management and operation of the DHS security program, including but not limited to:

○ Inquiries relating to suspected security violation(s);

○ Recommended remedial actions for possible security violation(s);

○ Reports of investigation regarding security violations;

○ Statements of individuals;

○ Affidavits;

○ Correspondence;

○ Documentation pertaining to investigative or analytical efforts by DHS Security program personnel to identify threats to DHS personnel, property, facilities, and information (*e.g.,* travel records obtained as part of continuous evaluation); and

○ Intelligence reports and database results relating to DHS personnel, applicants, or candidates for DHS employment or access to DHS facilities or information.

RECORD SOURCE CATEGORIES:

Records are generated from the individual receiving the background investigation, relevant law enforcement databases, publicly available electronic information, and from sources contacted during personnel and background investigations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of Justice (DOJ), including the U.S. Attorneys Offices, or other federal agencies conducting litigation or proceedings before any court, adjudicative, or administrative body, when it is relevant or necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

1. DHS or any component thereof;

2. Any employee or former employee of DHS in his/her official capacity;

3. Any employee or former employee of DHS in his/her individual capacity, only when DOJ or DHS has agreed to represent the employee; or

4. The United States or any agency thereof.

B. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

C. To the National Archives and Records Administration (NARA) or General Services Administration pursuant to records management inspections being conducted under the authority of 44 U.S.C. secs. 2904 and 2906.

D. To an agency or organization for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

E. To appropriate agencies, entities, and persons when (1) DHS suspects or has confirmed that there has been a breach of the system of records; (2) DHS has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, DHS (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 DHS's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

F. To another Federal agency or Federal entity, when DHS 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.

G. To an appropriate federal, state, tribal, local, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, when a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations and such disclosure is proper and consistent with the official duties of the person making the disclosure.

H. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS officers and employees.

I. To an appropriate federal, state, local, tribal, foreign, or international agency, if the information is relevant and necessary to a requesting agency's decision concerning the hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, delegation or designation of authority, or other benefit, or if the information is relevant and necessary to a DHS decision concerning the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, delegation or designation of authority, or other benefit and disclosure is appropriate to the proper performance of the official duties of the person making the request.

J. To a prospective or current employer that has, or is likely to have, access to any government facility, information, equipment, network, or system, to the extent necessary to determine the employment eligibility of an individual, based on actions taken by the Department pursuant to a personnel security matter involving the individual.

K. To a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations; in connection with criminal law proceedings; or pursuant

to the order of a court of competent jurisdiction.

L. To third parties during the course of a law enforcement investigation to the extent necessary to obtain information pertinent to the investigation, provided disclosure is appropriate to the proper performance of the official duties of the officer making the disclosure.

M. To a public or professional licensing organization when such information indicates, either by itself or in combination with other information, a violation or potential violation of professional standards, or reflects on the moral, educational, or professional qualifications of an individual who is licensed or who is seeking to become licensed.

N. To the National Counterintelligence and Security Center (NCSC) to assist in the ongoing review of an individual's eligibility for access to classified information or to hold a sensitive position.

O. To the news media and the public, with the approval of the Chief Privacy Officer in consultation with counsel, when there exists a legitimate public interest in the disclosure of the information, when disclosure is necessary to preserve confidence in the integrity of DHS, or when disclosure is necessary to demonstrate the accountability of DHS's officers, employees, or individuals covered by the system, except to the extent the Chief Privacy Officer determines that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

DHS stores records in this system electronically or on paper in secure facilities in a locked drawer behind a locked door. The records may be stored on magnetic disc, tape, and digital media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

DHS may be retrieve records by individual's name, date of birth, Social Security number, if applicable, or other unique individual identifier such as access control pass or credential number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Pursuant to GRS 5.6, Items 170 through 200, records relating to persons who were not granted security clearances are destroyed one year after consideration of the candidate ends, but longer retention is authorized if required for business use. Records related to individuals granted a clearance are destroyed five years after employee or contractor relationship ends, but longer retention is authorized if required for business use. Records related to alleged security violations are destroyed five years after closure of case or final action, whichever is sooner, but longer retention is authorized if required for business use.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

DHS safeguards records in this system according to applicable rules and policies, including all applicable DHS automated systems security and access policies. DHS has imposed strict controls to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RECORD ACCESS PROCEDURES:

The Secretary of Homeland Security has exempted this system from the notification, access, and amendment procedures of the Privacy Act, and the Judicial Redress Act if applicable, because it is a law enforcement system. However, DHS will consider individual requests to determine whether or not information may be released. Thus, individuals seeking access to and notification of any record contained in this system of records, or seeking to contest its content, may submit a request in writing to the Chief Privacy Officer and Chief Freedom of Information Act (FOIA) Officer, whose contact information can be found at *http://www.dhs.gov/foia* under ''Contact Information.'' If an individual believes more than one component maintains Privacy Act records concerning him or her, the individual may submit the request to the Chief Privacy Officer and Chief Freedom of Information Act Officer, Department of Homeland Security, Washington, DC 20528–0655. Even if neither the Privacy Act nor the Judicial Redress Act provide a right of access, certain records about you may be available under the Freedom of Information Act.

When an individual is seeking records about himself or herself from this system of records or any other Departmental system of records, the individual's request must conform with the Privacy Act regulations set forth in 6 CFR part 5. The individual must first verify his/her identity, meaning that the individual must provide his/her full name, current address, and date and place of birth. The individual must sign the request, and the individual's signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, an individual may obtain forms for this purpose from the Chief Privacy Officer and Chief Freedom of Information Act Officer, *http://www.dhs.gov/foia* or 1–866–431–0486. In addition, the individual should:

- Explain why he or she believes the Department would have information being requested;
- Identify which component(s) of the Department he or she believes may have the information;
- Specify when the individual believes the records would have been created; and
- Provide any other information that will help the FOIA staff determine which DHS component agency may have responsive records;

If the request is seeking records pertaining to another living individual, the requester must include an authorization from the second individual certifying his/her agreement for the requester to access his/her records.

Without the above information, the component(s) may not be able to conduct an effective search, and the individual's request may be denied due to lack of specificity or lack of compliance with applicable regulations.

CONTESTING RECORD PROCEDURES:

For records covered by the Privacy Act or covered JRA records, individuals may make a request for amendment or correction of a record of the Department about the individual by writing directly to the Department component that maintains the record, unless the record is not subject to amendment or correction. The request should identify each particular record in question, state the amendment or correction desired, and state why the individual believes that the record is not accurate, relevant, timely, or complete. The individual may submit any documentation that would be helpful. If the individual believes that the same record is in more than one system of records, the request should state that and be addressed to each component that maintains a system of records containing the record.

NOTIFICATION PROCEDURES:

See ''Record Access Procedures'' above.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

The Secretary of Homeland Security, pursuant to 5 U.S.C. 552a(k)(1), (k)(2), (k)(3), and (k)(5), has exempted this system from the following provisions of the Privacy Act, 5 U.S.C. 552a(c)(3); (d); (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I); and (f).

HISTORY:

DHS/ALL–023 Personnel Security Management System of Records, 74 FR 3084 (January 16, 2009), 75 FR 8088 (February 23, 2010); Implementation of Exemptions, DHS/ALL–023 Personnel Security Management System of Records, 74 FR 50904 (October 1, 2009).

Constantina Kozanas,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2020–22536 Filed 10–9–20; 8:45 am]

BILLING CODE 9110–9B–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. ICEB–2020–0003]

Privacy Act of 1974; System of Records

AGENCY: Department of Homeland Security, Immigration and Customs Enforcement.

ACTION: Notice of a Modified System of Records.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Homeland Security (DHS) proposes to modify and reissue a current DHS system of records titled, ''Department of Homeland Security/U.S. Immigration and Customs Enforcement-004 Bond Management Information System, System of Records.'' This system of records contains information related to the bond management process and supports the administrative and financial activities related to immigration bonds for U.S. Immigration and Customs Enforcement (ICE) Offices, including the Office of Financial Management and the Office of Enforcement and Removal Operations. This system of records covers records the Department collects and maintains on detained aliens in custody and on individuals involved in the processing and posting of immigration bonds.

DHS/ICE is updating this system of records to (1) expand the categories of records to include electronic communications between ICE officers and surety agents; (2) update Routine Use E and add Routine Use F to comply with Office of Management and Budget policy pertaining to data breach procedures; (3) add nine new routine uses to allow the Department of Homeland Security to share information from the system; and (4) make non-substantive edits to the routine uses to align with previously published Department of Records Notices. Additionally, this notice includes non-substantive changes to simplify formatting and text of the previously published notice. This modified system will be included in the Department of Homeland Security's inventory of records systems.

DATES: Submit comments on or before November 12, 2020. This modified system will be effective upon publication. New or modified routine uses will become effective November 12, 2020.

ADDRESSES: You may submit comments, identified by docket number ICEB–2020–0003 by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–343–4010.
- *Mail:* Constantina Kozanas, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528–0655.

Instructions: All submissions received must include the agency name and docket number ICEB–2020–0003. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For general questions, please contact: Jordan Holz, Privacy Officer, U.S. Immigration and Customs Enforcement, 500 12th Street SW, Mail Stop 5004, Washington, DC 20536, *ICEPrivacy@ice.dhs.gov.* For privacy questions, please contact: Constantina Kozanas, (202) 343–1717, *Privacy@hq.dhs.gov,* Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528–0655.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, DHS/ICE proposes to modify and reissue a current DHS system of records notice (SORN) titled, ''Department of Homeland Security/U.S. Immigration and Customs Enforcement–004 Bond Management Information System.'' DHS/ICE is updating the categories of records and routine uses of this system of records notice to better reflect ICE's administration and financial management activities related to the ICE immigration bond program. The categories of records has been modified to include electronic communications between ICE officers and surety agents. The routine uses have been altered in several ways. Specifically, DHS is modifying Routine Use E and adding Routine Use F to conform to Office of Management and Budget (OMB) Memorandum M–17–12 ''Preparing for and Responding to a Breach of Personally Identifiable Information,'' (Jan. 3, 2017). Routine uses following Routine Use E and Routine Use F are being renumbered to account for this additional routine use. ICE is also adding Routine Uses M through U to account for information shared external to DHS, which are listed below. The following is a summary of the new routine uses and their corresponding letter:

- (M) To federal, state, local, tribal, territorial, international, or foreign government agencies or entities for the purpose of consulting with that agency or entity in matters related to redress (*e.g.,* determinations, identity of an individual, verify the accuracy of information submitted);
- (N) To an attorney who is acting on behalf of a prospective claimant for the purpose of negotiating settlements of an actual or prospective claim against DHS or its current or former employees;
- (O) To international, foreign, intergovernmental, and multinational government agencies, authorities, and organizations in accordance with law and formal or informal international arrangements;
- (P) To appropriate federal, state, local, tribal, territorial, or foreign governmental agencies or multilateral governmental organizations for the purpose of protecting the vital interests of a data subject or other persons, to combat significant public health threats;
- (Q) To a former employee of DHS for purposes of responding to an official inquiry by federal, state, local, tribal, or territorial government agencies or professional licensing authorities or facilitating communications for personnel-related or other official purposes regarding a matter within that person's former area of responsibility;
- (R) To federal, state, local, tribal, territorial, foreign, or international agencies, if the information is relevant and necessary to a requesting agency's decision concerning the hiring or retention of an individual, or the issuance, grant, renewal, suspension or revocation of a security clearance, license, contract, grant, or other benefit;

• (S) To federal, state, local, tribal, territorial, foreign, or international agencies, if DHS determines that failure to disclose information related to the hiring or retention of an individual, or the issuance of a security clearance, license, contract, grant, or other benefit is likely to create a significant risk to the government (*e.g.,* facilities, personnel), sensitive information, critical infrastructure, or the public safety;

• (T) To federal, state, local, tribal, territorial, or foreign government agencies, as well as to other individuals and organizations during the course of an investigation by DHS, a matter under DHS's jurisdiction, or during a proceeding within the purview of the immigration and nationality laws, when necessary to carry out DHS functions and statutory mandates; and

• (U) To the Department of State when it requires information to consider and/or provide an informed response to a request for information from a foreign, international, or intergovernmental agency, authority, or organization about an alien or an enforcement operation with transnational implications.

In addition, non-substantive language changes have been made to additional routine uses to clarify disclosure policies that are standard across DHS and to align with previously published DHS SORNs. Lastly, this notice includes non-substantive changes to simply formatting and text of previously published notice.

The purpose of this system is to maintain records related to the administration and financial management operations associated with the immigration bonds that are posted for detained aliens in removal proceedings and/or as voluntary departure bonds. An immigration bond is a formal written guaranty by the obligor posted as security for the amount of the bond that assures DHS that all of the conditions of the bond will be fulfilled by the obligor as guarantor. For example, immigration bonds may be posted by surety companies that have obtained a certificate to do so from the Department of the Treasury, or by an individual's or entity's pledge (deposit) of cash or U.S. securities. If the conditions of a bond are satisfied, the bond must be cancelled and, if a cash bond, the principal and accrued interest must be returned to the obligor. If a bond is declared breached, the cash deposited as security will be forfeited and accrued interest will be returned to the obligor.

The information and records covered by this SORN is maintained in ICE's Bond Management Information System (BMIS) Web, an immigration bond management database used by the ICE Office of Financial Management (OFM) to support the tracking and recording of bond management activities. In addition, the information stored in BMIS is used by Enforcement and Removal Operations (ERO) and surety agents to facilitate the bond management processes and provide surety agents with access to bond-related documentation. BMIS provides ICE offices with an automated mechanism for maintaining and reporting on all immigration bonds.

Consistent with DHS's information sharing mission, records covered by this SORN may be shared with other DHS Components that have a need to know the information to carry out their national security, law enforcement, immigration, intelligence, or other homeland security functions. In addition, DHS/ICE may share information with appropriate federal, state, local, tribal, territorial, foreign, or international government agencies consistent with the routine uses set forth in this system of records notice. For example, BMIS information is also shared with the Internal Revenue Service to report any interest paid to obligors and for income tax purposes. Information about surety bonds may be shared with Department of Justice legal counsel; the Department of the Treasury; insurance investigators for surety companies; and legal representatives for surety companies and bonding agencies. This information is shared when ICE is pursuing further collection efforts on the surety bond receivables or if an agent of a bonding agency that posts surety bonds is being investigated for its business practices.

Additionally, pursuant to 5 U.S.C. 552a(b)(12), disclosures may be made from this system to consumer reporting agencies in accordance with 31 U.S.C. 3711(e). This modified system will be included in DHS's inventory of record systems.

II. Privacy Act

The Privacy Act embodies fair information practice principles in a statutory framework governing the means by which Federal Government agencies collect, maintain, use, and disseminate individuals' records. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass U.S. citizens and lawful permanent residents. Additionally, the Judicial Redress Act (JRA) provides a statutory right to covered persons to make requests for access and amendment to covered records, as defined by the JRA, along with judicial review for denials of such requests. The JRA prohibits disclosures of covered records, except as otherwise permitted by the Privacy Act.

Below is the description of the DHS/ICE–004, Bond Management Information System (BMIS) System of Records.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this system of records to the Office of Management and Budget and to Congress.

SYSTEM NAME AND NUMBER:

The Department of Homeland Security (DHS) Immigration and Customs Enforcement (ICE) DHS/ICE–004 Bond Management Information System (BMIS) System of Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records in BMIS are maintained in electronic form at the U.S. Immigration and Customs Enforcement Headquarters and in DHS Data Centers.

SYSTEM MANAGER(S):

Deputy Division Chief of Financial Systems, ICE Office of Financial Management, 1201 Maryland Avenue SW, Washington, DC 20024 *OFMFINSYS@ice.dhs.gov.*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 103, 212(g), 213, 214, 236, 240B, 241(c)(2)(C)(i), 286, and 293 of the Immigration and Nationality Act of 1982, as amended (8 U.S.C. 1103, 1182(g), 1183, 1184, 1226, 1229c, 1231(c)(2)(C)(i), 1356(r), and 1363, respectively).

PURPOSE(S) OF THE SYSTEM:

The purpose of this system is to maintain records related to the administration and financial management operations of ICE's immigration bond program. Immigration bond administration includes the maintenance, cancellation, and revocation of bonds. Financial management operations include collection, reimbursement, or forfeiture of the bond principal; calculation, payment, and reporting of interest income; calculation, withholding, and reporting of income taxes; and the collection or filing of associated income tax forms.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Categories of individuals covered by this system include: Individuals who post cash immigration bonds for aliens (known as obligors); individuals for whom an immigration bond is posted (known as bonded individuals); family members (bond requesters); individuals who arrange for the posting of surety bonds for aliens (known as indemnitors); the surety company and individual surety bond agents who post surety bonds; and notaries public and attorneys in fact.

CATEGORIES OF RECORDS IN THE SYSTEM:

Categories of records in this system include, for example:

For the Obligor: Name; Social Security number (SSN)/Tax Identification Number (TIN); address; phone number; U.S. citizenship or immigration status; and government-issued identification (type and number) shown at the time the bond is posted; and income tax-related information, such as taxpayer status, rate of withholding, income taxes withheld, income reporting (interest paid), tax treaty status, foreign tax identification number, country of residence, and information collected or reported on various income tax forms, such as IRS Forms W–9, W–8BEN, 945, 1042, 1042–S, and 1099–INT.

For the Bonded Individual: Name; alien number; location (while in detention); address(es) and phone number of residence upon release; date and country of birth; nationality; and date and port of arrival;

For the Indemnitor: Name; address(es); and phone number.

For the Surety Bonding Agent: Name; Tax Identification Number; address(es); and phone number.

For notary public and attorneys in fact: Name and phone number.

General bond information, that is associated with one of the types of individuals listed above, including: bond number; bond amount; securities pledged; bond types; bond status; location and date of posted bond; dates for bond-related activities, such as declaration of breach; names and titles of Department of Homeland Security (DHS) officials that approve, cancel, or declare breaches of bonds; communications between ICE and the surety agents, such as information related to the administration, issuance, breach termination, or cancellation of a bond; dates, forms, and status and outcome concerning motions to reconsider a breach or cancellation of bonds; and dates, forms, and status and outcome concerning bond-related appeals.

RECORD SOURCE CATEGORIES:

Records are obtained from categories of individuals listed and described above.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of Justice (DOJ), including Offices of the U.S. Attorneys, or other federal agencies conducting litigation or in proceedings before any court, adjudicative, or administrative body, when it is relevant or necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

1. DHS or any component thereof;

2. Any employee or former employee of DHS in his/her official capacity;

3. Any employee or former employee of DHS in his/her individual capacity, only when DOJ or DHS has agreed to represent the employee; or

4. The United States or any agency thereof.

B. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

C. To the National Archives and Records Administration (NARA) or General Services Administration pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

D. To an agency or organization for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

E. To appropriate agencies, entities, and persons when (1) DHS suspects or has confirmed that there has been a breach of the system of records; (2) DHS has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, DHS (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 DHS's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

F. To another Federal agency or Federal entity when DHS 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.

G. To an appropriate federal, state, tribal, local, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, when a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations and such disclosure is proper and consistent with the official duties of the person making the disclosure.

H. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS officers and employees.

I. To the Department of the Treasury and its bureaus to carry out financial transactions and any debt- or tax-related reporting, withholding, collection, and/or processing activities required or permitted by federal law, regulation or policy.

J. To the Department of Justice, the Department of the Treasury, other appropriate federal agencies, state insurance regulators, credit bureaus, debt collection agencies, legal representatives for surety companies and bonding agencies, and insurance investigators to provide information relevant to (1) investigations of an agent or bonding agency that posts surety bonds, or (2) activities related to collection of unpaid monies owed to the U.S. Government on immigration bonds.

K. To agencies, individuals, or entities as necessary to locate individuals who are owed money or property connected with the issuance of an immigration bond.

L. To an individual or entity seeking to post or arrange, or who has already posted or arranged, an immigration bond for an alien to aid the individual or entity in (1) identifying the location of the alien, or (2) posting the bond, obtaining payments related to the bond, or conducting other administrative or financial management activities related to the bond.

M. To federal, state, local, tribal, territorial, international, or foreign government agencies or entities for the purpose of consulting with that agency or entity: (1) To assist in making a determination regarding redress for an individual in connection with the operations of a DHS component or program; (2) to verify the identity of an individual seeking redress in connection with the operations of a DHS component or program; or (3) to verify the accuracy of information submitted by an individual who has requested such redress on behalf of another individual.

N. To an attorney who is acting on behalf of a prospective claimant for the purpose of negotiating the settlement of an actual or prospective claim against DHS or its current or former employees, in advance of the initiation of formal litigation or proceedings.

O. To international, foreign, intergovernmental, and multinational government agencies, authorities, and organizations in accordance with law and formal or informal international arrangements.

P. To appropriate federal, state, local, tribal, territorial, or foreign governmental agencies or multilateral governmental organizations for the purpose of protecting the vital interests of a data subject or other persons, including to assist such agencies or organizations in preventing exposure to or transmission of a communicable or quarantinable disease or to combat other significant public health threats.

Q. To a former employee of DHS for purposes of responding to an official inquiry by federal, state, local, tribal, or territorial government agencies or professional licensing authorities; or facilitating communications with a former employee that may be relevant and necessary for personnel-related or other official purposes when DHS requires information or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

R. To federal, state, local, tribal, territorial, foreign, or international agencies, if the information is relevant and necessary to a requesting agency's decision concerning the hiring or retention of an individual, or the issuance, grant, renewal, suspension or revocation of a security clearance, license, contract, grant, or other benefit.

S. To federal, state, local, tribal, territorial, foreign, or international agencies, if DHS determines (1) the information is relevant and necessary to the agency's decision concerning the hiring or retention of an individual, or the issuance of a security clearance, license, contract, grant, or other benefit, and (2) failure to disclose the information is likely to create a significant risk to government facilities, equipment, or personnel; sensitive information; critical infrastructure; or the public safety.

T. To federal, state, local, tribal, territorial, or foreign government agencies, as well as to other individuals and organizations during the course of an investigation by DHS or the processing of a matter under DHS's jurisdiction, or during a proceeding within the purview of the immigration and nationality laws, when DHS deems that such disclosure is necessary to carry out its functions and statutory mandates or to elicit information required by DHS to carry out its functions and statutory mandates.

U. To the Department of State when it requires information to consider and/or provide an informed response to a request for information from a foreign, international, or intergovernmental agency, authority, or organization about an alien or an enforcement operation with transnational implications.

V. To the news media and the public, with the approval of the Chief Privacy Officer in consultation with counsel, when there exists a legitimate public interest in the disclosure of the information, when disclosure is necessary to preserve confidence in the integrity of DHS, or when disclosure is necessary to demonstrate the accountability of DHS's officers, employees, or individuals covered by the system, except to the extent the Chief Privacy Officer determines that release of the specific information in the context of a particular case would constitute a clearly unwarranted invasion of personal privacy.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

DHS/ICE stores records in this system electronically in a central database or on paper in secure facilities in a locked drawer behind a locked door. The records are stored on magnetic disc, tape, and digital media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

DHS/ICE retrieves by any of the following: Bond number, SSN or TIN, name, Alien Number, obligor name, surety company name, or location and date bond was posted.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

In accordance with the Bond Management Information System (BMIS Web) schedule N1–567–10–11, ICE maintains records for six years and three months after the bond is closed, cancelled or breached and the collateral is returned to the obligor (when applicable). Copies of forms completed as part of the immigration bonds process (*e.g.,* Form I–352 (Immigration Bond) or Form I–395 (Affidavit In Lieu of Lost Receipt of United States ICE For Collateral Accepted As Security)) are placed into the bonded individual's A-File and maintained for the life of that file until transferred to the National Archives (100 years from the date of the alien's birthdate) in accordance with N1–566–08–11.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

DHS/ICE safeguards records in this system according to applicable rules and policies, including all applicable DHS automated systems security and access policies. DHS/ICE has imposed strict controls to minimize the risk of compromising the information that is being stored. Access to the computer systems containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions. The system maintains a real-time auditing function of individuals who access electronic records.

RECORD ACCESS PROCEDURES:

Individuals seeking access to and notification of any record contained in this system of records, or seeking to contest its content, may submit a request in writing to the Chief Privacy Officer and ICE's FOIA Officer, whose contact information can be found at *http://www.dhs.gov/foia* under ''Contact Information.'' If an individual believes more than one component maintains Privacy Act records concerning him or her, the individual may submit the request to the Chief Privacy Officer and Chief Freedom of Information Act Officer, Department of Homeland Security, Washington, DC 20528–0655. Even if neither the Privacy Act nor the Judicial Redress Act provide a right of access, certain records about a person may be available under the Freedom of Information Act.

When an individual is seeking records about himself or herself from this

system of records or any other Departmental system of records, the individual's request must conform with the Privacy Act regulations set forth in 6 CFR part 5. The individual must first verify his/her identity, meaning that the individual must provide his/her full name, current address, and date and place of birth. The individual must sign the request, and the individual's signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, an individual may obtain forms for this purpose from the Chief Privacy Officer and Chief Freedom of Information Act Officer, *http://www.dhs.gov/foia* or 1–866–431–0486. In addition, the individual should:

- Explain why he or she believes the Department would have the information being requested;
- Identify which component(s) of the Department he or she believes may have the information;
- Specify when the individual believes the records would have been created; and
- Provide any other information that will help the FOIA staff determine which DHS component agency may have responsive records.

If the request is seeking records pertaining to another living individual, the request must include an authorization from the individual whose record is being requested, authorizing the release to the requestor.

Without the above information, the component(s) may not be able to conduct an effective search, and the individual's request may be denied due to lack of specificity or lack of compliance with applicable regulations.

CONTESTING RECORD PROCEDURES:

For records covered by the Privacy Act or covered JRA records, individuals may make a request for amendment or correction of a record of the Department about the individual by writing directly to the Department component that maintains the record, unless the record is not subject to amendment or correction. The request should identify each particular record in question, state the amendment or correction desired, and state why the individual believes that the record is not accurate, relevant, timely, or complete. The individual may submit any documentation that would be helpful. If the individual believes that the same record is in more than one system of records, the request should so state and be addressed to each component that maintains a system of records containing the record.

Individuals who wish to contest the accuracy of records in this system of records should submit these requests to the Privacy Division of the ICE Information Governance & Privacy Office. Requests must comply with verification of identity requirements set forth in Department of Homeland Security Privacy Act regulations at 6 CFR 5.21(d). Please specify the nature of the complaint and provide any supporting documentation. By mail (please note substantial delivery delays exist): ICE Information Governance & Privacy Office, ATTN: Privacy Division, 500 12th Street SW, Mail Stop 5004, Washington, DC 20536. By email: *ICEPrivacy@ice.dhs.gov.*

Please contact the Privacy Division with any questions about submitting a request at *ICEPrivacy@ice.dhs.gov.*

NOTIFICATION PROCEDURES:

See ''Record Access Procedures'' above.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

DHS/ICE–004 Bonds Management Information System (BMIS) System of Records, 76 FR 8761 (February 15, 2011).

Constantina Kozanas,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2020–22535 Filed 10–9–20; 8:45 am]

BILLING CODE 9111–28–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2020–0007]

Privacy Act of 1974; System of Records

AGENCY: United States Secret Service, Department of Homeland Security.

ACTION: Notice of a modified system of records.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Homeland Security (DHS) proposes to modify and reissue a current DHS system of records titled, ''Department of Homeland Security/United States Secret Service (USSS)-004 Protection Information System of Records.'' This system of records describes DHS/USSS collection and maintenance of records on information relative to the protective mission of the agency. In this system of records notice update, DHS/USSS is modifying the categories of individuals, categories of records, routine uses, Authorities, and the retention and disposal of records. Additionally, this notice includes non-substantive changes to simplify the formatting and text of the previously published notice. The Department of Homeland Security previously published a Final Rule in the **Federal Register** to exempt this system of records from certain provisions of the Privacy Act. The current updates to this system of records do not impact the nature of the exemptions claimed; the exemptions continue to apply to this update. This modified system will be included in DHS's inventory of record systems.

DATES: Submit comments on or before November 12, 2020. This modified system will be effective upon publication. New or modified routine uses will be effective November 12, 2020.

ADDRESSES: You may submit comments, identified by docket number DHS–2020–0007 by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–343–4010.
- *Mail:* Constantina Kozanas, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528–0655.

Instructions: All submissions received must include the agency name and docket number DHS–2020–0007. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For general questions, please contact: E. Gayle Rucker, 202–406–5838, *PrivacyServicesProgram@usss.dhs.gov,* Privacy Officer, United States Secret Service, 245 Murray Lane SW, Building T–5, Washington, DC 20223. For privacy questions, please contact: Constantina Kozanas, (202) 343–1717, *Privacy@hq.dhs.gov,* Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528–0655.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the Department of Homeland Security (DHS) United States Secret Service (USSS) proposes to modify and reissue a current DHS system of records titled, DHS/USSS 004 Protection Information System of Records. Information collected in this

system of records is used to assist USSS in protecting its designated protectees, events, and venues. In doing so, USSS maintains necessary information to implement protective measures and to make protective inquiries concerning individuals who may come into proximity of a protectee, access a protected facility or event, or who have been involved in incidents or events that relate to the protective functions of USSS. Further, USSS ensures this protective information is appropriately managed and accessible to authorized users while employing appropriate safeguards to ensure that information is properly protected in accordance to national security standards.

DHS/USSS is updating this SORN to:

(1) Update the categories of individuals to include individuals who could be in proximity to protected persons or areas secured by USSS;

(2) update the categories of individuals to include persons who fly Unmanned Aircraft Systems (UAS) into areas secured by USSS;

(3) update the categories of records to broaden the name category to include variations of types;

(4) update the categories of records to broaden the address category to an all-inclusive category of Contact Information Identifiers;

(5) update the categories of records to separate confinement and release types from disposition of criminal charges types;

(6) update the categories of records for protective functions to include those related to furthering threat assessment and targeted violence prevention activities, as well as when exercising other USSS protective functions;

(7) update the categories of records to add name check records for credentialing some individuals near protectees;

(8) update the categories of records to include Protective Operations program and management files and Special Event files;

(9) update the categories of records to include citizenship information and identifiers;

(10) update the categories of records to include Government-issued Identifiers of persons;

(11) update the categories of records to include Government-issued Identifiers of property;

(12) update the categories of records to include biometric identifiers and profiles based on biometric attributes;

(13) update the categories of records to include samples of deoxyribonucleic acid DNA and their DNA profiles;

(14) update the routine uses to support USSS's protective function mission to include furthering threat assessment and targeted violence prevention activities;

(15) update the Authorities to include Special Events and the National Threat Assessment Center (NTAC) protective activities;

(16) update the Purpose of System to broaden the activities associated with the agency's protective mission;

(17) update the retention and disposal of records to reflect the most recent National Archives and Records Administration (NARA)-approved records schedules and to include Protective Operations program and management files and Security Events.

Consistent with DHS's information sharing mission, information stored in the DHS/USSS–004 Protection Information System of Records may be shared with other DHS Components that have a need to know the information to carry out their national security, law enforcement, immigration, intelligence, or other homeland security functions. In addition, DHS/USSS may share information with appropriate federal, state, local, tribal, territorial, foreign, or international government agencies consistent with the routine uses set forth in this system of records notice. This modified system will be included in DHS's inventory of record systems.

II. Privacy Act

The Privacy Act embodies fair information practice principles in a statutory framework governing the means by which Federal Government agencies collect, maintain, use, and disseminate individuals' records. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass U.S. citizens and lawful permanent residents. Additionally, the Judicial Redress Act (JRA) provides covered persons with a statutory right to make requests for access and amendment to covered records, as defined by the JRA, along with judicial review for denials of such requests. In addition, the JRA prohibits disclosures of covered records, except as otherwise permitted by the Privacy Act.

Below is the description of the DHS/USSS–004 Protection Information System of Records.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this system of records to the Office of Management and Budget and to Congress.

SYSTEM NAME AND NUMBER:

Department of Homeland Security (DHS)/United States Secret Service (USSS)-004 Protection Information System.

SECURITY CLASSIFICATION:

Unclassified and Classified.

SYSTEM LOCATION:

Records are maintained at the USSS Headquarters in Washington, DC and field offices. IT Systems covered by this SORN, include E-Check; Protective Intelligence Exchange (PIX); eCASE; and Protective Threat Management System (PTMS); which all can be accessed by individuals located at the United States Secret Service, and 245 Murray Lane SW, Building T–5, Washington, DC 20223.

SYSTEM MANAGER(S):

Assistant Director, Office of Strategic Intelligence and Information; Assistant Director, Office of Technical Development and Mission Support; and Assistant Director, Office of Protective Operations, *wfo@usss.dhs.gov,* 245 Murray Lane SW, Building T–5, Washington, DC 20223.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

18 U.S.C. 3056; 18 U.S.C. 3056A; 18 U.S.C. 871; 18 U.S.C. 879; Presidential Threat Protection Act of 2000, Pub. L. 106–544.

PURPOSE(S) OF THE SYSTEM:

The purpose of this system is: (1) To assist USSS in protecting its protectees by recording information necessary to implement protective measures and to investigate individuals who may come into proximity with a protectee or who have sought to make contact with a protectee, as well as individuals who have been involved in incidents or events that relate to the protective functions of USSS; (2) to support field agents coordinating physical security for designated Security Events by providing access to information regarding cases and threat assessments; and (3) to enable USSS to provide assistance to law enforcement officials, school personnel, and others with protective and public safety responsibilities for various types of targeted violence, such as the services provided by the National Threat Assessment Center.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Individuals who have been or are currently the subject of a criminal investigation by USSS or another law

enforcement agency for the violation of certain criminal statutes relating to the safety of persons or security of events, properties, facilities, and areas protected by USSS; (2) Individuals who are subjects of investigative records and reports supplied to USSS by federal, state, and local law enforcement agencies, or private institutions and individuals, in conjunction with the protective functions of USSS; (3) Individuals who are the subjects of non-criminal protective inquiries by USSS and other law enforcement agencies; (4) Individuals who are granted or denied ingress and egress to events, properties, facilities, and areas secured by USSS, or have access to areas in proximity to protected persons or areas secured by USSS, including but not limited to invitees, passholders, tradesmen, law enforcement personnel, maintenance personnel, or service personnel; (5) Individuals who are witnesses, suspects, complainants, informants, defendants, fugitives, released prisoners, and correspondents who have been identified by USSS or from information supplied by other law enforcement agencies, governmental units, private institutions, and members of the general public in connection with USSS performance of its protective functions; (6) Individuals who fly Unmanned Aircraft Systems (UAS) into protected areas; (7) Individuals who have sought an audience or contact with persons protected by USSS; (8) Individuals who could otherwise be in proximity of protectees or in contact with persons protected by USSS; (9) Individuals who have been involved in law enforcement encounters, incidents or events that relate to the protective functions of USSS; and (10) Individuals who have been or are currently protected by USSS.

CATEGORIES OF RECORDS IN THE SYSTEM:

- Name, alias, or code name;
- Contact information identifiers, such as physical and electronic addresses and phone numbers;
- Date of birth;
- Case number;
- Arrest Record;
- Government-controlled confinement and release information;
- Nature and disposition of criminal charges, to include sentencing and parole or probation status;
- Records concerning agency activities associated with protectee movements and other protective measures taken on a protectee's behalf;
- Records containing information compiled for identifying and evaluating individuals who may constitute a threat to the safety or persons or security of events, properties, facilities, and areas protected by USSS;
- Records containing information compiled for a criminal investigation, including reports of informants and investigators, that are associated with an identifiable individual;
- Records containing reports relative to an individual compiled at various stages of the process of enforcement of certain criminal laws from arrest or indictment through release from supervision;
- Records containing information supplied by other federal, state, and local law enforcement agencies, foreign or domestic, other non-law enforcement governmental agencies, private institutions, and persons concerning individuals who, because of their activities, personality traits, criminal or mental history, or history of social deviancy, may be of interest to USSS in connection with the performance of its protective functions to include furthering threat assessment and targeted violence prevention activities, as well as when exercising other USSS protective functions;
- Records containing information compiled for background investigations, including name check records for credentialing some individuals, including but not limited to, passholders, tradesmen, maintenance, or service personnel who have access and/or have been denied access to areas secured by or who may be in close proximity to persons protected by USSS;
- Records containing information compiled during protective law enforcement encounters in conjunction with National Security Events;
- Records containing information from the Protective Operations program and program files and security event management files;
- Records containing citizenship information and identifiers;
- Records containing information from Government-issued identifiers, including Passport, Social Security, and Driver License Numbers;
- Records containing information from Government-Issued property identifiers, to include boat, vehicle, and UAS registration numbers;
- Records containing information from biometric identifiers and profiles based on biometric attributes to include fingerprint and voiceprint. Such information may be both electronically analyzed and/or examined by human agents; and
- Records containing information from DNA samples and profiles of DNA obtained from the body, such as bodily fluids, or obtained from contacted surfaces. Such information may be both electronically analyzed and/or examined by human agents.

RECORD SOURCE CATEGORIES:

The Secretary of Homeland Security has exempted this system from subsections (e)(4)(I) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2), (k)(2), and (k)(3); therefore, records sources shall not be disclosed.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of Justice (DOJ), including the U.S. Attorneys Offices, or other federal agencies conducting litigation or proceedings before any court, adjudicative, or administrative body, when it is relevant or necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

1. DHS or any component thereof;
2. Any employee or former employee of DHS in his/her official capacity;
3. Any employee or former employee of DHS in his/her individual capacity, only when DOJ or DHS has agreed to represent the employee; or
4. The United States or any agency thereof.

B. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

C. To NARA or General Services Administration pursuant to records management inspections being conducted under the authority of 44 U.S.C. secs. 2904 and 2906.

D. To an agency or organization for performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

E. To appropriate agencies, entities, and persons when (1) DHS suspects or has confirmed that there has been a breach of the system of records; (2) DHS has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, DHS (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 DHS's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

F. To another Federal agency or Federal entity, when DHS 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.

G. To an appropriate federal, state, tribal, local, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, when a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations and such disclosure is proper and consistent with the official duties of the person making the disclosure.

H. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS officers and employees.

I. To federal, state, and local governmental agencies for criminal prosecutions; to parole and probation authorities for sentencing and to determine the parole and probation status of criminal offenders or suspected criminal offenders; and to personnel necessary for the completion of civil and other proceedings involving USSS protective functions.

J. To federal, state, and local governmental agencies, foreign and domestic, for the purposes of developing information on subjects involved in USSS protective investigations and the evaluation for and by USSS of persons considered to be of protective interest and for protective functions.

K. To federal, state, and local governmental agencies, foreign and domestic, private institutions and private individuals, for the purposes of designing and implementing protective measures, furthering threat assessment and targeted violence prevention activities, and exercising other USSS protective functions.

L. To private institutions and private individuals, to include identifying information pertaining to actual or suspected criminal offenders or other individuals considered to be of protective interest, for furthering USSS efforts to evaluate the danger such individuals pose to protected persons, facilities, and events.

M. To a court, magistrate, or administrative tribunal in the course of presenting evidence and opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal or civil proceedings.

N. To an appropriate federal, state, local, tribal, foreign, or international agency, if the information is relevant and necessary to a requesting agency's decision concerning the hiring or retention of an individual, or the issuance of a security clearance, license, contract, grant, or other benefit, or if the information is relevant and necessary to a DHS decision concerning the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, the issuance of a license, grant, or other benefit and when disclosure is appropriate to the proper performance of the official duties of the person making the request.

O. To appropriate federal, state, local, tribal, or foreign governmental agencies or multilateral governmental organizations, with the approval of the Chief Privacy Officer, when DHS is aware of a need to use relevant data for purposes of testing new technology that relate to the purpose(s) stated in this SORN.

P. To the news media and the public, with the approval of the Chief Privacy Officer in consultation with counsel, when there exists a legitimate public interest in the disclosure of the information, when disclosure is necessary to preserve confidence in the integrity of DHS, or when disclosure is necessary to demonstrate the accountability of DHS's officers, employees, or individuals covered by the system, except to the extent the Chief Privacy Officer determines that release of the specific information in the context of a particular case would constitute a clearly unwarranted invasion of personal privacy.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

DHS/USSS stores records in this system electronically or on paper in secure facilities behind a locked door. The electronic records may be stored on magnetic disc, tape, and digital media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

DHS/USSS may retrieve records by case number, name, or other identifying data or other case related data in master and magnetic media indices. Access to the physical files is located at field offices, Headquarters, and other Washington, DC locations.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Pursuant to NARA Schedule N1–087–11–2, Protective Intelligence Exchange System (PIX), protective intelligence case records, including non-judicial protective intelligence cases, are routinely retained for a period of up to 5 years from the date of last action; or for 10 years from the date of last action if they contain electronic records. All judicial records are retained for a period of 30 years from the date of last action, unless otherwise required to be held permanently for transfer to NARA. Files relating to issuance of White House Complex passes for employees of the White House, USSS employees, press representatives accredited at the White House, and other authorized individuals are retained for a period of 8 years from the date the file is closed.

Video surveillance source data from cameras and protectee active location data is maintained for 30 days. Recordings relevant to an investigative inquiry are retained for a minimum of 3 years following the date recorded but can be kept with a relevant case file. Video recordings associated with a highly unusual incident, occurrence, or significant event are permanent and are subsequently transferred to NARA when 25 years old.

Planning and after-action records pertaining to Presidential inaugurations and campaign records related to a Presidential candidate not currently under Secret Service protection are permanent and are subsequently transferred to NARA when 25 years old. Routine records pertaining to the administration and operations of USSS protective programs, logs, shift reports, survey files and related documents/data, and trip reports are retained for a period of 3 years up to 10 years, from the end of the event. Non-Criminal Protective Investigation Name Check Reports are kept until no longer needed, *e.g.,* cut off at end of the month, and destroyed 30 days after cutoff, as approved in its NARA Schedule.

Special Event files not related to an inauguration are retained for 5 years. In

the event of a highly unusual protective incident—*e.g.,* assassination attempt, successful assassination, or events requiring extraordinary protective measures—relevant records of the incident, including those normally scheduled as temporary, will be retained and subsequently transferred to NARA 25 years after the incident.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

DHS/USSS safeguards records in this system according to applicable rules and policies, including all applicable DHS automated systems security and access policies. DHS/USSS has imposed strict controls to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RECORD ACCESS PROCEDURES:

The Secretary of Homeland Security has exempted this system from the notification, access, and amendment procedures of the Privacy Act, and the Judicial Redress Act if applicable, because it is a law enforcement system. However, DHS/USSS will consider individual requests to determine whether information may be released. Individuals seeking access to and notification of any record contained in this system of records, or seeking to contest its content, may submit a request in writing to the Chief Privacy Officer and Headquarters or USSS FOIA Officer, whose contact information can be found at *http://www.dhs.gov/foia* under ''Contact Information.'' If an individual believes more than one component maintains Privacy Act records concerning him or her, the individual may submit the request to the Chief Privacy Officer and Chief Freedom of Information Act Officer, Department of Homeland Security, Washington, DC 20528–0655. Even if neither the Privacy Act nor the Judicial Redress Act provide a right of access, certain records about you may be available under the Freedom of Information Act.

When an individual is seeking records about himself or herself from this system of records or any other Departmental system of records, the individual's request must conform with the Privacy Act regulations set forth in 6 CFR part 5. The individual must first verify his/her identity, meaning that the individual must provide his/her full name, current address, and date and place of birth. The individual must sign the request, and the individual's signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, an individual may obtain forms for this purpose from the Chief Privacy Officer and Chief Freedom of Information Act Officer, *http://www.dhs.gov/foia* or 1–866–431–0486. In addition, the individual should:

- Explain why he or she believes the Department would have information being requested;
- Identify which component(s) of the Department he or she believes may have the information;
- Specify when the individual believes the records would have been created; and
- Provide any other information that will help the FOIA staff determine which DHS component agency may have responsive records.

If the request is seeking records pertaining to another living individual, the request must include an authorization from the individual whose record is being requested, authorizing the release to the requester.

Without the above information, the component(s) may not be able to conduct an effective search, and the individual's request may be denied due to lack of specificity or lack of compliance with applicable regulations.

CONTESTING RECORD PROCEDURES:

This system of records is exempt from the Privacy Act's access and amendment provisions and those of the Judicial Redress Act; therefore, record access and amendment may not be available. In such cases, certain records about you may be available under the FOIA, and the correspondence from those seeking a record amendment may be placed in the respective case file. For records covered by the Privacy Act or covered JRA records, individuals may make a request for amendment or correction of a record of the Department about the individual by writing directly to the Department component that maintains the record, unless the record is not subject to amendment or correction. The request should identify each particular record in question, state the amendment or correction desired, and state why the individual believes that the record is not accurate, relevant, timely, or complete. The individual may submit any documentation that would be helpful. If the individual believes that the same record is in more than one system of records, the request should state that and be addressed to each component that maintains a system of records containing the record.

NOTIFICATION PROCEDURES:

See ''Record Access Procedures'' above.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

The Secretary of Homeland Security, pursuant to 5 U.S.C. 552a(j)(2), has exempted this system from the following provisions of the Privacy Act: 5 U.S.C. 552a(c)(3), (c)(4); (d); (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8), (e)(12); (f); (g). Additionally, the Secretary of Homeland Security, pursuant to 5 U.S.C. 552a(k)(1), (k)(2), and (k)(3), has exempted this system from the following provisions of the Privacy Act, 5 U.S.C. 552a(c)(3); (d); (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I); and (f). When this system receives a record from another system exempted in that source system under 5 U.S.C. 552a(j)(2), DHS will claim the same exemptions for those records that are claimed for the original primary system of records from which they originated and claims any additional exemptions set forth here.

HISTORY:

DHS/USSS–004 Protection Information System of Records, 76 FR 66940 (October 28, 2011); Implementation of Exemptions, DHS/USSS–004 Protection Information System of Records, 74 FR 45090 (August 31, 2009).

Constantina Kozanas,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2020–22534 Filed 10–9–20; 8:45 am]

BILLING CODE 9110–18–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2020–0029]

Privacy Act of 1974; System of Records

AGENCY: United States Secret Service, Department of Homeland Security.

ACTION: Notice of a Modified System of Records.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Homeland Security (DHS) proposes to modify and reissue a current DHS system of records titled, ''Department of Homeland Security/United States Secret Service–001 Criminal Investigation Information System of Records.'' This system of records describes the collection and maintenance of records by DHS/United States Secret Service

(USSS) in its investigations related to individuals being investigated in connection with the criminal law enforcement functions of USSS, including investigating counterfeiting offenses, financial institution fraud, computer and telecommunications fraud, false identification documents, access device fraud, advance fee fraud, and electronic funds transfer fraud. In this system of records notice update, DHS/USSS is modifying the categories of records, routine uses, and retention and disposal of records. Additionally, this notice includes non-substantive changes to simplify the formatting and text of the previously published notice.

DATES: Submit comments on or before November 12, 2020. This modified system will be effective upon publication. New or modified routine uses will be effective November 12, 2020.

ADDRESSES: You may submit comments, identified by docket number DHS–2020–0029 by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–343–4010.
- *Mail:* Constantina Kozanas, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528–0655.

Instructions: All submissions received must include the agency name and docket number DHS–2020–0029. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For general questions, please contact: E. Gayle Rucker, (202) 406–5838, *PrivacyServicesProgram@usssd.dhs.gov,* Privacy Officer, United States Secret Service, Washington, DC 20223. For privacy questions, please contact: Constantina Kozanas, (202) 343–1717, *Privacy@hq.dhs.gov,* Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528–0655.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the Department of Homeland Security (DHS)/United States Secret Service (USSS) proposes to modify and reissue a current DHS system of records titled, ''DHS/USSS–001 Criminal Investigation Information System of Records.'' The purpose of this system is to collect and maintain criminal records related to individuals being investigated by DHS/USSS in connection with USSS' criminal law enforcement functions, including investigating counterfeiting offenses, financial institution fraud, computer and telecommunications fraud, false identification documents, access device fraud, advance fee fraud, and electronic funds transfer fraud.

DHS/USSS is updating this system of records notice (SORN) to:

(1) Update the categories of records to consolidate the name category by grouping together variations of name types; (2) update the categories of records to consolidate the government-issued identifiers of persons by grouping together variations of government-issued identifiers of persons; (3) update the categories of records to consolidate the address category by grouping together variations of address types including other contact information identifiers; (4) update the categories of records to add citizenship and immigration information identifiers; (5) update the categories of records to add video imagery records; (6) update the categories of records to add historical cell-site location information; (7) update the categories of records to add geo-fence records of mobile devices; (8) update the categories of records to add government-issued identifiers of property; (9) update the categories of records to add biometric identifiers and profiles based on biometric attributes; (10) update the categories of records to add samples of deoxyribonucleic acid (DNA) and their DNA profiles; (11) update the categories of records to add social media posts, profiles, and account content; (12) modify routine use (E) and add new routine use (F) to conform to Office of Management and Budget Memorandum M–17–12; (13) modify previously issued routine use (I), now routine use (N), to remove disclosures ''in response to a subpoena''; (14) add routine use (P) for disclosure to government agencies for the purposes of testing new technology; (15) remove routine uses that are no longer applicable; and (16) update retention and disposal of records to reflect the most recent National Archives and Records Administration (NARA)-approved records schedules.

Further, DHS is making non-substantive changes to the text and formatting of this SORN to align with previously published DHS SORNs, to include the reordering and re-lettering of routine uses.

Consistent with DHS's information sharing mission, information stored in the DHS/USSS–001 Criminal Investigation Information System of Records may be shared with other DHS Components that have a need to know the information to carry out their national security, law enforcement, immigration, intelligence, or other homeland security functions. In addition, DHS/USSS may share information with appropriate federal, state, local, tribal, territorial, foreign, or international government agencies consistent with the routine uses set forth in this system of records notice.

This modified system will be included in DHS's inventory of record systems.

II. Privacy Act

The Privacy Act embodies fair information practice principles in a statutory framework governing the means by which federal government agencies collect, maintain, use, and disseminate individuals' records. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass U.S. citizens and lawful permanent residents. Additionally, the Judicial Redress Act (JRA) provides covered persons with a statutory right to make requests for access and amendment to covered records, as defined by the JRA, along with judicial review for denials of such requests. In addition, the JRA prohibits disclosures of covered records, except as otherwise permitted by the Privacy Act.

Below is the description of the DHS/USSS–001 Criminal Investigation Information System of Records.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this system of records to the Office of Management and Budget and to Congress.

SYSTEM NAME AND NUMBER:

Department of Homeland Security (DHS)/United States Secret Service (USSS)–001 Criminal Investigation Information System of Records.

SECURITY CLASSIFICATION:

Unclassified and Classified.

SYSTEM LOCATION:

Records are maintained at the USSS Headquarters in Washington, DC and field offices. IT systems covered by this SORN include USSS systems, such as e-

Agent, Field Support System (FSS), and Field Investigative Reporting System (FIRS), all accessible at USSS offices.

SYSTEM MANAGER(S):

Assistant Director, Office of Investigations, United States Secret Service, *wfo@usss.dhs.gov,* 245 Murray Lane SW, Building T–5, Washington, DC 20223.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Homeland Security Act of 2002, Public Law 107–296, including 6 U.S.C. 124n, 6 U.S.C. 455, and 6 U.S.C. 383; 18 U.S.C. 3056; 18 U.S.C. 3056A; 18 U.S.C. 1029(d); 18 U.S.C. 1030(d).

PURPOSE(S) OF THE SYSTEM:

The purpose of this system is to collect and maintain criminal records related to individuals being investigated by DHS/USSS in connection with DHS/USSS' criminal law enforcement functions, including investigating counterfeiting offenses, financial institution fraud, computer and telecommunications fraud, false identification documents, access device fraud, advance fee fraud, and electronic funds transfer fraud.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Categories of individuals in this system of records include: (1) Individuals who have been or are currently the subject of a criminal investigation by DHS/USSS in connection with the performance by that agency of its authorized criminal investigative functions; (2) individuals who are informants, suspects, defendants, fugitives, released prisoners, victims, witnesses, or those associated with these individuals who have been identified by DHS/USSS during the course of official DHS/USSS criminal investigations or by information supplied by other law enforcement agencies, units, and the general public; (3) individuals who are complainants and correspondents; (4) individuals who are payees, registered owners, or endorsers of stolen or lost obligations and other securities of the United States; and (5) USSS and other law enforcement personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

- Name, alias, or code name;
- Records containing information from government-issued identifiers, including Passport number, Social Security number, and Driver License number;
- Contact information identifiers, such as physical and electronic addresses and phone numbers;
- Records containing still and video imagery (imagery records containing facial biometrics may be both electronically analyzed and/or examined by human agents during the course of criminal investigations);
- Records containing historical cell-site location information obtained from providers of electronic communications, and other information lawfully obtained under the provisions of 18 U.S.C. 2701, *et seq.;*
- Records containing citizenship information and identifiers;
- Records containing geo-fence information from mobile devices to track a suspected criminal's location;
- Records containing information from government-issued property identifiers, to include boat, vehicle, and other asset registration numbers;
- Social media posts, profiles, and account content;
- Records containing information from biometric identifiers and profiles based on biometric attributes to include fingerprint and voiceprint (such information may be both electronically analyzed and/or examined by human agents); and
- Records containing information from DNA samples and profiles of DNA obtained from the body, such as bodily fluids, or obtained from contacted surfaces (such information may be both electronically analyzed and/or examined by human agents).

RECORD SOURCE CATEGORIES:

The Secretary of Homeland Security has exempted this system from subsections (e)(4)(I) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2), (k)(2), and (k)(3); therefore, record source categories shall not be disclosed.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of Justice (DOJ), including the U.S. Attorney's Offices, or other federal agencies conducting litigation or proceedings before any court, adjudicative, or administrative body, when it is relevant or necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

1. DHS or any component thereof;
2. Any employee or former employee of DHS in his/her official capacity;
3. Any employee or former employee of DHS in his/her individual capacity, only when DOJ or DHS has agreed to represent the employee; or
4. The United States or any agency thereof.

B. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

C. To NARA or General Services Administration pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

D. To an agency or organization for performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

E. To appropriate agencies, entities, and persons when (1) DHS suspects or has confirmed that there has been a breach of the system of records; (2) DHS has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, DHS (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 DHS's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

F. To another federal agency or federal entity, when DHS 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.

G. To an appropriate federal, state, tribal, local, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, when a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations and such disclosure is proper and consistent with the official duties of the person making the disclosure.

H. To contractors and their agents, grantees, experts, consultants, and others performing or working on a

contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS officers and employees.

I. To employees and officials of financial and commercial business firms and to private individuals, information pertaining to actual or suspected criminal offenders where such disclosure is considered reasonably necessary for the purpose of furthering USSS efforts to investigate the activities of and apprehend criminal offenders and suspected criminal offenders.

J. To federal, state, and local government agencies foreign or domestic, having prosecutorial and civil law enforcement functions for use by attorneys, magistrates, and judges, parole or probation authorities and other law enforcement authorities for the purpose of developing a criminal or civil investigation, prosecuting, sentencing, or determining the parole and probation status of criminal offenders or suspected criminal offenders.

K. To personnel of other federal, state, and local law enforcement agencies, foreign or domestic, for the purpose of developing information on subjects involved in USSS criminal investigations and assisting other law enforcement agencies in the investigation and prosecution of violations of the criminal laws which those agencies are responsible for enforcing.

L. To personnel of federal, state, and local governmental agencies, foreign and domestic, where such disclosure is considered reasonably necessary for the purpose of furthering USSS efforts to investigate the activities of and apprehend criminal offenders and suspected criminal offenders.

M. To personnel of federal, state, and local governmental agencies, foreign and domestic, where there is a showing of reasonable necessity to obtain such information to accomplish a valid law enforcement purpose as agreed to by the USSS.

N. To a court, magistrate, or administrative tribunal in the course of presenting evidence and opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal or civil proceedings.

O. To an appropriate federal, state, local, tribal, foreign, or international agency, if the information is relevant and necessary to a requesting agency's decision concerning the hiring or retention of an individual, or the issuance of a security clearance, license, contract, grant, or other benefit, or if the information is relevant and necessary to a DHS decision concerning the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, the issuance of a license, grant, or other benefit and when disclosure is appropriate to the proper performance of the official duties of the person making the request.

P. To appropriate federal, state, local, tribal, or foreign governmental agencies or multilateral governmental organizations, with the approval of the Chief Privacy Officer, when DHS is aware of a need to use relevant data for purposes of testing new technology that relate to the purpose(s) stated in this SORN.

Q. To the news media and the public, with the approval of the Chief Privacy Officer in consultation with counsel, when there exists a legitimate public interest in the disclosure of the information, when disclosure is necessary to preserve confidence in the integrity of DHS, or when disclosure is necessary to demonstrate the accountability of DHS's officers, employees, or individuals covered by the system, except to the extent the Chief Privacy Officer determines that release of the specific information in the context of a particular case would constitute a clearly unwarranted invasion of personal privacy.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

DHS/USSS stores records in this system electronically or on paper in secure facilities behind a locked door. The electronic records may be stored on magnetic disc, tape, and digital media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

DHS/USSS may retrieve records by name, address, vehicle license number, or other identifier retrieved through computer search of electronic files maintained both at USSS Headquarters and in the field offices. Access to the physical files containing records is by case number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Investigative Records are managed by DHS/USSS in accordance with the following National Archives and Records Administration (NARA) approved records schedules: N1–087–89–02, ''Field Investigative Records,'' N1–087–92–002, ''Investigative Program Records,'' and NC1–87–84–1, ''Closed Case Investigative Files.'' Records are retained, transferred, and destroyed based on where the record was created (Headquarters or Field Office) and the type of record. For instance, pursuant to N1–087–89–02, for Field Office records, all selected closed case files pursuant to the selection criteria in the introduction of N1–087–89–02 are permanent and are subsequently transferred to NARA 30 years after the case has ended. All other closed case files are retained, transferred, and destroyed in the following: criminal judicial case files are to be transferred to a Federal Records Center (FRC) and destroyed 30 years after the end of the case; criminal non-judicial case files are to be transferred to the FRC and destroyed 30 years after the end of the case, except for forgery case files which are to be transferred to the FRC and then destroyed 5 years after the end of the case; non-criminal case files are to be transferred to the FRC and then destroyed 5 years following the end of the case; and investigations for other district (IOD) cases are to be destroyed two years following the end of a case. Case files in Field Offices containing special information are to be retained for the following dependent on the type of information: Title I Intercept Material Electronic communications (minimum of 10 years), Protected IRS information (minimum of 8 years), and mail cover information (minimum of 8 years), and then all follow records retention schedule for closed investigative case files in Item 1 of N1–087–89–02. Please refer to N1–087–89–02 for records retention schedules for other Field Office Investigative Program Records. Headquarters Office records are subject to NC1–87–84–1, as amended by N1–087–92–002. For instance, all selected closed case files pursuant to the selection criteria in the introduction of NC1–87–84–1 are permanent and are subsequently transferred to NARA in five-year blocks when 50 years old. Judicial, non-judicial, and non-criminal case files are to be transferred to the FRC 10 years after closing the case and destroyed 30 years after the end of the case. Please refer to NC1–87–84–1 and N1–087–92–002 for all other investigative program records held at USSS Headquarters. Disposal of records that have met the end of their life cycles is carried out in a secure manner, including by burning or shredding.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

DHS/USSS safeguards records in this system according to applicable rules and policies, including all applicable

DHS automated systems security and access policies. DHS/USSS has imposed strict controls to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RECORD ACCESS PROCEDURES:

The Secretary of Homeland Security has exempted this system from the notification, access, and amendment procedures of the Privacy Act, and the Judicial Redress Act if applicable, because it is a law enforcement system. However, DHS/USSS will consider individual requests to determine whether or not information may be released. Thus, individuals seeking access to and notification of any record contained in this system of records, or seeking to contest its content, may submit a request in writing to the Chief Privacy Officer and Chief Freedom of Information Act (FOIA) Officer, whose contact information can be found at *http://www.dhs.gov/foia* under ''Contact Information.'' If an individual believes more than one component maintains Privacy Act records concerning him or her, the individual may submit the request to the Chief Privacy Officer and Chief FOIA Officer, Department of Homeland Security, Washington, DC 20528–0655. Even if neither the Privacy Act nor the Judicial Redress Act provide a right of access, certain records about you may be available under the Freedom of Information Act.

When an individual is seeking records about himself or herself from this system of records or any other Departmental system of records, the individual's request must conform with the Privacy Act regulations set forth in 6 CFR part 5. The individual must first verify his/her identity, meaning that the individual must provide his/her full name, current address, and date and place of birth. The individual must sign the request, and the individual's signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, an individual may obtain forms for this purpose from the Chief Privacy Officer and Chief FOIA Officer, *http://www.dhs.gov/foia* or 1–866–431–0486. In addition, the individual should:

- Explain why he or she believes the Department would have information being requested;
- Identify which component(s) of the Department he or she believes may have the information;
- Specify when the individual believes the records would have been created; and
- Provide any other information that will help the FOIA staff determine which DHS component agency may have responsive records;

If the request is seeking records pertaining to another living individual, the request must include an authorization from the individual whose record is being requested, authorizing the release to the requester.

Without the above information, the component(s) may not be able to conduct an effective search, and the individual's request may be denied due to lack of specificity or lack of compliance with applicable regulations.

CONTESTING RECORD PROCEDURES:

This system of records is exempt from the Privacy Act's access and amendment provisions and those of the Judicial Redress Act; therefore, record access and amendment may not be available. In such cases, certain records about an individual may be available under FOIA, and the correspondence from those seeking a record amendment may be placed in the respective case file. For records covered by the Privacy Act or covered JRA records, individuals may make a request for amendment or correction of a record of the Department about the individual by writing directly to the Department component that maintains the record, unless the record is not subject to amendment or correction. The request should identify each particular record in question, state the amendment or correction desired, and state why the individual believes that the record is not accurate, relevant, timely, or complete. The individual may submit any documentation that would be helpful. If the individual believes that the same record is in more than one system of records, the request should state that and be addressed to each component that maintains a system of records containing the record.

NOTIFICATION PROCEDURES:

See ''Record Access Procedures'' above.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

The Secretary of Homeland Security, pursuant to 5 U.S.C. 552a(j)(2), has exempted this system from the following provisions of the Privacy Act: 5 U.S.C. 552a(c)(3) and (4); (d); (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), and (e)(8); (f); and (g). Additionally, the Secretary of Homeland Security, pursuant to 5 U.S.C. 552a(k)(1), (k)(2), and (k)(3) has exempted this system from the following provisions of the Privacy Act: 5 U.S.C. 552a(c)(3); (d); (e)(1), (e)(4)(G), (e)(4)(H), and (e)(4)(I); and (f).

HISTORY:

76 FR 49497 (August 10, 2011); 74 FR 45087 (Final Rule) (August 31, 2009).

Constantina Kozanas,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2020–22533 Filed 10–9–20; 8:45 am]

BILLING CODE 9110–18–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R5–ES–2020–N083; FXES11130500000–201–FF05E00000]

Endangered and Threatened Wildlife and Plants; Initiation of 5-Year Reviews of 10 Northeastern Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of initiation of reviews; request for information.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are initiating 5-year reviews under the Endangered Species Act, as amended, for 10 northeastern species. A 5-year review is based on the best scientific and commercial data available at the time of the review. We are requesting submission of any such information that has become available since the previous 5-year review for each species.

DATES: To ensure consideration, please submit your written information by November 12, 2020. However, we will continue to accept new information about any listed species at any time.

ADDRESSES: For instructions on how and where to submit information, see Request for New Information and Table 2—Contacts under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: *General Information:* Martin Miller, via email at *martin_miller@fws.gov,* and via U.S. mail at U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, MA 01035.

Species-Specific Information and Submission of Comments: Contact the appropriate person or office listed in Table 2—Contacts in **SUPPLEMENTARY INFORMATION**.

Individuals who are deaf or hard of hearing may call the Federal Relay Service at 1–800–877–8339 for TTY assistance.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service, are initiating 5-year reviews under the ESA (16 U.S.C. 1531 *et seq.*) for 10 northeastern species: The endangered Virginia fringed mountain snail, Plymouth red-bellied cooter, Jesup's milk-vetch, shale barren rock-cress, Maryland darter, Lee County cave isopod, James spinymussel, and Guyandotte River crayfish, and the threatened red knot and Big Sandy crayfish.

A 5-year review is based on the best scientific and commercial data available at the time of the review. We are requesting submission of any such information that has become available since the most recent status review for each species.

Why do we conduct 5-year reviews and species status assessments?

Under the ESA, we maintain Lists of Endangered and Threatened Wildlife and Plants (which we collectively refer to as the List) in title 50 of the Code of Federal Regulations at 50 CFR 17.11(h) (for wildlife) and 50 CFR 17.12(h) (for plants). Listed wildlife and plants can also be found at *http://ecos.fws.gov/tess_public/pub/listedAnimals.jsp* and *http://ecos.fws.gov/tess_public/pub/listedPlants.jsp,* respectively. Section 4(c)(2)(A) of the ESA requires us to review each listed species' status at least once every 5 years. Our regulations at 50 CFR 424.21 require that we publish a notice in the **Federal Register** announcing species under active review. For additional information about 5-year reviews, refer to our fact sheet at *http://www.fws.gov/endangered/what-we-do/recovery-overview.html.*

What species are under review?

We are initiating 5-year status reviews of the species in table 1.

TABLE 1—SPECIES UNDER REVIEW

Common name	Scientific name	Status	Where listed	Listing date and citation
Virginia fringed mountain snail	*Polygyriscus virginianus*	Endangered	Wherever found	43 FR 28932; 07/03/1978.
Plymouth red-bellied cooter	*Pseudemys rubriventris*	Endangered	Wherever found	45 FR 21828; 04/02/1980.
Jesup's milk-vetch	*Astragalus robbinsii* var. *jesupii.*	Endangered	Wherever found	52 FR 21481 06/05/1987.
Shale barren rock-cress	*Arabis serotina*	Endangered	Wherever found	54 FR 29655; 07/13/1989.
Maryland darter	*Etheostoma sellare*	Endangered	Wherever found	32 FR 4001; 03/11/1967.
Lee County cave isopod	*Lirceus usdagalun*	Endangered	Wherever found	57 FR 54722; 11/20/1992.
James spinymussel	*Pleurobema collina*	Endangered	Wherever found	53 FR 27689; 07/22/1988.
Red knot	*Calidris canutus rufa*	Threatened	Wherever found	79 FR 73706; 12/11/2014.
Big Sandy crayfish	*Cambarus callainus*	Threatened	Wherever found	81 FR 20450; 04/07/2016.
Guyandotte River crayfish	*Cambarus veteranus*	Endangered	Wherever found	81 FR 20450; 04/07/2016.

What information do we consider in our 5-year reviews and species status assessments?

A 5-year review considers all new information available at the time of the review. In conducting the review, we consider the best scientific and commercial data that have become available since the most recent status review. We are seeking new information specifically regarding:

(1) Species biology, including but not limited to life history and habitat requirements and impact tolerance thresholds;

(2) Historical and current population conditions, including but not limited to population abundance, trends, distribution, demographics, and genetics;

(3) Historical and current habitat conditions, including but not limited to amount, distribution, and suitability;

(4) Historical and current threats, threat trends, and threat projections in relation to the five listing factors (as defined in section 4(a)(1) of the ESA);

(5) Conservation measures for the species that have been implemented or are planned; and

(6) Other new information, data, or corrections, including but not limited to taxonomic or nomenclatural changes, identification of erroneous information contained in the List, and improved analytical methods.

Any new information received will be considered during the 5-year review and will also be useful in evaluating ongoing recovery programs for the species.

Request for New Information

To ensure that 5-year reviews are based on the best available scientific and commercial information, we request new information from all sources. If you submit information, please support it with documentation such as maps, bibliographic references, methods used to gather and analyze the data, and/or copies of any pertinent publications, reports, or letters by knowledgeable sources.

How do I ask questions or provide information?

Please submit your questions, comments, and materials to the appropriate contact in table 2. Individuals who are hearing impaired or speech impaired may call the Federal Relay Service at 800–877–8339 for TTY assistance.

Public Availability of Comments

Before including your address, phone number, electronic mail address, or other personal identifying information in your submission, you should be aware that your entire submission—including your personal identifying information—may be made publicly available at any time. Although you can request that personal information be withheld from public review, we cannot guarantee that we will be able to do so.

Contacts

New information on the species covered in this notice should be submitted by mail or electronic mail to the appropriate contact shown in table 2, by the deadline provided in **DATES**.

TABLE 2—CONTACTS

Species	Contact person, email	Contact address
Virginia fringed mountain snail	Jennifer Stanhope, *jennifer_stanhope@fws.gov*	U.S. Fish and Wildlife Service, Virginia Field Office, 6669 Short Lane, Gloucester, VA 23061.
Plymouth red-bellied cooter	Eliese Dykstra, *eliese_dykstra@fws.gov*	U.S. Fish and Wildlife Service, New England Field Office, 70 Commercial Street, Suite 300, Concord, NH 03301.
Jesup's milk-vetch	Susi von Oettingen, *susi_vonoettingen@fws.gov*	U.S. Fish and Wildlife Service, New England Field Office, 70 Commercial Street, Suite 300, Concord, NH 03301.
Shale barren rock-cress	Sumalee Hoskin, *sumalee_hoskin@fws.gov*	U.S. Fish and Wildlife Service, Virginia Field Office, 6669 Short Lane, Gloucester, VA 23061.
Maryland darter	Julie Thompson, *julie_thompson@fws.gov*	U.S. Fish and Wildlife Service, Chesapeake Bay Field Office, 177 Admiral Cochrane Drive, Annapolis, MD 21401.
Lee County cave isopod	Rose Agbalog, *rose_agbalog@fws.gov*	U.S. Fish and Wildlife Service, Southwestern Virginia Field Office, 330 Cummings Street, Abingdon, VA 24210.
James spinymussel	Jennifer Stanhope, *jennifer_stanhope@fws.gov*	U.S. Fish and Wildlife Service, Virginia Field Office, 6669 Short Lane, Gloucester, VA 23061.
Red knot	Wendy Walsh, *wendy_walsh@fws.gov*	U.S. Fish and Wildlife Service, New Jersey Field Office, 4 East Jimmie Leeds Road, Suite 4, Galloway, NJ 08205.
Big Sandy crayfish	Barbara Douglas, *barbara_douglas@fws.gov*	U.S. Fish and Wildlife Service, West Virginia Field Office, 6263 Appalachian Highway, Davis, WV 26260.
Guyandotte River crayfish	Barbara Douglas, *barbara_douglas@fws.gov*	U.S. Fish and Wildlife Service, West Virginia Field Office, 6263 Appalachian Highway, Davis, WV 26260.

Authority

We publish this document under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Wendi Weber,

Regional Director, Northeast Region.

[FR Doc. 2020–22547 Filed 10–9–20; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCO910000–20X–L13100000.PP0000]

Notice of Administrative Boundary Change for Bureau of Land Management Districts in Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of district boundary changes.

SUMMARY: The administrative boundaries of the Northwest Colorado District Office, Rocky Mountain District, and Southwest Colorado District are being changed, and the Upper Colorado River District is being created.

DATES: The boundary change takes effect on October 1, 2020.

FOR FURTHER INFORMATION CONTACT: Suzanne Copping, Rocky Mountain District Associate District Manager, telephone: 719–269–8724, email: *scopping@blm.gov* or Jayson Barangan, BLM Colorado Acting Communications Director, telephone: 303–239–3681, email: *jbaranga@blm.gov.* Persons who use a use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact Ms. Copping during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or questions. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The administrative boundary change will realign the Gunnison Field Office under the Southwest District; move the Grand Junction Field Office from the Southwest District to the newly created Upper Colorado River District; and move the Colorado River Valley Field Office from the Northwest District to the Upper Colorado River District. Field Office and Fire Unit boundaries will remain the same. This change in administrative boundaries will align district boundaries with BLM Colorado's fire units. All land managed by the Bureau of Land Management in Colorado fall within the Department of the Interior's Upper Colorado Basin—Region 7. This realignment of administrative boundaries does not conflict with the Department's reorganization into 12 unified Interior regions and is fully consistent with the goals of the Department's efforts for efficient government and enhanced coordination.

In 2016, BLM Colorado redrew its district boundaries, establishing the Rocky Mountain District, Northwest Colorado, and Southwest Colorado Districts. The established boundaries from this effort resulted in districts not aligning with the fire units. After implementation, the State Director made a commitment to evaluate the realignment and determine if adjustments would be necessary. To honor the commitment, BLM Colorado sought input in Fall 2019 from its employees, local communities and local government officials, and Tribes, as well as Colorado's congressional delegation on how the 2016 alignment is working. As a result of the evaluation, BLM Colorado is establishing a fourth district—the Upper Colorado River District—and realigning existing districts to match the existing four fire units and better complement the missions of the field offices throughout the state.

The primary purpose of the administrative boundary change is to align BLM Colorado fire units with district boundaries and simplify reporting and oversight structures to enhance wildfire response and wildland firefighter safety. Secondly, aligning district boundaries with more practical geographic features and geopolitical areas will enhance service to the public, as well as coordination with local, county and state agencies and elected officials.

Authority: BLM Manual 1203 Delegation of Authority Sec. 1202 and Sec. 1201 relates to functions of BLM. The delegation manual shows the various delegations of functions to BLM officials, et al., which includes ''Approve changes in District and Field Office boundaries.'' (See the table of delegations in the manual, specifically subject code 1202.) This authority is retained by the Director, with concurrence by the ''Office of the Assistant Secretary'' (see footnote 3 in

the 1203 Manual). BLM Manual 1201 Organization Management describes organizational policies and standards. Procedures and requirements for organizational change have been followed as described in BLM Manual 1202 Organization Control.

Jamie E. Connell,

Colorado State Director.

[FR Doc. 2020–22575 Filed 10–9–20; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWY920000. L57000000.FI0000. 14XL5017AR]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease WYW–160400, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: As provided under the Mineral Leasing Act of 1920, as amended, the Bureau of Land Management (BLM) received a petition for reinstatement of terminated competitive oil and gas lease WYW–160400 in Campbell County, Wyoming, from the lessee of record, Osborn Heirs Company LTD. The BLM has reviewed all applicable information and proposes to reinstate the lease subject to amended terms and conditions. The lessee filed the petition for reinstatement on time and has met all filing requirements. No leases affecting this land were issued before the petition was filed.

FOR FURTHER INFORMATION CONTACT: Chris Hite, Branch Chief for Fluid Minerals Adjudication, Bureau of Land Management, Wyoming State Office, 5353 Yellowstone Road, Cheyenne, Wyoming, 82009; phone 307–775–6176; email *chite@blm.gov.*

Persons who use a telecommunications device for the deaf may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact Mr. Hite during normal business hours. The FRS is available 24 hours a day, seven days a week, to leave a message or question with the above individual. A reply will be sent during normal business hours.

SUPPLEMENTARY INFORMATION: Termination of a lease is automatic and statutorily imposed by Congress when rental fees are not paid in a timely manner. Reinstatement terms are also set by Congress. Competitive oil and gas lease WYW–160400, which covers 935.65 acres, was terminated under the law effective June 1, 2014, for failure to pay rental timely. The lessee of record filed a petition for its reinstatement on time and met all requirements for Class II reinstatements as provided in Sec. 31(d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188). Reinstatement of this lease conforms to the terms and conditions of all applicable land use plans, including the 2015 Approved Resource Management Plan Amendments for the Rocky Mountain Region, and other applicable National Environmental Policy Act documents.

The BLM proposes to reinstate lease WYW–160400 effective June 1, 2014, subject to amended lease terms and conditions. The lessee has agreed to pay increased rentals, $10 per acre or fraction thereof per year, and royalty rates, 16⅔ percent, on the lease and to adhere to amended lease stipulations to protect sage-grouse habitat in conformance with current management decisions under the 2015 Approved Resource Management Plan Amendments for the Rocky Mountain Region. The lease will be reinstated 30 days after publication of this proposed reinstatement notice in the **Federal Register**.

Authority: 30 U.S.C. 188 (e)(4) and 43 CFR 3108.2–3 (b)(2)(v)

Chris Hite,

Chief, Branch of Fluid Minerals Adjudication.

[FR Doc. 2020–22496 Filed 10–9–20; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRSS–EQD–SSB–NPS0030569; PPWONRADE3, PPMRSNR1Y.NM000 (200); OMB Control Number 1024–0216]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; National Park Service Visitor Survey Card

AGENCY: National Park Service, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 we, the National Park Service (NPS) are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before November 12, 2020.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Please provide a copy of your comments to Phadrea Ponds, Acting NPS Information Collection Clearance Officer, 1201 Oakridge Drive Fort Collins, CO 80525; or by email to *phadrea_ponds@nps.gov.* Please reference OMB Control Number 1024–0216 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Bret Meldrum by email at *bret_meldrum@nps.gov* or by telephone at 970–267–7295. Individuals who are hearing or speech impaired may call the Federal Relay Service at 1–800–877–8339 for TTY assistance. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (PRA, 44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on June 5, 2020, (85 FR 34646). No comments were received.

As part of our continuing effort to reduce paperwork and respondent burdens, we are again soliciting comments from the public and other Federal agencies on the proposed ICR that is described below. We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency minimize the burden of the collection of information on those who are to

respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: As required by the Government Performance and Results Act (GPRA) codified in Public Law 103–62, the NPS uses the Visitor Survey Card (VSC) to monitor and report performance, accomplishments and progress toward pre-established management goals. The VSC is used to measure park unit's performance related to NPS Management Policy and GPRA Goals IIa1, visitor satisfaction, and IIb1, visitor understanding and appreciation. Each year, approximately 330 participating NPS units use the VSC to collect data to evaluate visitor perception and satisfaction of service and facility quality; awareness of park significance; and basic demographic information. Park managers, superintendents and the NPS Social Science Program use the information collected to understand visitor use and improve park services and facilities to develop long-term strategic plans, annual goals, and performance improvement plans.

Title of Collection: National Park Service Visitor Survey Card.

OMB Control Number: 1024–0216.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: General public, any person visiting the national park during the sampling period.

Total Estimated Number of Annual Respondents: 67,917.

Total Estimated Number of Annual Responses: 67,917.

Estimated Completion Time per Response: 4 minutes to complete the full survey, 2 minutes for the non-response survey. Completion time includes initial contact time.

Total Estimated Number of Annual Burden Hours: 4,356 hours.

Respondent's Obligation: Voluntary.

Frequency of Collection: One-time, on occasion.

Total Estimated Annual Nonhour Burden Cost: None.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Phadrea Ponds,

Information Collection Clearance Officer, National Park Service.

[FR Doc. 2020–22561 Filed 10–9–20; 8:45 am]

BILLING CODE 4312–52–P

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Meeting of the Advisory Committee; Meeting

AGENCY: Joint Board for the Enrollment of Actuaries.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The Joint Board for the Enrollment of Actuaries gives notice of a closed teleconference meeting of the Advisory Committee on Actuarial Examinations.

DATES: The meeting will be held on October 30, 2020, from 9:00 a.m. to 5:30 p.m. (EDT).

FOR FURTHER INFORMATION CONTACT: Elizabeth Van Osten, Designated Federal Officer, Advisory Committee on Actuarial Examinations, at (202) 317–3648 or *elizabeth.j.vanosten@irs.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Advisory Committee on Actuarial Examinations will hold a teleconference meeting on October 30, 2020, from 9:00 a.m. to 5:30 p.m. (EDT). The meeting will be closed to the public.

The purpose of the meeting is to discuss topics and questions that may be recommended for inclusion on future Joint Board examinations in actuarial mathematics, pension law and methodology referred to in 29 U.S.C. 1242(a)(1)(B).

A determination has been made as required by section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, that the subject of the meeting falls within the exception to the open meeting requirement set forth in Title 5 U.S.C. 552b(c)(9)(B), and that the public interest requires that such meeting be closed to public participation.

Dated: October 6, 2020.

Thomas V. Curtin, Jr.,

Executive Director, Joint Board for the Enrollment of Actuaries.

[FR Doc. 2020–22480 Filed 10–9–20; 8:45 am]

BILLING CODE 4830–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[[NARA–20–0022; NARA–2021–002]

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice of certain Federal agency requests for records disposition authority (records schedules). We publish notice in the **Federal Register** and on *regulations.gov* for records schedules in which agencies propose to dispose of records they no longer need to conduct agency business. We invite public comments on such records schedules.

DATES: NARA must receive comments by November 27, 2020.

ADDRESSES: You may submit comments by either of the following methods. You must cite the control number, which appears on the records schedule in parentheses after the name of the agency that submitted the schedule.

- *Federal eRulemaking Portal: http://www.regulations.gov.*
- *Mail:* Records Appraisal and Agency Assistance (ACR); National Archives and Records Administration; 8601 Adelphi Road; College Park, MD 20740–6001.

FOR FURTHER INFORMATION CONTACT: Kimberly Keravuori, Regulatory and External Policy Program Manager, by email at *regulation_comments@nara.gov.* For information about records schedules, contact Records Management Operations by email at *request.schedule@nara.gov,* by mail at the address above, or by phone at 301–837–1799.

SUPPLEMENTARY INFORMATION:

Public Comment Procedures

We are publishing notice of records schedules in which agencies propose to dispose of records they no longer need to conduct agency business. We invite public comments on these records schedules, as required by 44 U.S.C.

3303a(a), and list the schedules at the end of this notice by agency and subdivision requesting disposition authority.

In addition, this notice lists the organizational unit(s) accumulating the records or states that the schedule has agency-wide applicability. It also provides the control number assigned to each schedule, which you will need if you submit comments on that schedule. We have uploaded the records schedules and accompanying appraisal memoranda to the *regulations.gov* docket for this notice as ''other'' documents. Each records schedule contains a full description of the records at the file unit level as well as their proposed disposition. The appraisal memorandum for the schedule includes information about the records.

We will post comments, including any personal information and attachments, to the public docket unchanged. Because comments are public, you are responsible for ensuring that you do not include any confidential or other information that you or a third party may not wish to be publicly posted. If you want to submit a comment with confidential information or cannot otherwise use the *regulations.gov* portal, you may contact *request.schedule@nara.gov* for instructions on submitting your comment.

We will consider all comments submitted by the posted deadline and consult as needed with the Federal agency seeking the disposition authority. After considering comments, we will post on *regulations.gov* a ''Consolidated Reply'' summarizing the comments, responding to them, and noting any changes we have made to the proposed records schedule. We will then send the schedule for final approval by the Archivist of the United States. You may elect at *regulations.gov* to receive updates on the docket, including an alert when we post the Consolidated Reply, whether or not you submit a comment. If you have a question, you can submit it as a comment, and can also submit any concerns or comments you would have to a possible response to the question. We will address these items in consolidated replies along with any other comments submitted on that schedule.

We will post schedules on our website in the Records Control Schedule (RCS) Repository, at *https://www.archives.gov/records-mgmt/rcs,* after the Archivist approves them. The RCS contains all schedules approved since 1973.

Background

Each year, Federal agencies create billions of records. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval. Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. The records schedules authorize agencies to preserve records of continuing value in the National Archives or to destroy, after a specified period, records lacking continuing administrative, legal, research, or other value. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

Agencies may not destroy Federal records without the approval of the Archivist of the United States. The Archivist grants this approval only after thorough consideration of the records' administrative use by the agency of origin, the rights of the Government and of private people directly affected by the Government's activities, and whether or not the records have historical or other value. Public review and comment on these records schedules is part of the Archivist's consideration process.

Schedules Pending

1. Department of Homeland Security, U.S. Coast Guard, Maritime Analytic Support System (DAA–0026–2019–0003).

2. Department of Justice, Bureau of Prisons, Correctional Services Records (DAA–0129–2019–0004).

3. Department of the Treasury, Treasury Inspector General for Tax Administration, Legislation Reviewed (DAA–0056–2018–0009).

4. Federal Trade Commission, Office of the Inspector General, Records of the Office of the Inspector General (DAA–0122–2020–0001).

5. National Archives and Records Administration, Government-wide, GRS 5.7: Administrative Management and Oversight Records (DAA–GRS–2020–0001).

6. National Indian Gaming Commission, Agency-wide, Tribal Information Management System files (DAA–0600–2020–0001).

Laurence Brewer,

Chief Records Officer for the U.S. Government.

[FR Doc. 2020–22501 Filed 10–9–20; 8:45 am]

BILLING CODE 7515–01–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 meetings.

SUMMARY: Pursuant to the Federal Advisory Committee Act, as amended, notice is hereby given that 33 meetings 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 Meetings Are

Musical Theater (review of applications): This meeting will be closed.

Date and time: November 10, 2020; 1:00 p.m. to 3:00 p.m.

Opera (review of applications): This meeting will be closed.

Date and time: November 10, 2020; 12:00 p.m. to 2:00 p.m.

Opera (review of applications): This meeting will be closed.

Date and time: November 10, 2020; 3:00 p.m. to 5:00 p.m.

Theater (review of applications): This meeting will be closed.

Date and time: November 10, 2020; 4:00 p.m. to 6:00 p.m.

Arts Education (review of applications): This meeting will be closed.

Date and time: November 12, 2020; 1:30 p.m. to 3:30 p.m.

Theater (review of applications): This meeting will be closed.

Date and time: November 12, 2020; 1:00 p.m. to 3:00 p.m.

Theater (review of applications): This meeting will be closed.

Date and time: November 12, 2020; 4:00 p.m. to 6:00 p.m.

Music (review of applications): This meeting will be closed.

Date and time: November 16, 2020; 12:00 p.m. to 2:00 p.m.

Presenting & Multidisciplinary Works (review of applications): This meeting will be closed.

Date and time: November 16, 2020; 2:00 p.m. to 4:00 p.m.

Media Arts (review of applications): This meeting will be closed.

Date and time: November 16, 2020; 2:30 p.m. to 4:30 p.m.

Arts Education (review of applications): This meeting will be closed.

Date and time: November 17, 2020; 1:30 p.m. to 3:30 p.m.

Media Arts (review of applications): This meeting will be closed.

Date and time: November 17, 2020; 11:30 a.m. to 1:30 p.m.

Media Arts (review of applications): This meeting will be closed.

Date and time: November 17, 2020; 2:30 p.m. to 4:30 p.m.

Music (review of applications): This meeting will be closed.

Date and time: November 17, 2020; 12:00 p.m. to 2:00 p.m.

Music (review of applications): This meeting will be closed.

Date and time: November 17, 2020; 3:00 p.m. to 5:00 p.m.

Presenting & Multidisciplinary Works (review of applications): This meeting will be closed.

Date and time: November 17, 2020; 2:00 p.m. to 4:00 p.m.

Theater (review of applications): This meeting will be closed.

Date and time: November 17, 2020; 1:00 p.m. to 3:00 p.m.

Theater (review of applications): This meeting will be closed.

Date and time: November 17, 2020; 4:00 p.m. to 6:00 p.m.

Presenting & Multidisciplinary Works (review of applications): This meeting will be closed.

Date and time: November 18, 2020; 2:00 p.m. to 4:00 p.m.

Visual Arts (review of applications): This meeting will be closed.

Date and time: November 18, 2020; 11:30 a.m. to 1:30 p.m.

Visual Arts (review of applications): This meeting will be closed.

Date and time: November 18, 2020; 2:30 p.m. to 4:30 p.m.

Arts Education (review of applications): This meeting will be closed.

Date and time: November 19, 2020; 1:30 p.m. to 3:30 p.m.

Music (review of applications): This meeting will be closed.

Date and time: November 19, 2020; 12:00 p.m. to 2:00 p.m.

Music (review of applications): This meeting will be closed.

Date and time: November 19, 2020; 3:00 p.m. to 5:00 p.m.

Presenting & Multidisciplinary Works (review of applications): This meeting will be closed.

Date and time: November 19, 2020; 2:00 p.m. to 4:00 p.m.

Visual Arts (review of applications): This meeting will be closed.

Date and time: November 19, 2020; 11:30 a.m. to 1:30 p.m.

Visual Arts (review of applications): This meeting will be closed.

Date and time: November 19, 2020; 2:30 p.m. to 4:30 p.m.

Music (review of applications): This meeting will be closed.

Date and time: November 20, 2020; 12:00 p.m. to 2:00 p.m.

Presenting & Multidisciplinary Works (review of applications): This meeting will be closed.

Date and time: November 20, 2020; 2:00 p.m. to 4:00 p.m.

Visual Arts (review of applications): This meeting will be closed.

Date and time: November 20, 2020; 11:30 a.m. to 1:30 p.m.

Literary Arts (review of applications): This meeting will be closed.

Date and time: November 23, 2020; 1:00 p.m. to 3:00 p.m.

Literary Arts (review of applications): This meeting will be closed.

Date and time: November 24, 2020; 12:00 p.m. to 2:00 p.m.

Literary Arts (review of applications): This meeting will be closed.

Date and time: November 24, 2020; 3:00 p.m. to 5:00 p.m.

Dated: October 7, 2020.

Sherry Hale,

Staff Assistant, National Endowment for the Arts.

[FR Doc. 2020–22549 Filed 10–9–20; 8:45 am]

BILLING CODE 7537–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2020–0219]

Information Collection: Licensing Requirements for Land Disposal of Radioactive Waste

AGENCY: Nuclear Regulatory Commission.

ACTION: Renewal of existing information collection; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) invites public comment on the renewal of Office of Management and Budget (OMB) approval for an existing collection of information. The information collection is entitled, ''Licensing Requirements for Land Disposal of Radioactive Waste.''

DATES: Submit comments by December 14, 2020. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

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

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2020–0219. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* David Cullison, Office of the Chief Information Officer, Mail Stop: T–6 A10M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2020–0219 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search

for Docket ID NRC–2020–0219. A copy of the collection of information and related instructions may be obtained without charge by accessing Docket ID NRC–2020–0219 on this website.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The supporting statement is available in ADAMS under Accession No. ML20226A239.

• *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting NRC's Clearance Officer, David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

B. Submitting Comments

Please include Docket ID NRC–2020–0219 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *https://www.regulations.gov* as well as enter the comment submissions into ADAMS, and the NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC is requesting public comment on its intention to request the OMB's approval for the information collection summarized below.

1. *The title of the information collection:* 10 CFR part 61, Licensing Requirements for Land Disposal of Radioactive Waste.

2. *OMB approval number:* 3150–0135.

3. *Type of submission:* Extension.

4. *The form number, if applicable:* Not applicable.

5. *How often the collection is required or requested:* Applications for licenses are submitted as needed. Other reports are submitted annually and as other events require.

6. *Who will be required or asked to respond:* Applicants for and holders of an NRC license (to include Agreement State licensees) for land disposal of low-level radioactive waste.

7. *The estimated number of annual responses:* 16 (12 reporting responses + 4 recordkeepers).

8. *The estimated number of annual respondents:* 4.

9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 5,372 hours (56 hours reporting + 5,316 hours recordkeeping).

10. *Abstract:* Part 61 of title 10 of the *Code of Federal Regulations* (10 CFR), establishes the procedures, criteria, and license terms and conditions for the land disposal of low-level radioactive waste. The reporting and recordkeeping requirements are mandatory and, in the case of application submittals, are required to obtain a benefit. The information collected in the applications, reports, and records is evaluated by the NRC to ensure that the licensee's or applicant's disposal facility, equipment, organization, training, experience, procedures, and plans provide an adequate level of protection of public health and safety, common defense and security, and the environment.

III. Specific Requests for Comments

The NRC is seeking comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the estimate of the burden of the information collection accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection on respondents be minimized, including the use of automated collection techniques or other forms of information technology?

Dated: October 7, 2020.

For the Nuclear Regulatory Commission.

David C. Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2020–22611 Filed 10–9–20; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee;

Cancellation of Upcoming Virtual Public Meeting

AGENCY: Office of Personnel Management.

ACTION: Notice

SUMMARY: The Federal Prevailing Rate Advisory Committee is issuing this notice to cancel the October 15, 2020, virtual public meeting scheduled to be held via teleconference, beginning at 10:00 a.m. (EDT). The original **Federal Register** notice announcing this virtual public meeting was published Monday, September 28, 2020, at 85 FR 60844.

FOR FURTHER INFORMATION CONTACT: Madeline Gonzalez, 202–606–2858, or email *pay-leave-policy@opm.gov.*

Office of Personnel Management.

Alexys Stanley,

Regulatory Affairs Analyst.

[FR Doc. 2020–22598 Filed 10–9–20; 8:45 am]

BILLING CODE 6325–49–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2021–9 and CP2021–9; MC2021–10 and CP2021–10; MC2021–11 and CP2021–11]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning negotiated service agreements. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* October 16, 2020.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2021–9 and CP2021–9; *Filing Title:* USPS Request to Add Priority Mail Contract 671 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* October 6, 2020; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Kenneth R. Moeller; *Comments Due:* October 16, 2020.

2. *Docket No(s).:* MC2021–10 and CP2021–10; *Filing Title:* USPS Request to Add Priority Mail Contract 672 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* October 6, 2020; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Kenneth R. Moeller; *Comments Due:* October 16, 2020.

3. *Docket No(s).:* MC2021–11 and CP2021–11; *Filing Title:* USPS Request to Add Priority Mail & First-Class Package Service Contract 173 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* October 6, 2020; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Kenneth R. Moeller; *Comments Due:* October 16, 2020.

This Notice will be published in the **Federal Register**.

Erica A. Barker,
Secretary.

[FR Doc. 2020–22563 Filed 10–9–20; 8:45 am]

BILLING CODE 7710–FW–P

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

POSTAL SERVICE

Board of Governors; Sunshine Act Meeting

DATES AND TIMES: October 6, 2020, at 9 a.m.

PLACE: Washington, DC

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Tuesday, October 6, 2020, at 9 a.m.

1. Strategic Items.
2. Financial and Operational Matters.
3. Administrative Items.

GENERAL COUNSEL CERTIFICATION: The General Counsel of the United States Postal Service has certified that the meeting may be closed under the Government in the Sunshine Act.

CONTACT PERSON FOR MORE INFORMATION: Katherine Sigler, Acting Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza SW, Washington, DC 20260–1000. Telephone: (202) 268–4800.

Joshua J. Hofer,
Attorney, Federal Compliance.

[FR Doc. 2020–22614 Filed 10–8–20; 11:15 am]

BILLING CODE 7710–12–P

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Request for Information: National Nanotechnology Initiative Strategic Planning

AGENCY: Office of Science & Technology Policy (OSTP).

ACTION: Request for information.

SUMMARY: The National Nanotechnology Coordination Office (NNCO), on behalf of the Nanoscale Science, Engineering, and Technology (NSET) Subcommittee of the National Science and Technology Council (NSTC), seeks public input to inform the development of the 2021 National Nanotechnology Initiative (NNI) Strategic Plan. A restructuring of the NNI is under consideration, and the NSET Subcommittee seeks feedback from the community to help identify effective mechanisms, strategies for communication, and priority topics to shape the future directions.

DATES: Responses are requested by 11:59 p.m. ET on November 9, 2020. Input received after this date may not be considered.

ADDRESSES: Responses should be submitted via email to *NNIStrategicPlanning@nnco.nano.gov* and include ''RFI Response: NNI Strategic Planning'' in the subject line of the message.

Instructions: Response to this RFI is voluntary. Respondents need not reply to all questions listed. For all submissions, clearly indicate which questions are being answered. Each individual or organization is requested to submit only one response. Submissions should include the name(s) of the person(s) or organization(s) filing the comment. No other personally identifiable information, business proprietary information, or copyrighted information should be included. Submissions should not exceed 10 pages in length using 12 point or larger font and should be in plain text, Microsoft Word, or Adobe PDF format.

In accordance with FAR 15.202(3), responses to this notice are not offers and cannot be accepted by the Federal Government to form a binding contract. Additionally, those submitting responses are solely responsible for all expenses associated with response

preparation. Submissions are subject to Freedom of Information Act (FOIA) disclosure and may be posted, without change, on a Federal website.

FOR FURTHER INFORMATION CONTACT: Patrice Pages at *info@nnco.nano.gov* or 202–517–1041.

SUPPLEMENTARY INFORMATION:

Background Information: This request is in alignment with the 21st Century Nanotechnology Research and Development Act as amended (15 U.S.C. 7501), which calls for an update to the NNI Strategic Plan every 5 years.

The NNI is a U.S. Government research and development (R&D) program of 20 departments and independent agencies working together toward the common vision of a future in which the ability to understand and control matter at the nanoscale level leads to a revolution in technology and industry that benefits society. Additional information, including participating agencies, is available at *www.nano.gov/about-nni.*

The NNI Strategic Plan provides the framework that underpins the nanotechnology activities of the NNI agencies and ensures continued advances in nanotechnology R&D and their applications. The plan describes the NNI vision and goals, as well as the mechanisms used to support progress.

''A Quadrennial Review of the National Nanotechnology Initiative'' (*https://www.nap.edu/catalog/25729/a-quadrennial-review-of-the-national-nanotechnology-initiative-nanoscience-applications*) was recently released by the National Academies of Sciences, Engineering, and Medicine and will inform the planning process. The report recommends that the NNI continue and be reorganized and relaunched to promote a renewed focus on nanotechnology and respond to the dynamic global research environment.

Information Requested: The NSET Subcommittee seeks responses to the questions below to identify effective mechanisms, strategies for communication, and priority topics to inform the future directions of the NNI. Additional background information and points for consideration are available at *www.nano.gov/2021StrategicPlanRFI.*

Mechanisms

- What is your understanding of how the Federal Government has supported the nanotechnology community since the launch of the NNI?
- How should this support evolve into 2030 and beyond? What mechanisms and programs are necessary to support the broad NNI R&D portfolio?
- What key elements and intersections are necessary to form an agile framework that will enable response to new developments along the nanotechnology continuum, from discovery and design to development and deployment?
- How can the government engage effectively with stakeholders in industry and academia to advance nanotechnology research, development, and eventual commercialization? What are some best practices for this kind of engagement?
- How could public-private partnerships contribute to progress towards the NNI goals? Are there any examples (domestic or international) of productive partnership mechanisms that should be considered as a model?
- What are exemplary models (domestic or international) for accessing NNI resources, including user facilities and laboratories?

Communication

The NNCO serves as the public-facing entity of the NNI in addition to and in support of NNI agency communication efforts. NNCO maintains *Nano.gov* and shares information through numerous communication means. However, the NNI community is complex and multifaceted, and diverse stakeholder groups consume information in different ways.

- How can the NNCO facilitate communication and collaboration throughout the nanotechnology R&D ecosystem to enhance research and ultimately commercialization? How can the NNI/NNCO best communicate opportunities, resources, and advancements to the community? How can the NNI/NNCO best engage with the stakeholder community to understand their advancements and needs?
- Beyond the media platforms used by NNCO, what additional means should be considered to better reach the public and various stakeholder groups?
- What are effective strategies for improving communication of desired nanotechnology workforce skills and capabilities between industry and academia?
- How can the NNI participating agencies or NNCO best raise awareness among teachers regarding the educational resources that have been developed over the past 20 years and help get these resources into their classrooms?

Topics

- What are the high priority open scientific questions in nanoscience and nanotechnology?
- What are challenges facing the United States and the world where nanotechnology is poised to make significant contributions?
- What nanotechnology-enabled ''moonshots'' should be considered?
- How does nanotechnology support other foundational fields/initiatives? What future technical topics are likely to emerge from advancements in nanotechnology?
- What are the gaps in the fabrication, characterization, and modeling and simulation tools available through the NNI user facilities (listed on Nano.gov)? What other tools are necessary to conduct nanotechnology R&D?
- What specific nanotechnology topics could be accelerated to commercialization by public-private partnerships?
- As concepts surrounding responsible development have evolved over the past twenty years, what factors may contribute to the responsible development of nanotechnology going forward?

Thank you for taking the time to respond to this Request for Information. We appreciate your input.

Dated: October 7, 2020.

Stacy L. Murphy,

Operations Manager, White House Office of Science and Technology Policy.

[FR Doc. 2020–22556 Filed 10–9–20; 8:45 am]

BILLING CODE 3270–F1–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90119; File No. SR–MEMX–2020–11)

Self-Regulatory Organizations; MEMX LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Shorten the Exchange's Post-Market Session To End at 5:00 p.m. Eastern Time

October 7, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 2, 2020, MEMX LLC (''MEMX'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4.

Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing with the Commission a proposed rule change to proposed rule change to amend Exchange Rule 1.5(w) to shorten the length of the Exchange's after-hours trading session (*i.e.,* the Post-Market Session [5]) to end at 5:00 p.m. Eastern Time [6] rather 8:00 p.m., and to make conforming changes to Exchange Rules 1.5(k) and 11.1(a). The text of the proposed rule change is provided in Exhibit 5.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange offers three distinct trading sessions in which the Exchange accepts orders from members of the Exchange (''Members'') for potential execution: (1) The ''Pre-Market Session,'' which begins at 7:00 a.m. and continues until 9:30 a.m.,[7] (2) ''Regular Trading Hours,'' which begin at 9:30 a.m. and continue until 4:00 p.m.,[8] and (3) the ''Post-Market Session,'' which begins at 4:00 p.m. and continues until 8:00 p.m.[9] Members may designate when their orders are eligible for execution by selecting their desired Time-in-Force instruction.[10]

The purpose of the proposed rule change is to shorten the length of the Exchange's after-hours trading session by amending Exchange Rule 1.5(w), which defines Post-Market Session, to end the Post-Market Session at 5:00 p.m. rather than 8:00 p.m. The Exchange submits that shortening the Post-Market Session would allow the Exchange to utilize its staff and resources in a more efficient manner while continuing to provide Members with an after-hours trading session for one hour after the close of the Regular Hours Session.

The Exchange believes the proposal to reduce the operating time of its Post-Market Session to end at 5:00 p.m. rather than 8:00 p.m. is reasonable and appropriate given that only a very small percentage (approximately 0.65%) of daily trading volume in NMS stocks occurs during those hours,[11] and as such the Exchange believes that the costs to the Exchange associated with operating during those hours outweigh the benefits to Members and other market participants. Moreover, since the Exchange commenced trading operations on September 21, 2020 (supporting trading in seven NMS stocks), the Exchange has received very few orders in the Post-Market Session, and all such orders were received between 4:00 p.m. and 5:00 p.m. The Exchange expects that it will continue to receive very few orders in the Post-Market Session even after the Exchange completes its rollout of supporting trading in all NMS stocks, and that the large majority of such orders would continue to be received between 4:00 p.m. and 5:00 p.m. rather than between 5:00 p.m. and 8:00 p.m. To the extent the Exchange in the future believes there is adequate demand to justify operating a longer after-hours trading session, it will consider again extending its hours to accommodate such demand.

The Exchange notes that other exchanges offer a longer after-hours trading session after the close of Regular Trading Hours and that Members and other market participants can choose to direct their orders to those exchanges if they wish to participate in an after-hours trading session extending beyond 5:00 p.m.[12] The Exchange also notes that other exchanges currently end their after-hours trading sessions prior to 8 p.m., including three exchanges that close at 5:00 p.m. consistent with the Exchange's proposal.[13] Thus, the Exchange believes that its proposal will adequately address the needs of Members by providing for a one-hour Post-Market Session, which trade data show is the period in which most of the after-hours trading activity occurs, as described above, and would allow the Exchange to conserve resources and staff time that would otherwise be dedicated to supporting the Exchange's after-hours trading session for a four-hour period on every trading day.

The Exchange also proposes to make conforming changes to Exchange Rules 1.5(k) and 11.1(a) to reflect the Post-Market Session ending at 5:00 p.m. Specifically, the Exchange proposes to amend Exchange Rule 1.5(k), which defines ''Exchange Operating Hours'' or ''Exchange Hours,'' to reflect that the Exchange's daily trading hours, comprised of all three trading sessions offered by the Exchange, would begin at 7:00 a.m. and continue until 5:00 p.m.[14] The Exchange also proposes to amend Exchange Rule 11.1(a) to update the hours of operations referenced in that Rule consistent with the changes described above.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) [15] of the Act, in general, and furthers the objectives of Sections and 6(b)(5) [16] of the Act, in particular, in that it is designed to promote just and equitable principles of trade and, in general, to protect investors and the public interest; furthermore, the proposed rule change is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Specifically, the Exchange believes its proposal to amend Rule 1.5(w) to shorten the length of its Post-Market

[5] ''Post-Market Session'' means the time between 4:00 p.m. and 8:00 p.m. Eastern Time. *See* Exchange Rule 1.5(w).

[6] All time references in this filing are to Eastern Time unless otherwise noted.

[7] ''Pre-Market Session'' means the time between 7:00 a.m. and 9:30 a.m. *See* Exchange Rule 1.5(x).

[8] ''Regular Trading Hours'' means the time between 9:30 a.m. and 4:00 p.m. *See* Exchange Rule 1.5(bb).

[9] *See supra* note 5.

[10] *See* Exchange Rule 11.6(o).

[11] Percentage calculated based on data from the week of September 21, 2020. The Exchange receives and processes data made available through consolidated data feeds (*i.e.,* CTS and UTDF).

[12] *See, e.g.,* Cboe BZX Exchange, Inc. Rule 1.5(c), which provides for an ''After Hours Trading Session'' from 4:00 p.m. to 8:00 p.m.; Cboe EDGX Exchange, Inc. Rule 1.5(r), which provides for a ''Post-Closing Session'' from 4:00 p.m. to 8:00 p.m.; NYSE Arca Equities, Inc. Rule 7.34–E.(a)(3), which provides for a ''Late Trading Session'' that concludes at 8:00 p.m. Eastern Time; Nasdaq Rule 4701(g), which provides for ''Post-Market Hours'' that end at 8:00 p.m. Eastern Time.

[13] *See, e.g.,* New York Stock Exchange LLC Rule 51, which provides that the trading session concludes at 4:00 p.m.; MIAX PEARL, LLC Equities Rule 2600(a), which provides that orders may be entered on such exchange until 4:00 p.m.; Investors Exchange LLC Rule 1.160(aa), which provides for a ''Post-Market Session'' that concludes at 5:00 p.m.; Long-Term Stock Exchange, Inc. Rule 1.160(ee), which provides for a ''Post-Market Session'' that concludes at 5:00 p.m.; Nasdaq PHLX LLC Rule 3301(g), which provides for ''Post-Market Hours'' that end at 5:00 p.m. Eastern Time.

[14] ''Exchange Operating Hours'' or ''Exchange Hours'' currently means the time between 7:00 a.m. and 8:00 p.m. *See* Exchange Rule 1.5(k).

[15] 15 U.S.C. 78f.

[16] 15 U.S.C. 78f(b)(5).

Session to end at 5:00 p.m. rather than 8:00 p.m. would allow the Exchange to conserve its resources and staff time and focus these on the Exchange's core business, which is providing an efficient and cost-effective marketplace for trading in equity securities during Regular Trading Hours, and other aspects of the Exchange's operations, including its regulatory function, while maintaining a facility for Members to execute trades for one hour after Regular Trading Hours. Reducing the time during which the Post-Market Session operates would allow the Exchange to maximize efficiencies and eliminate costs that are associated with supporting trading operations during the longer after-hours trading session but are not expected to yield a sufficient economic return. The Exchange believes that the proposed rule change is therefore consistent with Section 6(b)(5) of the Act in that, by seeking to operate in a more efficient manner that focuses on trading during Regular Trading Hours and other aspects of the Exchange's operations, including its regulatory function, it will operate to promote just and equitable principles of trade and, in general, protect investors and the public interest. The Exchange also believes that the proposed rule change would not permit unfair discrimination between customers, issuers, brokers, or dealers because it would affect all Members and market participants in the same way and to the same extent, and is therefore consistent with Section 6(b)(5) of the Act. Moreover, the Exchange notes that there is precedent for an exchange shortening the hours of its after-hours trading session (also changing from 8:00 p.m. to 5:00 p.m.) to allow it to utilize its staff time and resources in a more efficient manner and focus these on other aspects of its operations, so this aspect of the proposed rule change does not raise any new or novel issues that have not previously been considered by the Commission.[17]

In addition, the Exchange believes that the proposed amendment to Exchange Rule 1.5(w) furthers the objectives of Sections 6(b)(1)[18] of the Act in that it would conserve Exchange resources, which are expended to support trading operations during the Exchange's trading hours, and would allow the Exchange to utilize these resources for other purposes, including the Exchange's regulatory function, thereby enabling it to be so organized as to have the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange.

The Exchange also believes that the proposed amendments to Exchange Rules 1.5(k) and 11.1(a) are consistent with the Act because the amendments update those Rules to reference the proposed 5:00 p.m. time as the time until which the Exchange would accept orders in the Post-Market Session. No further substantive changes to those Rules are proposed. The Exchange believes that it is appropriate to update all of its rules that specifically reference the Exchange's operating hours so that the Exchange's rules properly reflect the change to the Post-Market Session being implemented in this proposed rule change.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the Act. By shortening the time period during which its Post-Market Session operates, the Exchange is reducing the number of equity exchanges offering an after-hours trading session extending from after the close of Regular Trading Hours until 8:00 p.m. However, the Exchange does not believe that this will inappropriately burden competition in that, as proposed, the Exchange will continue to offer a Post-Market Session until 5:00 p.m. and other exchanges offer an after-hours trading session extending until 8:00 p.m.[19] The Exchange therefore believes that the availability of an after-hours trading facility at other exchanges will provide Members and other market participants with venues to which they can direct their after-hours activity after the Exchange's proposed 5:00 p.m. Post-Market Session end time and the reduction in the time frame during which the Exchange's after-hours facility operates will not impair competition.

Furthermore, the Exchange does not believe that the proposed rule change would have any significant impact on inter-market competition as there are other exchanges that already end their after-hours trading sessions prior to 8:00 p.m., including at 5:00 p.m.,[20] and other marketplaces are free to provide similar trading hours. The Exchange also does not believe that the proposed rule change would have any significant impact on intra-market competition as all Members would be subject to the modified hours of the Post-Market Session.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[21] and Rule 19b–4(f)(6) thereunder.[22] Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[23] and subparagraph (f)(6) of Rule 19b-4 thereunder.[24]

A proposed rule change filed under Rule 19b–4(f)(6)[25] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[26] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may take effect immediately. The Exchange states that waiver of the 30-day operative delay would allow the Exchange to immediately implement the proposed change to the Post-Market Session, which would better align the expenses of operating the Post-Market Session with the expected volume and revenue associated with that trading session, thereby allowing the Exchange to conserve resources and staff time and

[17] *See* Securities Exchange Act Release No. 72215 (May 21, 2014), 79 FR 30678 (May 28, 2014) (rule change of National Stock Exchange, Inc. shortening its after-hours trading session from 8:00 p.m. to 5:00 p.m.).

[18] 15 U.S.C. 78(f)(b)(1).

[19] *See supra* note 12.

[20] *See supra* note 13.

[21] 15 U.S.C. 78s(b)(3)(A)(iii).

[22] 17 CFR 240.19b–4(f)(6).

[23] 15 U.S.C. 78s(b)(3)(A)(iii).

[24] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has fulfilled this requirement.

[25] 17 CFR 240.19b–4(f)(6).

[26] 17 CFR 240.19b–4(f)(6)(iii).

focus these on the Exchange's core business and other aspects of the Exchange's operations, including the Exchange's regulatory function. The Commission believes that the proposed rule change raises no new or novel issues and that waiver of the operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal operative upon filing.[27]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[28] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–MEMX–2020–11 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–MEMX–2020–11. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MEMX–2020–11 and should be submitted on or before November 3, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[29]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–22640 Filed 10–9–20; 8:45 am]

BILLING CODE 8011–01–P

[27] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[28] 15 U.S.C. 78s(b)(2)(B).

[29] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90101; File No. SR–FICC–2020–010]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Order Approving a Proposed Rule Change To Describe Key Components of the Mortgage-Backed Securities Division Stress Testing Program

October 6, 2020.

I. Introduction

On August 11, 2020, Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–FICC–2020–010, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder.[2] The proposed rule change was published for comment in the **Federal Register** on August 25, 2020.[3] The Commission did not receive any comment letters on the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change.[4]

II. Description of the Proposed Rule Change

The proposed rule change consists of a proposal to amend the FICC Mortgage-Backed Securities Division (''MBSD'') Clearing Rules (''MBSD Rules'')[5] to include a new section that would describe the purpose and the key components of MBSD's stress testing program. The proposed rule change would also provide that vendor-supplied data would be used in the stress testing program, and that a back-up calculation would be used in the event the vendor fails to provide FICC with the vendor-sourced data. The proposed changes are further described below.

A. Background

MBSD provides trade comparison, netting, risk management, settlement, and central counterparty services for the U.S. mortgage-backed securities market. FICC manages its credit exposures to its Clearing Members by collecting an appropriate amount of margin (referred to in the MBSD Rules as Required Fund Deposit) from each Clearing Member.[6] The aggregate of all Clearing Members' margin amounts (together with certain other deposits required under the MBSD Rules) constitutes MBSD's Clearing Fund, which FICC would access should a Clearing Member default with insufficient margin to satisfy any FICC losses caused by the liquidation of the defaulting Clearing Member's portfolio.[7]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 89616 (August 19, 2020), 85 FR 52387 (August 25, 2020) (SR–FICC–2020–010) (''Notice'').

[4] On January 21, 2020, FICC filed a portion of this proposed rule change that is subject to Section 806(e)(1)(A) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act entitled the Payment, Clearing, and Settlement Supervision Act of 2010 (''the Clearing Supervision Act'') and Rule 19b–4(n)(1)(i) under the Act, as an advance notice with the Commission (the ''Advance Notice Filing''). 12 U.S.C. 5465(e)(1); 17 CFR 240.19b–4(n)(1)(i); Release No. 88266 (February 24, 2020), 85 FR 11413 (February 27, 2020) (SR–FICC–2020–801). The Commission issued a notice of no objection to the Advance Notice Filing on March 13, 2020. *See* Release No. 88382 (March 13, 2020), 85 FR 15830 (March 19, 2020) (SR–FICC–2020–801). A copy of the Advance Notice Filing and the Commission's notice of no objection are *available at: http://www.dtcc.com/legal/sec-rule-filings.aspx.*

[5] Capitalized terms used herein and not otherwise defined shall have the meanings assigned to such terms in the MBSD Rules, *available at: www.dtcc.com/legal/rules-and-procedures.aspx.*

[6] *See* MBSD Rule 4, *supra* note 5.

[7] *Id.*

FICC uses stress testing to test the sufficiency of its prefunded financial resources.[8] In contrast to FICC's margin methodologies, which are designed to limit FICC's credit exposures under normal market conditions,[9] FICC's stress testing methodologies are designed to quantify FICC's potential losses under extreme but plausible market conditions.[10] Therefore, stress testing is designed to help FICC identify credit risks beyond those contemplated by FICC's margin methodologies, including credit exposures that might result from the realization of potential stress scenarios, such as extreme price changes, multiple defaults, or changes in other valuation inputs and assumptions.[11] As a result, stress testing helps FICC identify the amount of financial resources necessary to cover its credit exposure under stress scenarios in extreme but plausible market conditions.[12]

The purpose and the key components of MBSD's stress testing program, among others, are provided in the Stress Testing Framework.[13] FICC's stress testing methodologies have three key components: Risk identification, scenario development, and risk measurement and aggregation. The key components generally provide that FICC identifies the principal credit risk drivers, develops sets of extreme but plausible historical and hypothetical stress scenarios for the identified risk drivers, and calculates risk metrics for each Clearing Member's actual portfolio to estimate the profits and losses in connection with such Clearing Member's close-out under the chosen stress scenarios.[14]

B. MBSD's Stress Testing Program

FICC proposes to include a new section in the MBSD Rules to provide the purpose and the key components of FICC's stress testing program.[15] By including such description of the stress testing program in the MBSD Rules, which is a public document, FICC intends to make the current stress testing program transparent to its Clearing Members.[16] Specifically, the proposed rule change provides that FICC uses stress testing to (1) test the sufficiency of the Clearing Fund against FICC's potential losses assuming the default of a Clearing Member with the largest credit exposure and its entire Affiliated Family under extreme but plausible market conditions, and (2) identify both (x) Clearing Members who may pose a greater market risk under certain market conditions, and (y) potential weaknesses in FICC's margin methodologies. The proposed rule change also provides that FICC's stress testing program has three key components.[17] First, FICC analyzes the securities and risk exposures in its Clearing Members' portfolios to identify the principal market risk drivers and capture the risk sensitivity of the portfolios under stressed market conditions. Second, FICC develops a comprehensive set of scenarios including historical scenarios and hypothetical stress scenarios. Third, FICC calculates risk metrics for each Clearing Member's actual portfolio to estimate the profits and losses in connection with such Clearing Member's close out under the chosen stress scenarios.

C. Vendor-Supplied Data in MBSD's Stress Testing Program

In connection with FICC's stress testing program, FICC proposes to use vendor-supplied data in MBSD's scenario development process, which is the second component of FICC's stress testing program, and the risk measurement and aggregation process, which is the third component of FICC's stress testing program.

(1) Historical Data in the Scenario Development Component

The scenario development component involves FICC's construction of comprehensive and relevant sets of extreme but plausible historical and hypothetical stress scenarios for identified risk drivers. In its development of historical stress scenarios, FICC proposes to examine vendor-supplied historical risk factor[18] time series data (''Historical Data'') to identify the largest historical changes of risk factors that influence the pricing of mortgage-backed securities.

FICC proposes to use Historical Data because it believes that this data would explain the market price changes of To-Be-Announced (''TBA'') securities transactions cleared by MBSD.[19] In addition, FICC believes that the data would (1) identify stress risk exposures under broad and varied market conditions, and (2) provide MBSD with a capability to design transparent scenarios.[20]

(2) Historical Data and Security-Level Data in the Risk Measurement and Aggregation Component

FICC represents that the risk measurement and aggregation process calculates risk metrics for each Clearing Member's actual portfolio to estimate the profits and losses in connection with such Clearing Member's close out under chosen stress scenarios.[21] In connection with this calculation, FICC proposes to use a financial profit-and-loss calculation that leverages the Historical Data and the vendor-supplied security-level risk sensitivity[22] data (''Security-Level Data''). The Security-Level Data is generated using the vendor's suite of security valuation models that includes an agency mortgage prepayment model and interest rate term structure model.[23] FICC believes that the vendor's approach generates stable and robust Security-Level Data.[24] Because the stress profits and losses calculation would include Security-Level Data, FICC believes that the calculated results would reflect results that are close to actual price changes for TBA securities during larger market moves, which are typical of stress testing scenarios.[25]

[8] On December 19, 2017, the Commission approved FICC's adoption of the Clearing Agency Stress Testing Framework (Market Risk), which among other things, sets forth the purpose of FICC's stress testing and describes certain methodologies FICC uses in its stress testing. Securities Exchange Act Release No. 82368 (December 19, 2017), 82 FR 61082 (December 26, 2017) (SR–DTC–2017–005; SR–FICC–2017–009; SR–NSCC–2017–006) (''Stress Testing Framework Order''). The Stress Testing Framework is an FICC rule, pursuant to Section 3(a)(27) of the Act, although it is not part of the MBSD Rules, and it has been filed confidentially with the Commission. *See* 15 U.S.C. 78c(a)(27).

[9] *See e.g.,* Securities Exchange Act Release No. 80253 (March 15, 2017), 82 FR 14581, 14582 (March 21, 2017) (SR–FICC–2017–004) (notice of filing and immediate effectiveness of a proposed rule change to amend MBSD Rules with respect to the intraday mark-to-market charge).

[10] *See* Stress Testing Framework Order, *supra* note 8 at 61083; Notice, *supra* note 3 at 52388.

[11] *See id.;* 17 CFR 240.17Ad–22(a)(17).

[12] *See* Stress Testing Framework Order, *supra* note 8 at 61083; Notice, *supra* note 3 at 52388.

[13] *See* Stress Testing Framework Order, *supra* note 8 at 61082–83.

[14] *See* Stress Testing Framework Order, *supra* note 8 at 61083; Notice, *supra* note 3 at 52388.

[15] The changes described in Section II.B. are consistent with the existing Framework.

[16] *See* Notice, *supra* note 3 at 52388.

[17] *See id.*

[18] Generally, the term ''risk factor'' (or ''risk driver'') means an attribute, characteristic, variable or other concrete determinant that influences the risk profile of a system, entity, or financial asset. Risk factors may be causes of risk or merely correlated with risk.

[19] *See* Notice, *supra* note 3 at 52389.

[20] *See id.*

[21] *See id.*

[22] The term ''sensitivity'' means the percentage value change of a security given each risk factor change.

[23] A prepayment model captures cash flow uncertainty as a result of unscheduled payments of principal (prepayments). An interest rate term structure model describes the relationship between interest rates of different maturities.

[24] *See* Notice, *supra* note 3 at 52389.

[25] *See id.*

D. Back-Up Stress Testing Calculation

Finally, FICC proposes to implement a back-up calculation that it would use in the event the vendor fails to provide FICC with the vendor-sourced data described above. Specifically, if the vendor fails to provide any data or a significant portion of the data in accordance with the timeframes to which FICC and the vendor agreed, FICC would use the most recently available data on the first day that such disruption occurs. If FICC and the vendor expect that the vendor would resume providing data within five business days, FICC would determine whether to calculate the daily stress testing calculation using the most recently available data or a back-up calculation, described below. If FICC and the vendor expect that the data disruption would extend beyond five days, FICC would utilize the back-up calculation.

E. Delayed Implementation of the Proposed Rule Change

FICC proposes to implement the proposed rule change within 45 Business Days after the Commission's approval of this proposed rule change. Prior to the effective date, FICC would add legends to the MBSD Rules to state that the specified changes to the MBSD Rules have been approved but not yet implemented, and to provide the date such approved changes would be implemented. The legends would also include the file number of the approved proposed rule change and state that once implemented, the legends would automatically be removed from the MBSD Rules.

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act [26] directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization. After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to FICC. In particular, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act,[27] as well as Rule 17Ad–22(e)(4)(iii) and (iv) thereunder [28] for the reasons described below.

A. Consistency With Section 17A(b)(3)(F) of the Act

Section 17A(b)(3)(F) of the Act requires, in part, that the rules of a registered clearing agency, such as FICC, be designed to promote the prompt and accurate clearance and settlement of securities transactions, and, in general, to protect investors and the public interest.[29]

First, as described in Section II.B., the proposed rule change would incorporate a new section explaining the purpose and the three key components of the stress testing program, which is currently included in the Stress Testing Framework. By incorporating the purpose and the key components of the stress testing program in the MBSD Rules, the proposed rule change would provide FICC stakeholders with a better understanding of what the stress testing program is designed to accomplish and how FICC manages its credit exposures. The Commission therefore believes that this aspect of the proposed rule change is consistent with Section 17A(b)(3)(F), in that this increased transparency would protect investors and the public interest.

Second, as described in Section II.C., FICC proposes to use vendor-supplied data in MBSD's scenario development process and the risk measurement and aggregation process. The Commission believes that vendor-supplied data should allow FICC to identify and analyze risk exposures under a broad and varied range of stressed market conditions, which should, in turn, help FICC identify the amount of financial resources necessary to cover its credit exposure under stress scenarios in extreme but plausible market conditions. The Commission further believes that the use of vendor-supplied data should enable FICC to perform a robust assessment of the stress profits and losses calculation, identify and address potential risks with risks with respect to specific Clearing Members and their affiliates, and in turn, should help FICC ensure that it is collecting adequate prefunded financial resources to cover its potential losses resulting from the default of clearing members and their affiliates under extreme but plausible market conditions.

Moreover, as described in Section II.D., FICC proposes to use a back-up calculation in the event the vendor fails to provide FICC with the vendor-sourced data. The Commission believes that the back-up calculation is designed to provide FICC with a reasonable alternative method for calculating stress profit-and-loss in the event of an interruption in the vendor-sourced data feed. By providing FICC with a reasonable alternative method for conducting stress testing, the Commission believes that the proposed back-up calculation is designed to help FICC avoid gaps in assessing the sufficiency of its prefunded financial resources due to the inability of particular data.

Taken together, the Commission believes that these aspects of the proposed rule change, as described in Sections II.C. and II.D., should better enable FICC to evaluate and manage the credit risk presented by its Clearing Members. The Commission believes that the proposed rule change is designed to improve FICC's ability to meet its requirement to maintain sufficient prefunded financial resources at a minimum to enable FICC to cover the default of the Clearing Member (including relevant affiliates) that would potentially cause the largest aggregate credit exposure for FICC in extreme but plausible conditions, as required under Rule 17Ad–22(e)(4)(iii).[30] Accordingly, the Commission believes that the proposed rule change should help FICC to continue providing prompt and accurate clearance and settlement of securities transactions even in extreme but plausible historical and hypothetical stress scenarios, consistent with Section 17A(b)(3)(F) of the Act.[31]

B. Consistency With Rule 17Ad–22(e)(4)(iii) and (vi)

Rule 17Ad–22(e)(4)(iii) requires that a covered clearing agency, such as FICC, establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively identify, measure, monitor, and manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes, by maintaining additional financial resources at the minimum to enable it to cover a wide range of foreseeable stress scenarios that include, but are not limited to, the default of the participant family that would potentially cause the largest aggregate credit exposure for the covered clearing agency in extreme but plausible market conditions.[32] Rule 17Ad–22(e)(4)(vi) requires that a covered clearing agency, such as FICC, effectively identify, measure, monitor, and manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes, by testing the sufficiency of

[26] 15 U.S.C. 78s(b)(2)(C).

[27] 15 U.S.C. 78q–1(b)(3)(F).

[28] 17 CFR 240.17Ad–22(e)(4)(iii) and (iv).

[29] *Id.*

[30] 17 CFR 240.17Ad–22(e)(4).

[31] *Id.*

[32] 17 CFR 240.17Ad–22(e)(4)(iii).

its total financial resources available by conducting stress testing of its total financial resources once each day using standard predetermined parameters and assumptions.[33]

As described in Section II.C., FICC proposes to use vendor-supplied data, including Historical Data and Security-Level Data, in MBSD's scenario development process and the risk measurement and aggregation process. Historical Data would identify stress risk exposures under broad and varied market conditions and provide FICC with an enhanced capability to design more transparent scenarios.[34] Security-Level Data would provide stable and robust data that would enable FICC to calculate stress profits and losses that is more accurate.[35] In addition, as described in Section II.D., FICC proposes to use a back-up calculation in the event the vendor fails to provide data to FICC.

The Commission believes that the proposal is consistent with Rule 17Ad–22(e)(4)(iii) because it should better enable FICC to assess its ability to maintain sufficient financial resources to cover a wide range of foreseeable stress scenarios that include the default of the member (including relevant affiliates) that would potentially cause FICC's largest aggregate credit exposure in extreme but plausible conditions.[36] Additionally, the Commission believes FICC's proposed stress testing methodology is consistent with Rule 17Ad–22(e)(4)(vi) because it should enable FICC to test the sufficiency of its minimum financial resources by conducting stress testing using standard predetermined parameters and assumptions.[37]

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and, in particular, with the requirements of Section 17A of the Act[38] and the rules and regulations promulgated thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act[39] that proposed rule change SR–FICC–2020–010, be, and it hereby is, *approved.*[40]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[41]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–22476 Filed 10–9–20; 8:45 am]

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[33] 17 CFR 240.17Ad–22(e)(4)(vi).

[34] *See* Notice, *supra* note 3 at 52389.

[35] *See id.*

[36] 17 CFR 240.17Ad–22(e)(4)(iii).

[37] 17 CFR 240.17Ad–22(e)(4)(vi).

[38] 15 U.S.C. 78q–1.

[39] 15 U.S.C. 78s(b)(2).

[40] In approving the proposed rule change, the Commission considered the proposals' impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[41] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90112; File No. S7–13–20]

Notice of Proposed Exemptive Order Granting Conditional Exemption From the Broker Registration Requirements of Section 15(a) of the Securities Exchange Act of 1934 for Certain Activities of Finders

AGENCY: Securities and Exchange Commission.

ACTION: Notice of proposed exemptive order; request for comment.

SUMMARY: Pursuant to Sections 15(a)(2) and 36(a)(1) of the Securities Exchange Act of 1934 (''Exchange Act''), the Securities and Exchange Commission (''SEC'' or ''Commission'') is proposing to grant exemptive relief to permit natural persons to engage in certain limited activities on behalf of issuers (''Finders''), without registering as brokers under Section 15 of the Exchange Act. The proposed exemption provides for two classes of Finders, Tier I Finders and Tier II Finders, with corresponding conditions as described below.

DATES: Comments should be received on or before November 12, 2020.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/exorders.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number S7–13–20 on the subject line.

Paper Comments

- Send paper comments to Vanessa A. Countryman, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number S7–13–20. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/exorders.shtml*). Comments also are available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Emily Westerberg Russell, Chief Counsel; Joanne Rutkowski, Assistant Chief Counsel; Timothy White, Senior Special Counsel; Geeta Dhingra, Special Counsel; and Darren Vieira, Special Counsel, Office of Chief Counsel, Division of Trading and Markets, at (202) 551–5550, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–8549.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Commission's mission includes facilitating capital formation—not only for public companies, but also for the small businesses that are active participants in our private markets. Our dynamic markets and economy significantly benefit from a robust pipeline of new small businesses, which create the majority of net new jobs in the United States[1] and greatly contribute to innovation.[2] Small and emerging companies—from start-ups seeking their initial seed funding to businesses on a path to become a public reporting company—require capital to grow and scale.[3] One of the ways that

[1] *See* U.S. Small Business Administration Office of Advocacy, Frequently Asked Questions (Sept. 2019), *available at https://cdn.advocacy.sba.gov/wp-content/uploads/2019/09/24153946/Frequently-Asked-Questions-Small-Business-2019-1.pdf.*

[2] *See, e.g.,* Ufuk Akcigit and William R. Kerr, ''Growth through Heterogeneous Innovations,'' Journal of Political Economy 126:4 (Aug. 2018), *available at https://www.journals.uchicago.edu/doi/full/10.1086/697901* (demonstrating that the ''relative rate of major inventions is higher in small firms'' due to the ''outcome of innovation investment choices by firms'').

[3] *See* Facilitating Capital Formation and Expanding Investment Opportunities by Improving Access to Capital in Private Markets, Release No. 33–10763 (Mar. 4, 2020) [85 FR 17956 (Mar. 31, 2020)] (''Harmonization Proposal'') (proposing amendments to facilitate capital formation and increase opportunities for investors by expanding

small businesses may seek to access critical capital needed to grow and scale is through offerings conducted in reliance on an exemption from registration under the Securities Act of 1933 (''Securities Act'').[4] The exempt market supports the capital needs of many small companies that contribute substantially to our economy.[5]

Small business investors play a critical role in fostering the growth and success of small companies.[6] For example, investors can provide expertise as well as financial capital to support the businesses' strategic growth.[7] Observers have noted, however, that small businesses frequently encounter challenges connecting with investors in the exempt market, particularly in regions that lack robust capital raising networks.[8] According to the 2017 Treasury Report, ''[f]or a small business seeking to raise capital, identifying and locating potential investors can be difficult. It becomes even more challenging if the amount sought (*e.g.,* less than $5 million) is below a level that would attract venture capital or a registered broker-dealer, but beyond the levels that can be provided by friends and family and personal financing. The number of registered broker-dealers has been falling, and few registered broker-dealers are willing to raise capital in small transactions.'' [9]

In areas that lack robust venture capital (''VC'') [10] and angel investor [11] networks, so-called ''finders,'' who may identify and in certain circumstances solicit potential investors, often play an important and discrete role in bridging the gap between small businesses that need capital and investors who are interested in supporting emerging enterprises.[12] Finders may also help bridge gaps between traditionally underrepresented founders, such as women and minorities [13] and VC and start-up capital.[14]

A long-standing issue in the area of broker regulation concerns the regulatory status of these persons who play a discrete role in bridging the gap between small businesses and investors. Concerns have been raised that ''identifying potential investors is one of the most difficult challenges for small businesses trying to raise capital . . . [yet] companies that want to play by the rules struggle to know in what circumstances they can engage a 'finder' or a platform that is not registered as a broker-dealer.'' [15] Observers have described a ''gray market,'' reflecting a ''major disconnect'' between the various laws and regulations applicable to securities brokerage activities, and the methods and practices by which capital is raised to fund early stage businesses in the United States.[16] As a result of this uncertainty, individuals potentially could be engaging in unregistered brokerage activity, or alternatively, not serving the market because of the regulatory uncertainty associated with playing even a limited role in a capital raise.[17]

Over the years, there have been many calls for Commission action in this area. In 2005, the ABA Task Force recommended that the Commission work with the Financial Industry Regulatory Authority (''FINRA,'' which was then the National Association of Securities Dealers) and state regulators to establish a simplified system that would allow persons to solicit investors for small issuers, subject to a reduced, but appropriate, level of regulation.[18] In

access to capital for entrepreneurs across the United States and noting that the significance of the exempt securities markets has increased over time both in terms of the absolute amounts raised and relative to the public registered markets).

[4] *See* Harmonization Proposal at 17957.

[5] *Id.*

[6] *Id.*

[7] *See* Final Report of the Securities and Exchange Commission Advisory Committee on Small and Emerging Companies (''ACSEC'') (Sept. 2017), *available at https://www.sec.gov/info/smallbus/acsec/acsec-final-report-2017-09.pdf.*

[8] *See id. See also* U.S. Department of Treasury, A Financial System that Creates Economic Opportunities: Capital Markets (Oct. 2017), *available at https://home.treasury.gov/system/files/136/A-Financial-System-Capital-Markets-FINAL-FINAL.pdf* (''2017 Treasury Report'').

A recent report shows that in 2019, 77% of venture capital funding in the United States was raised by companies in just three states, California, New York, and Massachusetts. *See PWC MoneyTree™ Report, Q4 2019, available at https://www.pwc.com/us/en/industries/technology/assets/pwc-moneytree-2019-q4-final.pdf.*

[9] 2017 Treasury Report at 43–44. *See e.g.,* Report and Recommendations of the American Bar Association Business Law Section Task Force on Private Placement Broker-Dealers (''ABA Task Force'') (June 2005), *available at https://www.sec.gov/info/smallbus/2009gbforum/abareport062005.pdf* (''ABA Task Force Report'') (stating that small issuers are almost ''never interesting'' to professional capital and will seldom be able to attract fully licensed members to participate in offerings of less than $5 million); Gregory C. Yadley, ''Notable by Their Absence: Finders and Other Financial Intermediaries in Small Business Capital Formation,'' (June 2015), *available at https://www.sec.gov/info/smallbus/acsec/finders-and-other-financial-intermediaries-yadley.pdf* (''Funding of start-up and new companies is often sought in amounts of $100,000 or less, and rarely more than $5 million. Accordingly, these offerings are not of interest to many professional investors such as venture capital or private equity funds.'').

[10] Venture capital funds generally invest capital directly in portfolio companies for the purpose of funding the expansion and development of the companies' business, with the goal of eventually either selling the companies or taking them public. *See* Exemptions for Advisers to Venture Capital Funds, Private Fund Advisers With Less Than $150 Million in Assets Under Management, and Foreign Private Advisers, Release No. IA–3222 (Jun. 22, 2011) [76 FR 39646 (Jul. 6, 2011)] (''VC Fund Adviser Release''). Many advisers to VC funds provide managerial assistance to the funds' portfolio companies. *See* VC Fund Adviser Release at 39661.

[11] ''Angel investors'' are generally high net worth individuals who provide financial backing for early-stage businesses. They typically invest their own funds directly in a business located in close proximity, often using convertible debt. *See* Office of the Advocate for Small Business Capital Formation, Annual Report for Fiscal Year 2019, *available at https://www.sec.gov/files/2019_OASB_Annual%20Report.pdf* (''OASB Report'') at 18.

[12] *See id.* at 44–45. *See also* comments of Gregory Yadley, Partner, Shumaker, Loop & Kendrick, LLC, at the Meeting of the Small Business Capital Formation Advisory Committee meeting (May 8, 2020), *available at https://www.sec.gov/info/smallbus/acsec/sbcfac-transcript-050820.pdf,* transcript at 112–113 (''Particularly these days, where companies are going to become even more desperate for money and we are loosening up so many ways for people to be able to raise money, there is still a disconnect between issuers who need a little bit of money and accredited investors who are willing to invest. . . .'').

[13] *See* Transcript of the 39th Annual SEC Government-Business Forum on Small Business Capital Formation *available at https://www.sec.gov/file/06182020-small-business-forum-transcript.pdf.*

[14] *See* OASB Report at 26 and 30. *See also* Presentation at Feb. 4, 2020 Small Business Capital Formation Advisory Committee meeting by James Gelfer, Senior Strategist, Lead Venture Analyst, PitchBook, *available at https://www.sec.gov/spotlight/sbcfac/2020-02-04-presentation-pitchbook-venture-climate.pdf* at 13 (showing that 22.8 percent of VC deals and 14.2% of VC dollars in 2019 involved companies with at least one female founder and 6.8% of VC deals and 2.7% of VC dollars in 2019 involved companies with all female founders.; Banerji, Devika & Reimer, Torsten, *Startup Founders and Their LinkedIn Connections: Are Well-Connected Entrepreneurs More Successful?* 90 Computers in Hum. Behavior 46 (2019) (finding that social connectedness of founders was the best predictor of funds raised); Redd, Tammi C. and Wu, Sibin, ''Gender Differences in Acquiring Business Support from Online Social Networks'' (2020), *available at https://doi.org/10.28934/jwee20.12.pp22-36* (highlighting gender differences between social networks and the process of creating network ties for men and women); Looze, Jessica and Desai, Sameeksha, ''Challenges Along the Entrepreneurial Journey: Considerations for Entrepreneurship Supporters'' (2020) *available at https://ssrn.com/abstract=3637048* (noting that aspiring entrepreneurs reported acquiring funds to start or grow the business as one of the key challenges, followed by networks and connections).

[15] Recommendation Regarding Finders, Private Placement Brokers, and Investment Platforms Not Registered as Broker-Dealers, ACSEC (May 15, 2017), *available at https://www.sec.gov/info/smallbus/acsec/acsec-recommendation-051517-finders.pdf* (''ACSEC Recommendation 2017'').

[16] *See* ABA Task Force Report.

[17] *See id.* (''This vast and pervasive 'gray market' of brokerage activity creates continuing problems for the unlicensed brokers, the businesses which rely upon them for funding, attorneys and other professionals advising both the brokers and businesses, and, last but not least, the federal and state regulators who are charged with the obligation to enforce laws and regulations that are out of step with current business practices.'').

[18] *See id.* at 2 (stating that, among other things, the proposed solution should modify the amount

Continued

recent years, the U.S. Department of the Treasury recommended that the SEC, FINRA, and the states propose a new regulatory structure for finders and other intermediaries in capital-forming transactions;[19] the former SEC Advisory Committee on Small and Emerging Companies (the ''ACSEC'')[20] recommended that the Commission address questions regarding whether and under what circumstances small issuers can engage a finder or other intermediary that is not a registered broker-dealer, highlighting the importance of finders for small business capital formation;[21] and the current SEC Small Business Capital Formation Advisory Committee (the ''SBCFAC'') recommended that the Commission adopt a clear framework for unregistered finders in light of their role as intermediaries in fostering capital formation for smaller businesses.[22]

The status of these intermediaries has also been a concern for participants in the SEC Government-Business Forum on Small Business Capital Formation (''Small Business Forum''). The Small Business Forum has repeatedly recommended that the Commission address the status of finders, including recommendations that finders should be exempt from the requirement to register as broker-dealers, and that the Commission should define permissible activities in which finders can engage without being deemed as engaging in activities that require broker registration.[23] In August 2019, the Small Business Forum's Small, Emerging Businesses breakout group and the Mature and Later Stage Private Companies breakout group both made recommendations related to finders, indicating a broad market perception that additional clarity and possibly relief may be needed in this area.[24] Further, at the Small Business Forum in June 2020, participants made a recommendation related to finders.[25]

Against this background, and given the role of intermediaries with respect to capital formation and investor protection, especially for smaller issuers, the Commission believes it is important to address the regulatory status of persons who engage in certain limited securities-related activities on behalf of issuers. The Commission preliminarily believes that this exemption would provide clarity to investors and issuers, and establish clear lanes for both registered broker activity and limited activity by finders that would be exempt from registration.[26]

II. Broker Regulatory Framework

Because of the broker's role as an intermediary between customers and the securities markets, broker-dealers are required to register with the Commission unless they can rely on an exception or exemption.[27] Registered broker-dealers are subject to comprehensive regulation under the Exchange Act and under the rules of each self-regulatory organization (''SRO'') of which the broker-dealer is a member, including a number of obligations that attach when a broker-dealer makes recommendations to a customer, as well as general and specific requirements aimed at addressing certain conflicts of interest.[28]

and scope of regulations that apply such that they would be in proper balance with the scope of activities to be pursued by those who will be subject to regulations, and diminish the number of unlawful securities brokers to a level that will make feasible effective enforcement actions against continuing unlawful activity).

[19] *See* 2017 Treasury Report at 44.

[20] The ACSEC was formed in 2011 to provide the Commission with advice on its rules, regulations and policies with regard to protecting investors; maintaining fair, orderly and efficient markets; and facilitating capital formation in relation to smaller public companies. The ACSEC's term expired at the end of 2017 and it was replaced by the SEC's new Small Business Capital Formation Advisory Committee. *See https://www.sec.gov/page/small-business-capital-formation-advisory-committee.*

[21] *See, e.g.,* ACSEC Recommendations Regarding the Regulation of Finders and Other Intermediaries in Small Business Capital Formation Transactions (Sept. 23, 2015), *available at https://www.sec.gov/info/smallbus/acsec/acsec-recommendations-regulation-of-finders.pdf* (requesting the Commission address the regulatory issues surrounding finders and other private placement intermediaries as referenced in the ABA Task Force Report and stating that a failure to address the issue impedes capital formation for smaller companies); ACSEC Recommendation 2017 (referencing the ABA Task Force Report).

[22] *See,* SBCFAC Recommendations regarding the Capital Formation Proposal (May 28, 2020), *available at https://www.sec.gov/spotlight/sbcfac/capital-formation-proposal-recommendation-2020-05-08.pdf. See also* Transcript of SBCFAC at 59–61 for discussion of finders (May 6, 2019), *available at https://www.sec.gov/info/smallbus/acsec/sbcfac-transcript-050619.pdf;* Transcript of SBCFAC at 18, 112 for discussion of finders (Feb. 4, 2020), *available at https://www.sec.gov/info/smallbus/acsec/sbcfac-transcript-020420.pdf;* Transcript of SBCFAC at 112–117 for discussion of finders (May 8, 2020), *available at https://www.sec.gov/info/smallbus/acsec/sbcfac-transcript-050820.pdf* (encouraging the Commission to adopt a clear framework for unregistered finders).

[23] *See, e.g.,* 37th Annual Government-Business Forum on Small Business Capital Formation, Final Report (Dec. 12, 2018); 36th Annual SEC Government-Business Forum on Small Business Capital Formation, Final Report (Nov. 30, 2017); 35th Annual SEC Government-Business Forum on Small Business Capital Formation, Final Report (Nov. 17, 2016); 34th Annual SEC Government-Business Forum on Small Business Capital Formation, Final Report (Nov. 19, 2015); 33rd Annual SEC Government-Business Forum on Small Business Capital Formation, Final Report (Nov. 20, 2014); 32nd Annual SEC Government-Business Forum on Small Business Capital Formation, Final Report (Nov. 21, 2013); 31st Annual SEC Government-Business Forum on Small Business Capital Formation, Final Report (Nov. 15, 2012); 30th Annual SEC Government-Business Forum on Small Business Capital Formation, Final Report (Nov. 17, 2011); 29th Annual Small Business Forum, Final Report (Nov. 18, 2010); 28th Annual SEC Government-Business Forum on Small Business Capital Formation, Final Report (Nov. 19, 2009); 27th Annual Small Business Forum, Final Report (Nov. 20. 2008); 26th Annual SEC Government-Business Forum on Small Business Capital Formation, Final Report (Sept. 24, 2007); 25th Annual SEC Government-Business Forum on Small Business Capital Formation, Final Report (2006); and 24th Annual SEC Government-Business Forum on Small Business Capital Formation, Final Report (Sept. 19, 2005). Copies of these and other Annual Government-Business Forum on Small Business Capital Formation Final Reports making recommendations relating to finders are available at *https://www.sec.gov/info/smallbus/sbforumreps.htm.*

[24] *See* Report on 38th Annual Government-Business Forum on Small Business Capital Formation (Aug. 14, 2019), *available at https://www.sec.gov/files/small-business-forum-report-2019.pdf.*

The Mature and Later Stage Private Companies breakout group also recommended that the *M&A Broker* Letter be codified. *See M&A Brokers,* SEC Staff No-Action Letter (Jan. 31, 2014) (''*M&A Broker* Letter''). In the *M&A Broker* Letter, the staff agreed not to recommend enforcement action under Section 15(a) of the Exchange Act for persons facilitating securities transactions in connection with the transfer of ownership of a controlling interest in a privately-held operating company under certain facts and circumstances. This proposed exemptive order is limited to the regulatory status of individuals who identify and solicit potential investors for an issuer as discussed above, and does not address the *M&A Broker* Letter or the associated recommendation to codify the staff position in the *M&A Broker* Letter.

[25] *See* Report on 39th Annual Government-Business Forum on Small Business Capital Formation (June 18, 2020), *available at https://www.sec.gov/files/2020-oasb-forum-report-final_0.pdf.* The Small Business Forum recommended that the Commission provide an exemption from broker-dealer registration for finders facilitating secondary transactions. *Id.* While the scope of this proposed exemptive order is limited to finders participating in primary offerings, the Commission is requesting comment on whether we should expand the scope to include secondary offerings.

[26] The conditions of this proposed exemptive order for Finders differ from the requirements for solicitors under the Commission's proposed amendments to Rule 206(4)–3 under the Investment Advisers Act of 1940 (''Advisers Act''). *See* Investment Adviser Advertisements; Compensation for Solicitations, Release No. IA–5407 (Nov. 4, 2019), [84 FR 67518 (Dec. 20, 2019)] (''Cash Solicitation Rule Proposed Amendments'').

These differences reflect the particular facts and circumstances surrounding the proposed permitted activities for Finders and solicitors, and the characteristics of the applicable regulatory regimes, notably that a solicitor would solicit for an investment adviser and would be subject to oversight by such investment adviser, while a Finder would solicit for an issuer and therefore would not be subject to such oversight. *See* Cash Solicitation Rule Proposed Amendments at 67580.

[27] *See, e.g.,* Registration Requirements for Foreign Broker-Dealers, Exchange Act Release No. 27017 (Jul. 11, 1989), [54 FR 30013 (Jul. 18, 1989)] (''15a–6 Adopting Release'') at 30014–15.

[28] *See, e.g.,* Regulation Best Interest, Exchange Act Release No. 86031 (Jun. 5, 2019), [84 FR 33318 (Jul.

Section 3(a)(4) of the Exchange Act generally defines a ''broker'' as ''any person engaged in the business of effecting transactions in securities for the account of others.'' [29] Section 15(a)(1) of the Exchange Act, in turn, generally makes it unlawful for any broker to use the mails or any other means of interstate commerce to ''effect any transactions in, or to induce or attempt to induce the purchase or sale of, any security'' unless that broker is registered with the Commission in accordance with Section 15(b) of the Exchange Act.[30] As a result, absent an available exception or exemption,[31] a person engaged in the business of effecting transactions in securities for the account of others is a broker required to register under Section 15(a) of the Exchange Act.

The question of whether a person is a broker within the meaning of Section 3(a)(4) turns on the facts and circumstances of the matter. Because the Exchange Act does not define what it means to be ''engaged in the business'' or ''effecting transactions,'' courts and the Commission have looked to an array of factors in determining whether a person is a broker within the meaning of the statute.[32] Often, a key consideration in these determinations is whether the person participates on a regular basis in securities transactions at key points in the chain of distribution.[33] Over the years, the courts and the Commission have identified certain activities as indicators of broker status, including: (1) Actively soliciting or recruiting investors; [34] (2) participating in negotiations between the issuer and the investor; [35] (3) advising investors as to the merits of an investment or opining on its merits; [36] (4) handling customer funds and securities; [37] (5) having a history of selling securities of other issuers; [38] and (6) receiving commissions, transaction-based compensation or payment other than a salary for selling the investments.[39] This is not an exhaustive list of the relevant factors, and no one factor is dispositive.[40]

A person who identifies and solicits potential investors for an issuer or other party could be viewed as engaging in activity that indicates broker status.[41] The courts and the Commission generally have viewed solicitation as any affirmative effort intended to induce a securities transaction, including, but not limited to, telephone calls, mailings, advertising (online or in print), and conducting investment seminars.[42] Solicitation includes efforts to induce a single securities transaction as well as efforts to develop an ongoing securities-business relationship.[43] Although it is not required to establish broker status and is not in itself determinative of broker status, the receipt of transaction-based compensation in connection with securities activities, such as solicitation of potential investors, has been considered by courts as a factor indicating that registration as a broker may be required.[44]

While some courts have discussed the issue of finders, their interpretations have varied, and address the facts and circumstances of the specific matter.[45] The Commission has not previously recognized a ''finders'' exemption or exception, nor has the Commission broadly addressed whether and under what circumstances a person may ''find'' or solicit potential investors on behalf of an issuer without being required to register as a broker, or even whether such activity implicates the Commission's regulatory regime for brokers.[46] Instead, the Commission

12, 2019)] (''Regulation Best Interest Adopting Release'').

[29] Section 3(a)(4)(A) of the Exchange Act, 15 U.S.C. 78c(a)(4)(A).

[30] Section 15(a) of the Exchange Act, 15 U.S.C. 78*o*(a). Although Section 15(a) applies to both brokers and dealers, this proposed exemption would apply only to activities that historically have been associated with brokers—that is, effecting securities transactions for the account of others.

[31] *See, e.g.,* Exemptions to Facilitate Intrastate and Regional Securities Offerings, Release No. 33–10238 (Oct. 26, 2016) [81 FR 83494 (Nov. 21, 2016)] at 83510 (providing guidance on the exemption from registration for broker-dealers whose business is exclusively intrastate and who do not use any facility of a national securities exchange).

[32] *See, e.g.,* 15a–6 Adopting Release (noting that the definition in the Exchange Act of the term ''broker'' and the registration requirements under Section 15(a) of the Exchange Act ''were drawn broadly by Congress to encompass a wide range of activities involving investors and the securities markets'').

[33] *See SEC* v. *Bravata,* 2009 WL 2245649 (E.D. Mich. 2009), quoting *SEC* v. *Martino. See also Mass. Fin. Servs., Inc. v. SIPC,* 411 F. Supp. 411, 415 (D. Mass. 1976), *aff'd,* 545 F.2d 754 (1st Cir. 1976), *cert. denied,* 431 U.S. 904 (1977).

[34] *See SEC* v. *Hansen,* 1984 U.S. Dist. LEXIS 17835, at *26 (S.D.N.Y. April 6, 1984).

[35] *Id.*

[36] *Id.*

[37] *See SEC* v. *M&A West, Inc.,* 2005 WL 1514101, at *9 (N.D. Cal. June 20, 2005); *SEC* v. *Margolin,* 1992 WL 279735, at *5 (S.D.N.Y. 1992); *SEC* v. *Benger,* 697 F. Supp. 2d 932, 944 (N.D. Ill. 2010).

[38] *See, e.g., SEC* v. *Hansen,* 1984 U.S. Dist. LEXIS 17835, at *26 (S.D.N.Y. April 6, 1984).

[39] *Id.*

[40] *See SEC* v. *Benger,* 697 F. Supp. 2d 932, 945.

[41] *See, e.g.,* Definition of Terms in and Specific Exemptions for Banks, Savings Associations, and Savings Banks Under Section 3(a)(4) and 3(a)(5) of the Securities Exchange Act of 1934, Exchange Act Rel. No. 44291, 66 FR 27760, 27772–73 at n.124 (May 18, 2001) (''Solicitation is one of the most relevant factors in determining whether a person is effecting transactions.''), *cited in Registration Process for Security-Based Swap Dealers and Major Security-Based Swap Participants,* Exchange Act Rel. No. 75611 (Aug. 5, 2015), 80 FR 48964, 48976 (Aug. 14, 2015) (''The Commission has previously interpreted the term 'effecting transactions' in the context of securities transactions to include a number of activities, ranging from identifying potential purchasers to settlement and confirmation of a transaction.'').

[42] *See, e.g., SEC* v. *Century Inv. Transfer Corp., et al.,* No. 71–cv–3384, 1971 WL 297, at *5 (S.D.N.Y. Oct. 5, 1971) (Century ''engaged in the brokerage business by soliciting customers through ads in the Wall Street Journal, and engaging in sales activities designed to bring about mergers between private corporations and publically held shells controlled by'' a co-defendant); *SEC* v. *Hansen,* 1984 U.S. Dist. LEXIS 17835, at *26 (S.D.N.Y. Apr. 6, 1984) (defendant engaged in unregistered broker activity when he ''sold or attempted to sell interest in the five [securities] by use of the mails, the telephone, advertisements in publications distributed nationally and by other intestate means of communication''); *SEC* v. *National Executive Planners, Ltd.,* et al., 503 F. Supp. 1066, 1072–73 (M.D.N.C. 1980) (defendant engaged in unregistered broker activity by using the mails and telephone to ''solicit[] clients actively'' in the offer and sale of securities); *SEC* v. *Earthly Mineral Solutions, Inc.,* No. 2:07–cv–1057, 2011 WL 1103349, at *2 (D. Nev. Mar. 23, 2011) (defendant engaged in unregistered broker activity when, among other things, he ''conducted general solicitations through newspaper advertisements''); *SEC* v. *Deyon,* 977 F. Supp. 510, 518 (D. Maine 1997) (defendants engaged in unregistered broker activity when they ''solicited investors by phone and in person,'' ''distributed documents and . . . prepared and distributed sales circulars'').

[43] *See* 15a–6 Adopting Release at 30018.

[44] *See, e.g., SEC* v. *Helms,* No. 13–cv–01036, 2015 WL 5010298, at *17 (W.D. Tex. Aug. 21, 2015) (''In determining whether a person 'effected transactions [for purposes of the Exchange Act registration requirements],' courts consider several factors, such as whether the person: (1) Solicited investors to purchase securities, (2) was involved in negotiations between the issuer and the investor, and (3) received transaction-related compensation.'') (citing cases initiated by the Commission).

[45] *See, e.g., SEC* v. *Collyard,* 154 F. Supp. 3d 781, No. 11–CV–3656 (JNE/JJK), 2015 WL 8483258 at *5 (D. Minn. Dec. 9, 2015) (rejecting the argument that the defendant acted as a ''finder'' not subject to registration under Section 15(a)); *SEC* v. *Bio Defense Corp., et al.,* No. 1:12–cv–11669–DPW (D. Mass. Sept. 6, 2019) (concluding that the defendants acted as unregistered brokers in violation of Section 15(a) because the directness of their involvement in the securities sales was ''certainly broader than that of a mere finder who has no broker/dealer experience and simply brings parties together''); *SEC* v. *Kramer,* 778 F.Supp.2d 1320 (M.D. Fla. 2011) (concluding that registration under Section 15(a) was not required where the defendant acted like a ''finder'' and not a broker where he introduced friends and family as prospective investors to an issuer and received transaction-based compensation); *SEC* v. *Mapp,* 2017 U.S. Dist. LEXIS 29267 (E.D. Tex. Mar. 2, 2017) (finding that the defendant acted as a ''finder, as opposed to a broker, as he was ''merely facilitating securities transactions rather than performing the functions of a broker''). *See also SEC* v. *Offill,* Civil Action No. 3:07–CV–1643–D (N.D. Tex. Jan. 26, 2012) (''If an individual is a ''finder'' rather than a broker or dealer, he is not required to register under the Exchange Act. 'The distinction drawn between the broker and the finder or middleman is that the latter bring[s] the parties together with no involvement on [his] part in negotiating the price or any of the other terms of the transaction.' '').

[46] Exchange Act Rule 3a4–1 provides a conditional exemption from broker status when

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understands that market participants have looked to staff no-action letters discussing circumstances under which persons act as ''finders'' without registering as a broker-dealer.[47]

In particular, in connection with private placements, the Commission understands that market participants may look to the *Paul Anka* staff no-action letter with respect to broker registration under Section 15(a) of the Exchange Act.[48] In the *Paul Anka* Letter, the staff stated that it would not recommend enforcement action to the Commission under Section 15(a) of the Exchange Act against an individual who, without registering with the Commission as a broker-dealer: (1) Entered into an agreement with an issuer to provide to the issuer a list of names and telephone numbers of potential investors he reasonably believed to be accredited investors and with whom he had a pre-existing business or personal relationship, (2) had no further contact with potential investors concerning the issuer, and (3) received a finder's fee for doing so.[49]

As noted above, Commission staff has responded over the years to other requests for staff statements in relation to broker status issues, similar to those in the *Paul Anka* Letter. Differences in the facts and circumstances can lead to different results. In some matters, the staff provided the no-action statement that was requested.[50] A number of the no-action letters in this area, for example, involve persons seeking to facilitate the sale of a business or a controlling interest therein, a fact pattern different from that presented in the *Paul Anka* Letter.[51] But in certain other matters, the staff has declined to provide such statements.[52]

III. Proposed Exemption for Finders

The Commission acknowledges that so-called ''finders'' may play an important role in facilitating capital formation, particularly for smaller issuers. At the same time, the absence of a regulated intermediary may raise investor protection concerns. The Commission preliminarily believes that there are situations where the need to impose the broker registration requirement may be mitigated by other factors.[53] Accordingly, the Commission is proposing to grant exemptive relief pursuant to Sections 15(a)(2)[54] and 36(a)(1)[55] of the Exchange Act to permit a natural person to engage in certain defined activities on behalf of an issuer (a ''Finder'') without registration as a broker, subject to the conditions described below.[56] The proposed exemption would provide a non-exclusive safe harbor from broker registration. The safe harbor is intended to provide clarity with respect to the ability of a Finder to engage in certain activities without being required to register as a broker under Section 15(a).[57] Accordingly, no presumption shall arise that a person has violated Section 15(a) of the Exchange Act if such person is not within the terms of the proposed exemption; rather—consistent with how questions under Section 15(a) have been evaluated—it would depend on the facts and circumstances of the situation.

Specifically, the Commission is proposing to exempt two classes of Finders, Tier I Finders and Tier II Finders, as described below, based on the types of activities in which they are permitted to engage, and with conditions tailored to the scope of their activities. The Commission's proposed relief is intended to be narrowly-tailored and seeks to address the capital formation needs of certain smaller issuers while preserving appropriate investor protections.

The proposed exemption for Tier I and Tier II Finders would be available only where:

- The issuer is not required to file reports under Section 13 or Section 15(d) of the Exchange Act;
- The issuer is seeking to conduct the securities offering in reliance on an

''associated persons'' of an issuer engage in certain limited activities on behalf of the issuer. However, the ability to rely on the rule is subject to a number of conditions, including that the associated person does not receive compensation that is based either directly or indirectly on transactions in securities. The associated person must also perform, or be intended primarily to perform at the end of the offering, substantial duties for or on behalf of the issuer otherwise than in connection with transactions in securities. Exchange Act Rule 3a4–1; *see Persons Deemed Not to Be Brokers,* Exchange Act Release No. 22172, 1985 WL 634795 (June 27, 1985) (''Rule 3a4–1 Adopting Release''). Finders are customarily paid transaction-based compensation and few finders perform substantial duties for the issuer after the offering. Thus, finders have generally not been eligible to rely on the Rule 3a4–1 exemption.

[47] Staff no-action letters, like all staff guidance, have no legal force or effect: they do not alter or amend applicable law, and they create no new or additional obligations for any person.

[48] *See Paul Anka,* SEC Staff No-Action Letter (July 24, 1991) (''*Paul Anka* Letter''). If the exemption is adopted, the *Paul Anka* Letter and other staff positions relating to the application of Section 15(a) of the Exchange Act in private offerings, including but not limited to the letters discussed in footnotes 50 and 52 *infra,* may be moot, superseded, or otherwise inconsistent with the exemption. As discussed below, the Commission is requesting comment on which letters, if any, should or should not be withdrawn, and why.

[49] *Id.* The facts of the *Paul Anka* Letter are very narrow. The staff in its response noted that the individual would not: (i) Solicit the prospective investors or have any contact with them regarding the proposed investment; (ii) participate in any advertisement, endorsement, or general solicitation; (iii) participate in the preparation of any sales materials; (iv) perform any independent analysis of the sale; (v) engage in any ''due diligence'' activities; (vi) assist or provide financing for such purchases; (vii) provide advice as to the valuation or financial advisability of the investment; or (viii) handle any funds or securities in connection with the investment.

The staff's response also noted that the individual had not previously engaged in any private or public offering of securities (other than buying and selling securities for his own account through a broker-dealer), had not acted as a broker or finder for other private placements of securities, and did not intend to participate in any distribution of securities after the completion of the proposed private placement, so that the *Paul Anka* Letter only addressed an individual's first participation in a securities offering and not participation in any subsequent offerings by that individual.

[50] *See, e.g., Garrett/Kushell/Assocs.* SEC Staff No-Action Letter (Aug. 8, 1980, Pub. Avail. Sept.7, 1980); *May-Pac Management Co.* SEC Staff No-Action Letter (Oct. 23, 1973, Pub. Avail. Dec. 20, 1973); *Victoria Bancroft* SEC Staff No-Action Letter (July 9, 1987); *Russell R. Miller & Co., Inc.* SEC Staff No-Action Letter (July 14, 1977); *Corporate Forum, Inc.* SEC Staff No-Action Letter (Dec. 10, 1972).

[51] *M&A Broker* Letter; *Country Business, Inc.* Staff No-Action Letter (Nov. 8, 2006); *International Business Exchange Corporation* Staff No-Action Letter (Dec. 12, 1986).

[52] *See, e.g., Brumberg, Mackey & Wall, PLC* Staff No-Action Letter (May 17, 2010) (denial of no-action for a person who would pre-screen investors for eligibility to purchase certain privately-placed securities and pre-sell securities to those investors); *John Loofbourrow Associates, Inc.* Staff No-Action Letter (June 29, 2006) (denial of no-action for a person who would receive a commission for introducing an investment banking client to a registered broker-dealer).

[53] *See* Rule 3a4–1 Adopting Release (''Exemptions from registration have traditionally been narrowly drawn in order to promote both investor protection and the integrity of the brokerage community. At the same time, however, the Commission recognizes that there are situations where imposition of the registration requirement would be inappropriate.'').

[54] Section 15(a)(2) of the Exchange Act authorizes the Commission to conditionally or unconditionally exempt from the registration requirements of Section 15(a)(1) any broker or class of brokers, by rule or order, as it deems consistent with the public interest and the protection of investors.

[55] Section 36(a)(1) of the Exchange Act authorizes the Commission, by rule, regulation, or order, to exempt, either conditionally or unconditionally, any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of the Exchange Act or any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.

[56] Nothing in the proposed exemption excuses compliance with all other applicable laws, including the antifraud provisions of the Securities Act and the Exchange Act and state law.

[57] As discussed above, whether a person is acting as a ''broker'' and in particular, whether he or she is ''engaged in the business'' of effecting securities transactions for the account of others will depend on the facts and circumstances of the particular matter. Accordingly, engaging in some of the limited activities falling within the terms of the proposed exemption should not be considered per se to require registration as a broker-dealer in the absence of the exemption.

applicable exemption from registration under the Securities Act;[58]

- The Finder does not engage in general solicitation;
- The potential investor is an ''accredited investor'' as defined in Rule 501 of Regulation D or the Finder has a reasonable belief that the potential investor is an ''accredited investor'';
- The Finder provides services pursuant to a written agreement[59] with the issuer that includes a description of the services provided and associated compensation;
- The Finder is not an associated person of a broker-dealer; and
- The Finder is not subject to statutory disqualification, as that term is defined in Section 3(a)(39) of the Exchange Act, at the time of his or her participation.

Limiting the proposed exemption to activities on behalf of issuers that are not required to report under the Exchange Act and in connection with offers and sales of securities made in reliance on an applicable exemption from registration under the Securities Act is intended to address concerns that have been raised over the years regarding the perceived inability of smaller companies to engage the services of a broker-dealer to assist with opportunities to raise capital in exempt offerings.[60] Smaller companies, particularly smaller private companies, may be more likely to rely on the exemptions from registration, given the initial and ongoing costs associated with conducting a registered offering and becoming an Exchange Act reporting company.[61]

Although relatively smaller issuers that are required to report under the Exchange Act may also encounter difficulty raising capital in exempt offerings as compared to larger Exchange Act reporting issuers, we have proposed limiting this relief to non-Exchange Act reporting issuers because we believe these non-reporting issuers may be the types of companies most likely to experience difficulty obtaining the assistance of a broker-dealer, and are therefore most likely to need the assistance of a Finder when seeking to raise capital in such offerings.[62]

The proposed exemption would also require that a Finder not engage in general solicitation of potential investors, and that the potential investors be ''accredited investors'' or investors that the Finder has a reasonable belief[63] are ''accredited investors,'' as defined in Rule 501 of Regulation D.[64] These proposed requirements are intended to provide investor protection by limiting the scope of potential investors with whom Finders are permitted to engage on behalf of an issuer.[65] The accredited investor requirement is intended to ensure that Finders solicit only potential investors who have a sufficient level of financial sophistication to participate in investment opportunities that do not have the additional protections provided by registration under the Securities Act.[66] Accredited investors currently provide the vast majority of early-stage capital to small businesses through exempt offerings,[67] where they often invest directly without the engagement of an intermediary. We believe the targeted approach we are proposing would address the capital raising needs of smaller issuers while maintaining appropriate investor protections.

The requirement that a Finder enter into a written agreement[68] with the issuer that includes a description of the services provided and associated compensation is intended to explicitly define the role of the Finder consistent with the terms of the proposed exemption and, in turn, establish accountability between the parties.[69]

Next, a Finder cannot be an associated person of a broker-dealer as defined under Section 3(a)(18) of the Exchange Act.[70] The Commission believes this

[58] An issuer's failure to comply with the conditions of an exemption from registration under the Securities Act for an offering would not, in itself, affect the ability of a Finder to rely on the proposed exemptive order provided the Finder can establish that he or she did not know and, in the exercise of reasonable care, could not have known, that the issuer had failed to comply with the conditions of an exemption. However, a Finder that, through its activities on behalf of an issuer, causes an issuer's offering to be ineligible for an exemption from registration, would not be able to rely on the proposed exemption.

This proposed exemptive order is not intended to exempt an issuer from its requirements under each offering exemption from registration under the Securities Act.

[59] *See* footnote 68 and accompanying text.

[60] *See, e.g.,* ACSEC Recommendation 2017 at 10 (stating that ''identifying potential investors is one of the most difficult challenges for small businesses trying to raise capital'').

[61] *See* Harmonization Proposal at 17957.

[62] *See* 2017 Treasury Report at 43–44.

[63] The Commission recently reiterated that the steps necessary to establish a reasonable belief as to investor status will depend on the facts and circumstances of the contemplated offering and each potential issuer. *See* Solicitations of Interest Prior to a Registered Public Offering, Release No. 33–10699 (Sept. 25, 2019) [84 FR 53011 (Oct. 4, 2019)] at 53018. Finders can look to the methods that other market participants currently use to establish a reasonable belief regarding an accredited investor's status in other contexts.

[64] 17 CFR 230.501(a). The definition of accredited investor provides that natural persons and entities that come within, or that the issuer reasonably believes come within, any of the enumerated categories at the time of the sale of the securities are accredited investors.

On August 26, 2020, the Commission adopted changes to the accredited investor definition to add new categories of qualifying natural persons and entities. *Amending the ''Accredited Investor'' Definition,* Release Nos. 33–10824; 34–89669 (Aug. 26, 2020) (''Accredited Investor Adopting Release'').

[65] As the Commission previously indicated, ''[w]hether there has been a general solicitation is a fact-specific determination.'' *See* Harmonization Proposal at footnote 70. One way, though not the exclusive way, to demonstrate the absence of general solicitation is by establishing the existence of a pre-existing substantive relationship. *Id.* at 17966.

The Commission has stated that it generally viewed a pre-existing relationship as ''one that the issuer has formed with an offeree prior to the commencement of the securities offering or, alternatively, that was established through another person (for example a registered broker-dealer or investment adviser) prior to that person's participation in the offering.'' *Id.* The Commission has stated that a substantive relationship is ''one in which the issuer (or a person acting on its behalf, such as a registered broker-dealer or investment adviser) has sufficient information to evaluate, and does, in fact, evaluate, an offeree's financial circumstances and sophistication, in determining his or her status as an accredited or sophisticated investor.'' *Id.*

[66] *Regulation D Revisions; Exemption for Certain Employee Benefit Plans,* Release No. 33–6683 (Jan. 16, 1987), [52 FR 3015 (Jan. 30, 1987)]. *See also* Accredited Investor Adopting Release.

As the Commission recently stated in the Accredited Investor Adopting Release, the accredited investor standard is similar to, but distinct from, other regulatory standards in Commission rules that are used to identify persons who are not in need of certain investor protection features of the federal securities laws. *See* Accredited Investor Adopting Release at footnote 8. Each of these other regulatory standards serves a different regulatory purpose. Accordingly, an accredited investor will not necessarily meet these other standards, and these other regulatory standards are not designed to capture the same investor characteristics as the accredited investor standard. *See id.*

The Commission, in adopting Rule 3a4–1, noted that ''the fact that the Commission has concluded that, under limited circumstances, investors do not need the protections afforded by registration under the 1933 Act does not dictate a conclusion that a broad exemption from broker-dealer is appropriate.'' The Commission is not predicating the proposed exemption solely on the status of the potential investor. Rather, as it did with Rule 3a4–1, the Commission is considering, among other various approaches, whether there are a set of conditions that considered together would be appropriate in a narrow set of circumstances.

[67] From 2009 to 2019, Rule 506(b) offerings to only accredited investors provided between 93–97% of total capital raised using Rule 506(b), the most commonly used offering exemption. *See* Accredited Investor Adopting Release at 97.

[68] The Finder could employ electronic media and communications to satisfy the written agreement requirement.

[69] *See* footnote 26 and accompanying text.

[70] Section 3(a)(18) of the Exchange Act defines associated person of a broker or dealer as: ''any partner, officer, director or branch manager of such broker or dealer (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with such broker or dealer, or any employee of such broker or dealer, except that any person associated with a broker or dealer whose functions are solely clerical or ministerial shall not be included in the meaning of such term

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condition is appropriate because of the potential for investor confusion and abusive sales tactics when the Finder is also associated with a broker-dealer.[71] Therefore, the relief provided by the proposed exemption should not be necessary or available to such persons. This condition is intended to ensure that regulated persons do not attempt to circumvent applicable rules and regulations to which they are already subject, including their required standard of conduct when providing recommendations.[72]

Finally, a Finder cannot rely on the exemption during a time he or she is subject to statutory disqualification, as that term is defined in Section 3(a)(39) of the Exchange Act.[73] The Commission preliminarily believes that any person subject to the provisions described in Section 3(a)(39) should not be able to rely on this exemption as we believe there is potential for abusive practices where persons who are subject to a statutory disqualification participate in securities transactions without the assurance of adequate supervision or regulatory oversight.[74]

Tier I Finders. For purposes of the proposed exemption, a ''Tier I Finder'' is defined as a Finder who meets the above conditions [75] and whose activity is limited to providing contact information of potential investors in connection with only one capital raising transaction by a single issuer within a 12-month period,[76] provided the Tier I Finder does not have any contact with the potential investors about the issuer. The contact information may include, among other things, name, telephone number, email address, and social media information. The Commission preliminarily believes limiting the exemption to this activity will appropriately narrow the role of the Tier I Finder to preclude the participation in continuous or multiple sales of securities by persons that are not subject to broker-dealer registration or to the heightened requirements of Tier II Finders. A Tier I Finder that complies with all of the conditions of the exemption may receive transaction-based compensation for the limited services described above without being required to register as a broker under Section 15(a) of the Exchange Act.[77]

Tier II Finders. The Commission is also proposing an exemption that would permit a Finder, where certain conditions are met, to engage in additional solicitation-related activities beyond those permitted for Tier I Finders. For purposes of the proposed exemption, a ''Tier II Finder'' is defined as a Finder who meets the above conditions,[78] and who engages in solicitation-related activities on behalf of an issuer, that are limited to: (i) Identifying, screening, and contacting potential investors; [79] (ii) distributing issuer offering materials to investors; (iii) discussing issuer information included in any offering materials,[80] provided that the Tier II Finder does not provide advice as to the valuation or advisability of the investment; [81] and (iv) arranging or participating in meetings with the issuer and investor.[82] As discussed above, the Commission generally views solicitation as any affirmative effort to induce or attempt to induce a securities transaction [83] and broadly views these activities of Tier II Finders to constitute solicitation. The identification of these activities is not an exhaustive listing of activities that may constitute solicitation. Rather, these are the limited solicitation-related activities permissible under the proposed exemption.[84] The Commission preliminarily believes that limiting the proposed exemption to these specified activities associated with solicitation, along with the additional conditions discussed below, will appropriately narrow the role of the Tier II Finder to support the proposed exemption.[85]

A Tier II Finder wishing to rely on the proposed exemption would need to satisfy certain disclosure requirements and other conditions: [86]

First, the Tier II Finder would need to provide a potential investor, prior to or at the time of the solicitation, disclosures that include:

(1) the name of the Tier II Finder;

(2) the name of the issuer;

(3) the description of the relationship between the Tier II Finder and the issuer, including any affiliation;

(4) a statement that the Tier II Finder will be compensated for his or her

for purposes of section 15(b) of this title (other than paragraph 6 thereof).''

[71] *See* Rule 3a4–1 Adopting Release at *3.

[72] The Commission recognizes the importance of the protections provided by the standard of conduct applicable to broker-dealers when providing recommendations to retail investors. *See* Regulation Best Interest Adopting Release at Section I.

[73] Section 3(a)(39).

[74] *See* Rule 3a4–1 Adopting Release at *3 (''The Commission believes that there is added potential for abusive practices in the sale of an issuer's securities in circumstances where persons who are subject to a statutory disqualification participate without assurance of adequate supervision or regulatory oversight.'').

[75] As discussed above, the proposed exemption would only be available where: (i) The issuer is not required to file reports under Section 13 or Section 15(d) of the Exchange Act; (ii) the issuer conducts the offering in reliance on an applicable exemption from registration under the Securities Act; (iii) the Finder does not engage in general solicitation; (iv) the potential investor is an accredited investor or the Finder has a reasonable belief that the potential investor is an accredited investor; (v) the Finder provides services pursuant to a written agreement with the issuer that includes a description of the services provided and associated compensation; (vi) the Finder is not an associated person of a broker or dealer; and (vii) the Finder is not subject to statutory disqualification.

[76] The Commission notes that requirement is similar to the limitation included in Rule 3a4–1 for sales activities by associated persons of an issuer. *See* Rule 3a4–1(a)(4)(ii)(C) (stating that as a condition of the rule, subject to limited exceptions, the associated person of an issuer cannot participate in selling and offering of securities for any issuer more than once every 12 months).

[77] As noted above, no presumption shall arise that a person has violated Section 15(a) of the Exchange Act if such person is not within the terms of the proposed Tier I Finders exemption. Whether a person is acting as a ''broker'' and, in particular, whether he or she is ''engaged in the business'' of effecting securities transactions for the account of others will depend on the facts and circumstances of the particular matter. A person who falls within the definition of broker must register with the Commission pursuant to Section 15(a) of the Exchange Act, absent an applicable exemption or exclusion. The proposed exemption is intended to provide a safe harbor from the broker registration requirement to market participants for the limited activities described herein.

[78] *See supra* footnote 75 and accompanying text.

[79] *See SEC* v. *Hansen,* 1984 U.S. Dist. LEXIS 17835, at *26 (S.D.N.Y. April 6, 1984) (setting forth actively soliciting or recruiting investors as commonly cited indicia of broker activity).

[80] *See SEC* v. *Offill,* 2012 WL 246061 (N.D. Tex. Jan. 26, 2012) (stating that a ''finder'' will be performing the functions of a broker-dealer, triggering registration requirements, if activities include, among other things, discussion of details of securities transactions).

[81] *See infra* p. 28 (discussing activities that Finders are not permitted to engage in pursuant to the proposed exemption).

[82] A Tier II Finder is not subject to the Tier I Finder's limitation of participation in only one capital raising transaction by a single issuer in a 12-month period.

[83] *See supra* p. 13 (stating that solicitation includes efforts to induce a single securities transaction as well as efforts to develop an ongoing securities-business relationship).

[84] *See supra* footnote 77.

[85] As noted above, no presumption shall arise that a person has violated Section 15(a) of the Exchange Act if such person is not within the terms of the proposed Tier II Finders exemption. Whether someone is acting as a ''broker'' and in particular, whether he or she is ''engaged in the business'' of effecting securities transactions for the account of others, will depend on the facts and circumstances of the particular matter. A person who falls within the definition of broker must register with the Commission pursuant to Section 15(a) of the Exchange Act, absent an applicable exemption or exclusion. The proposed exemption is intended to provide a safe harbor from the broker registration requirement to market participants for the limited activities described herein.

[86] The disclosure requirements and conditions applicable to Tier II Finders differ from the requirements applicable to solicitors under the Cash Solicitation Rule Proposed Amendments. As discussed above, the Commission preliminarily believes these more specific disclosure requirements, including the required acknowledgment, for Tier II Finders are appropriate to address the differences in regulatory structures. *See* footnote 26 and accompanying text.

solicitation activities by the issuer and a description of the terms of such compensation arrangement;

(5) any material conflicts of interest resulting from the arrangement or relationship between the Tier II Finder and the issuer; and

(6) an affirmative statement that the Tier II Finder is acting as an agent of the issuer, is not acting as an associated person of a broker-dealer, and is not undertaking a role to act in the investor's best interest.[87]

The Commission is proposing to allow a Tier II Finder to provide such disclosure orally, provided that the oral disclosure is supplemented by written disclosure and satisfies all of the disclosure requirements listed above no later than the time of any related investment in the issuer's securities.

The Commission preliminarily believes that this disclosure would direct an investor's attention to important information, such as the fact that the Tier II Finder is paid by the issuer and any associated material conflicts of interest, in order to facilitate the investor's ability to evaluate the role of the Tier II Finder. In addition, the Commission believes the disclosure should be made ''prior to or at the time of the solicitation'' so that investors have this important information early enough in the process to give the investor adequate time to consider the information in order to make informed investment decisions.[88] While the Commission is requiring that the disclosures be written, we believe this can be satisfied either through paper or electronic means.[89] For purposes of this proposed exemption, we believe that delivery of the disclosure would be evidenced by the acknowledgment required below.

The Tier II Finder must obtain from the investor, prior to or at the time of any investment in the issuer's securities, a dated written acknowledgment of receipt of the Tier II Finder's required disclosures. While the Commission is requiring that the acknowledgment be written, we believe this can be satisfied either through paper or electronic means, similar to the disclosure condition discussed above.[90] The Commission believes this acknowledgment is important as it helps ensure that the investor received the required disclosures.

Because Tier II Finders may participate in a wider range of activity and have the potential to engage in more offerings with issuers and investors, the Commission believes that heightened requirements are appropriate. A Tier II Finder that complies with all of the conditions of the proposed exemption may receive transaction-based compensation for services provided in connection with the activities described above without being required to register as a broker under Section 15(a) of the Exchange Act.

The Commission preliminarily believes that the proposed exemption is narrowly drawn to permit a limited set of activities, subject to conditions intended to address investor protection concerns, including the requirement that any potential investors solicited under this proposed exemption be accredited investors or investors the Finder has a reasonable belief are accredited investors. In addition, Tier II Finders, who will interact with potential investors, must provide those investors with appropriate disclosures of the Tier II Finder's role and compensation.[91]

Because a Finder would engage in a limited scope of securities-related activities with a limited set of investors, would be subject to conditions commensurate with the level of activity, and would not handle customer funds or securities or have the power to bind the issuer or the investor, the Commission preliminarily believes that the investor protection concerns that otherwise would be addressed by registration as a broker and the related requirements in the limited circumstances contemplated by the exemption should be addressed by the conditions of the proposed exemption for each tier of Finders. In particular, the disclosure requirement for Tier II Finders should help to increase investor awareness of the scope of the Finder's relationship with the issuer and potential conflicts of interest, and as a result help to facilitate an informed investment decision.

Consistent with the narrow scope of activities contemplated by the proposed exemption, as noted above, a Finder could not be involved in structuring the transaction or negotiating the terms of the offering.[92] A Finder also could not handle customer funds or securities or bind the issuer or investor; participate in the preparation of any sales materials; perform any independent analysis of the sale; engage in any ''due diligence'' activities; assist or provide financing for such purchases; or provide advice as to the valuation or financial advisability of the investment.

The proposed exemption would apply only with respect to the defined activities for each tier of Finder and is limited to activities solely in connection with primary offerings. A Finder could not rely on this proposed exemption to engage in broker activity beyond the scope of the proposed exemption, such as to facilitate a registered offering, a resale of securities, or the sale of securities to investors that are not accredited investors or that the Finder does not have a reasonable belief are accredited investors. The Commission preliminarily believes these are important safeguards that operate as a constraint on the conduct of Finders.

If a Finder fails to comply with any of the relevant conditions (for example, the Finder engages in general solicitation of potential investors), the Finder could not rely on the proposed exemption. The inability to rely on the proposed exemption means that the Finder may need to consider whether it is required to register with the Commission as a broker under Section 15(a) of the Exchange Act.[93]

There are two important principles embodied in our regulatory framework that are not affected by this exemption. Significantly, this exemption would not affect a Finder's obligation to continue to comply with all other applicable laws, including the antifraud provisions of the Securities Act and the Exchange Act, such as the obligations under Section 10(b) and Rule 10b-5 under the Exchange Act, and state law. In

[87] A Tier I Finder or Tier II Finder that complies with the requirements of the proposed exemption would not be subject to broker-dealer sales practice rules, including Regulation Best Interest.

[88] *See* Regulation Best Interest Adopting Release at Section II.C.1.

[89] The Finder could employ electronic media and communications to satisfy the requirement.

[90] *Id.*

[91] *See supra* pp. 25–26 (describing required disclosures to the investors) and *infra* 29 (describing the Commission's antifraud protections). The Commission is seeking comment on questions related to potential investor protection concerns associated with this proposed exemption.

Because Tier I Finders would only be providing the investor's contact information to the issuer and would not have any contact with potential investors about the securities offering, we preliminarily do not believe that a similar disclosure requirement for Tier I Finders is necessary or appropriate.

[92] To assist Finders in applying this standard, we propose to use terms already familiar to market participants. To that end, for the purposes of the proposed exemption, ''terms of the offering'' would be interpreted as the amount of securities offered, the nature of the securities, the price of the securities and the closing date of the offering period. This interpretation would be consistent with the Instruction to Rule 204 of Regulation Crowdfunding. *See* Rule 204 of Regulation Crowdfunding.

[93] As noted above, the proposed exemption would provide a non-exclusive safe harbor from broker registration, and no presumption shall arise that a person has violated Section 15(a) of the Exchange Act if such person is not within the terms of the proposed exemption but rather the need for registration would depend on the facts and circumstances of the situation.

addition, this exemption is not intended to affect the rights of the Commission or any other party to enforce compliance with other applicable law, or the available remedies for violations of the law. Further, regardless of whether or not a Finder complies with this exemption, it may need to consider whether it is acting as another regulated entity, such as an investment adviser or a municipal advisor. An exemption from the obligation to register as a broker-dealer does not insulate a person from the registration requirements of the Advisers Act if such person is acting as an investment adviser.

Thus, the Commission preliminarily believes that the proposed exemption would be consistent with the public interest and protection of investors, and would also provide issuers with greater access to investment capital and investors with access to investment opportunities. Specifically, the proposed conditions for both Tier I Finders and Tier II Finders should sufficiently restrict the scope of the proposed exemption such that permitting limited activities associated with solicitation in this narrow context would not implicate the need for regulation of these activities under the broker regulatory framework. At the same time, the proposed exemption would permit Finders to play an important role in facilitating capital formation for small businesses, consistent with many of the various recommendations put forth through the years.[94]

Accordingly, for the reasons discussed above, the Commission preliminary believes that the proposed conditional exemption would be consistent with the public interest and the protection of investors and would be necessary or appropriate in the public interest.

IV. Request for Comments

The Commission is seeking comment on all aspects of the proposed exemption. In particular, the Commission requests comment on the following questions as well as the potential costs and benefits of the proposed exemption. When responding to the request for comment, please explain your reasoning.

1. Have we accurately and completely identified the legal uncertainties, if any, around the involvement by Finders in connecting investors with small firms in need of capital?

2. Have we appropriately defined Tier I Finders and Tier II Finders? Should there be two tiers of Finders or instead should there be multiple tiers of Finders? Should there be only one tier of Finders?

3. Should the definition of Finder be limited to natural persons?

4. Should the definition of Finder be limited to a natural person resident in the U.S.?[95]

5. Have we appropriately identified the activities in which each tier of Finder should and should not be able to engage? Does the proposed exemption provide a workable path for Finders to be engaged in this activity?

6. Have we appropriately limited the types of investors whom a Finder can ''find'' or solicit? Instead of limiting potential investors to those the Finder reasonably believes are accredited investors, should investors identified by Finders be subject to investment limitations, regardless of the exemption being relied upon, such as a dollar limit on the size of the investment? If so, please specify.

7. Should the Finder be prohibited from engaging in general solicitation as proposed? Would this create practical problems for a Finder? For example, would a Finder be able to establish a pre-existing substantive relationship with investors in order to not engage in general solicitation?[96]

8. Should we limit the proposed exemption to offerings of a specific size threshold? If so, how should we define such threshold?

9. Have we appropriately limited the number of offerings a Tier I Finder can participate in on an annual basis?

10. Is the limitation that Tier I Finders do not have any contact with potential investors about the issuer workable? Should we instead permit Tier I Finders to have some contact with potential investors?

11. Should we define ''capital raising transaction'' for purposes of Tier 1? If so, how?

12. Have we appropriately defined the conditions that should apply to the proposed exemption for each tier of Finder? Is more clarity, specificity or flexibility required with respect to the proposed conditions? Are there other or different conditions that should apply to the proposed exemption?

13. Should Finders be able to ''find'' or solicit investors only for exempt offerings, as proposed? Should Finders be able to ''find'' or solicit investors only for offerings under certain exemptions from registration? If so, which ones?

14. Should Finders be able to ''find'' or solicit for all non-Exchange Act reporting companies or should they be able to solicit for a narrower or wider range of companies?

15. Should Finders only be able to ''find'' or solicit for primary offerings? Should we expand the scope of the proposed exemption to secondary offerings, such as transactions facilitating the sale of equity by employees holding options or warrants?

16. Should the proposed exemption include limitations on the types of securities for which a Finder can ''find'' or solicit investors?

17. Is more clarity or specificity required with respect to the specific written disclosures that are a condition of the proposed exemption for Tier II Finders? Should we provide more guidance about any of the specific written disclosures?

18. Are there any specific written disclosures to investors that should be required, beyond those that are a condition of the proposed exemption for Tier II Finders? Should the disclosures be required to be written or should the Finder be permitted to provide them orally? Should the written disclosures be required at all?

19. Should we adopt comparable disclosure requirements with disclosures required under the proposed changes to Rule 206(4)–3 under the Advisers Act[97] for solicitations of investors in private funds, if adopted? Should the disclosures required by Tier II Finders be deemed to satisfy the disclosure requirements under the proposed changes to Rule 206(4)–3 under the Advisers Act[98] for solicitations of investors in private funds, if adopted?

20. Should Tier II Finders be required to receive an acknowledgment of receipt of the required disclosure from the investor? If so, are there methods other than an acknowledgment, for example, a read receipt for email, that could serve to validate that investors received the required disclosure?

21. Should Tier I Finders be subject to a disclosure and acknowledgment requirement?

[94] *See* Section I.

[95] This term would be interpreted consistent with the meaning in Rule 902(k)(1)(i) of Regulation S.

[96] *See* Harmonization Proposal at footnote 70.

[97] *See* Cash Solicitation Rule Proposed Amendments. The Cash Solicitation Proposed Amendments require that the solicitor disclosure state: (A) The name of the investment adviser; (B) the name of the solicitor; (C) a description of the investment adviser's relationship with the solicitor; (D) the terms of any compensation arrangement, including a description of the compensation provided or to be provided to the solicitor; (E) any potential material conflicts of interest on the part of the solicitor resulting from the investment adviser's relationship with the solicitor and/or the compensation arrangement; and (F) the amount of any additional cost to the client or private fund investor as a result of solicitation.

[98] *Id.*

22. Should Tier II Finders be required to enter into a written agreement with the issuer where the issuer, without affecting the Finder's obligations, also assumes liability with respect to investors for the Finder's misstatements in the course of his or her engagement by the issuer?

23. Should the proposed exemption be conditioned on a Finder filing a notice with the Commission of reliance on the exemption from registration? Why or why not? If so, when should Finders be required to file the notice? What, if any, disclosures should be required in the notice?

24. Should there be any limitations on the amount of fee a Finder can receive?

25. Should we impose limitations on the form of compensation Finders can receive? Should Finders be prohibited in certain circumstances from receiving transaction-based compensation, and instead be required to receive compensation that is not tied to the success of the transaction (that is a fixed fee or other arrangement)? If so, under what circumstances and how should Finders then be compensated?

26. Should a Finder be able to receive a financial interest in an issuer as compensation for its services? Why or why not?

27. Are the explicit limitations on the activities in which Finders can or cannot engage appropriate for each tier of Finder? What other activities should be expressly permitted or prohibited for each class of Finder?

28. Should we provide guidance on how a Finder can establish that he or she did not know and, in the exercise of reasonable care, could not have known, that the issuer had failed to comply with the conditions of an exemption?

29. Should we provide further guidance on the solicitation-related activities in which Tier II Finders can engage on behalf of an issuer, for example, guidance surrounding a Tier II Finder's discussion of issuer information and arrangement and participation in meetings with issuers and investors?

30. Should we provide guidance regarding activities of private fund advisers, M&A Brokers as defined in the *M&A Broker* Letter,[99] or real estate brokers that may require registration under Section 15(a) of the Exchange Act? Should we consider codifying the *M&A Broker* Letter? [100]

31. Are there other areas in which the Commission should provide guidance regarding the registration requirements of Section 15(a) of the Exchange Act to other types of limited-purpose broker-dealers?

32. If the proposed exemption is adopted, which staff letters, if any, should or should not be withdrawn, and why?

33. Have we appropriately defined the disqualification condition for Finders?

34. Have we appropriately limited the proposed exemption to individuals who are not associated persons of a broker-dealer?

35. Should the proposed exemption include a limitation such that it would not be available to individuals who were associated persons of a broker-dealer within the previous 12 months?

36. Should the proposed exemption be limited to individuals who are not associated persons of a municipal advisor or investment adviser representatives of an investment adviser?

37. Should the proposed exemption be limited to individuals who are not associated persons of an issuer? Why or why not?

38. Would the proposed exemption provide sufficient investor protections while promoting capital formation for small businesses?

39. Would the proposed exemption have a competitive impact on registered brokers?

40. With respect to the activities permitted for Tier I Finders, what are the practical implications of the requirements if they were subject to broker registration? What about for Tier II Finders?

41. Should we instead take an alternative approach for either class of Finders?

42. Are there areas related to the proposed Finders framework for which the Commission should provide guidance?

43. Should we coordinate with other regulators to provide clarity and consistency on what types of activities Finders and other limited purpose brokers may engage in?

44. Are there any other sources of data or information that could assist the Commission in analyzing the consequences of the proposed exemption? We request that commenters provide any relevant data or information.

45. Other than the possible obligation of a Finder to register as a broker-dealer, the proposed exemption is not intended to affect the rights of the Commission or any other party to enforce compliance with applicable law, or the available remedies for violations of the law. This includes, in the case of the Commission, the ability to impose a broker-dealer registration bar on a person for misconduct that would warrant a bar. Are there any other considerations in this regard that the Commission should take into account as it considers the exemptive relief?

By the Commission.

Dated: October 7, 2020.

Vanessa A. Countryman,

Secretary.

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[99] An M&A Broker is defined as a person engaged in the business of effecting securities transactions solely in connection with the transfer of ownership and control of a privately-held company through the purchase, sale, exchange, issuance, repurchase, or redemption of, or a business combination involving, securities or assets of the company, to a buyer that will actively operate the company or the business conducted with the assets of the company. *See M&A Broker* Letter.

[100] *See supra* footnote 24 and accompanying text.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90099; File No. SR–LCH SA–2020–005]

Self-Regulatory Organizations; LCH SA; Notice of Filing of Proposed Rule Change Relating to the Clearing of Options on Index Credit Default Swaps in Respect of North American Indices (More Specifically, CDX.NA.IG and CDX.NA.HY)

October 6, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 24, 2020, Banque Centrale de Compensation, which conducts business under the name LCH SA (''LCH SA''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II, and III below, which Items have been prepared primarily by LCH SA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

Banque Centrale de Compensation, which conducts business under the name LCH SA (''LCH SA''), is proposing to amend its rules to permit the clearing of options on index credit default swaps in respect of North American indices (more specifically, CDX.NA.IG and CDX.NA.HY) (''CDX Swaptions'') (the ''Proposed Rule Change'').

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

According to filings LCH SA–2017–006 and 007, currently, LCH SA clears today options on certain European index CDS as the underlying, *i.e.,* CDS on Markit iTraxx® Europe Index and iTraxx® Crossover Index (''iTraxx Swaptions'').

The text of the Proposed Rule Change has been annexed as Exhibit 5.[3]

The launch of the CDX Swaptions initiative will be contingent on LCH SA's receipt of all necessary regulatory approvals.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, LCH SA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. LCH SA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of these statements.

A. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Proposed Rule Change will permit LCH SA to introduce clearing of CDX Swaptions.

As part of this initiative, LCH SA is proposing to amend its (i) Reference Guide: CDS Margin Framework (''CDSClear Margin Framework'') and (ii) CDS Clearing Supplement (''Supplement'') and (iii) CDS Clearing Procedures (''Procedures'').

i. CDSClear Margin Framework

The introduction of CDX Swaptions requires minimal changes to extend the existing risk framework to the new product, these are reflected in the LCH SA Reference Guide: CDS Margin Framework alongside other changes described below enabling it to cover the clearing of CDX Swaptions. This has led to an opportunity to make other changes, unrelated to the CDX Swaptions, also described below, including changes to the Vega Margin which would apply to both iTraxx Swaptions and CDX Swaptions.

Paragraph 2.3.4 which deals with the Daily Contributions Assessment has been expanded in order to include CDX Swaptions. Members' price contribution will be mandatory on CDX Swaptions for all strikes that are multiples of 2.5 bps for CDX.NA.IG and 0.5 point for CDX.NA.HY of a given expiry from the moment Members have at least one open position on one of that expiry's strike, in order to ensure implied volatility measurements are updated on a daily basis. Otherwise, LCH SA will fall back to Markit's composite prices or according to section 2.3.3.2 of the Reference Guide: CDS Margin Framework, use pre-defined rules to fill in missing data.

The proposed changes in section 3.9 (which are unrelated to the requirements for clearing CDS Options on CDX) serve to enrich and align the methodology for calculating Vega Margin with LCH SA's approach across all products and business segments. Vega Margin captures the risk of volatility changes in the options premium relative to the strikes, *i.e.,* the skew risk and the risk of changes in the volatility of volatility. As a result of a risk model validation finding, LCH SA is proposing to transition from a parametric model to a historical model, using predefined scenarios to simulate the risk of volatility change. In order to introduce shocks on the volatility itself rather than on the calculation's model parameters only as was the case before, the new methodology would rely on use of four regular and four stressed historical scenarios for each index family, calibrated based on the worst skew risk and the volatility of volatility risk at given confidence levels. Since Vega Margin represents an add-on amount to spread margin that accounts for potential moves in assumed volatility, the P&L impact of the proposed change is not expected to be significant.

(a) The volatility scenarios are built using data going back to April 3, 2007 whereby for each index family, historical scenarios are identified by making an estimate of the largest 5-day shifts in volatility distance, at a given percentile, between At-The-Money strikes and implied volatilities for options with a delta of 10, 25, 75 and 90%, so as to capture the deformation of volatility surface across.

(b) The Skew and Smile scenarios are calibrated against the worst volatility surface distortion (*i.e.,* largest changes of the volatility distance previously defined) at a given confidence level. The scenarios are derived in the form of volatility shocks at each delta level, these are used to shift the end of day volatilities, at the corresponding delta levels, to calibrate a set of shifted or Stochastic Volatility Inspired (SVI) scenarios as depicted in the updated table in paragraph 3.9.2.

(c) The number of scenarios calculated for each index family has been adjusted from eight previously to four as a result of the shocks now being applied at volatility level.

In paragraph 4.1.9 of CDSClear Margin Framework,

—As requested by the LCH SA Risk model validation department, a comment has been added to highlight that although the example given pertains to iTraxx Swaptions, the same logic applies to CDX Swaptions;

—in the description of Step 2 regarding the calculation of the cost of vega hedging, it has been detailed that the volume of delta neutral Swaption notional that can be reasonably unwound by LCH SA in a day is derived from a clearing member survey and that the volume of principal index 5YR Off-The-Run–1 series Swaption notional that can be reasonably unwound by LCH SA in a day is defined in the section on indices;

—in the description of Step 3, the contributions to the macro-hedge cost, the CDX Swaptions have been added to the description of the variable beta (''β'') that defines an index sub-family, either Main or Xover for iTraxx, and IG or HY for CDX.

—in the description of Step 4 regarding the final Liquidity Charge and in order to aggregate the costs of delta hedging and vega hedging, while no changes are required to the liquidity and concentration risk margin methodology, a formula has been added to clarify that the existing methodology would also apply and to describe how the Foreign Exchange rate is introduced into the final Liquidity Charge formula in order to cater for CDX Swaptions.

With respect to the calculation of liquidity charge, in the event of a clearing member default the market does not require for swaptions to be liquidated as a delta-hedged package intended to trade and hedge an option along with an index but it is deemed more optimal to do so from a friction cost standpoint as per the market feedback. LCH SA atte mpts to source the hedges from the CDS part of the defaulting member's portfolio using a delta hedging algorithm to ensure minimal hedging costs before sourcing the hedges from the market, and language has been added to note that the volume of the delta neutral package of the selected option that can be reasonably unwound per day is based on a member survey. Finally, additional commentary serves to confirm how currency conversion from USD to EUR

[3] All capitalized terms not defined herein have the same definition as the Framework or Default Fund Methodology, as applicable.

will apply where options forming part of the delta-hedged package are priced in USD.

Paragraph 4.2 sets forth accrued coupon liquidation risk margin (margin covering the risk that a protection buyer will not be paying any accrued coupon via the VM between the time it defaukts and the end of the liquiditation of its portfolio) for both CDS and CDS options. The accrued coupon liquidation risk margin with respect to CDS Options remains the same, but now reflects that any such amount for CDX Swaptions contracts is converted from USD to EUR.

Finally, the following changes, unrelated to the CDX Swaptions initiative were made.

(a) Section 3 provides for the total initial margin framework with respect to both CDS and CDS Options. While the methodology for calculating Short Charge margin in section 3.2 remains the same, the summary language in paragraph 3.1 has been amended to explicit that it covers the Profit and Loss impact of liquidating a defaulting member's portfolio under one or two credit events, whereas the number of credit events considered was previously set to two.

This is also reflected in the Risk Overview table in paragraph 3.2. The specific rule to calculate the Short Charge on Financial entities (which covered the default risk by the two largest Financials entities comprising the underlying constituent entities of the relevant index) has been removed. The Short Charge accounts for the risk of default by the underlying constituent entities of the relevant index, and per the model used for linear U.S. products this amount would also cover the possibility of a default in respect of an exposure representing the average net short exposure of the ten (10) riskiest exposures with the defined recovery rate cap. Since the approach in respect of iTraxx Swaptions only accounts for the risk of default of the entity with the largest net short exposure, the language has been amended to include the additional default risk that must be taken into account in respect of CDX Swaptions on CDX.NA.HY. Additionally, the Financial Short Charge (which covered the default risk by the two largest Financials entities comprising the underlying constituent entities of the relevant index) has been deleted. A corresponding change has been made to section 3.2, which provides an overview of the risks captured by each margin component.

(b) Reference to a 10 year sample for the Foreign Exchange rate has been removed from paragraph 3.4.8.3 as it was not an accurate description of how the Foreign Exchange rate was computed.

(c) A typographical error in paragraph 3.8.2 has been corrected (double parenthesis and period missing).

The Content table and the summary of changes to the document have been updated as a result of the above mentioned items. Finally, corresponding changes to provision numbering throughout the Reference Guide: CDS Margin Framework have been made as necessary.

ii. Supplement

(a) CDX Swaption-Related Amendments

The Supplement has been amended in order to include the relevant provisions to allow the clearing of the new CDX Swaptions.

In Part C of the Supplement, the following amendments have been made to Section 1.2 (*Terms defined in the CDS Clearing Supplement*):

i. The ''CDX Swaption Standard Terms Supplement'' definition has been added to refer to the applicable documentation to the CDX Swaptions, as published by Markit North America Inc. and as amended by the Supplement;

ii. the definition of the term ''Index Swaption Cleared Transaction Confirmation'' has been amended to make a reference to the applicable form of confirmation which is relevant for CDX Swaptions and make some minor corrections in new indent (a) and in the last paragraph of the definition;

iii. the new defined term of ''Submission Deadline'' has been added in order to cater for both the Markit iTraxx and CDX exercise windows in respect of a swaption which differ; and

iv. the definition of ''Transaction Data'' has been amended to make a reference to the Option Type which is relevant for CDX Swaptions.

In Sections 6.3, 6.4, 6.5 (paragraph (c)), 6.10 (paragraph (b)) and Sections 5.3, 5.5 and 5.7 of Appendix VIII (*CCM Client Transaction Requirements*) of Part C of the Supplement, references to the standard fixed time of 4:00 p.m. (London time) or 5:00 p.m. (Central European Time), which would only be applicable to iTraxx Swaptions, have been replaced by a reference to the new defined term of ''Submission Deadline''.

In Section 7.2, references to the relevant paragraph of the CDX Swaption Standard Terms Supplement for consistency purpose have been added.

References to a CDX as an Underlying Index and the Swaption Type have been added to the Schedules of Appendix 1 (*Form of Exercise Notice*) and Appendix II (*Form of Abandonment Notice*) to Part C of the Supplement.

In Appendix VIII (*CCM Client Transaction Requirements*) to Part C of the Supplement, Section 1 has been amended to refer to the CDX Swaptions Standard Terms Supplement and the definition of ''STS Supplement'' has been removed. Consequently, the reference to the ''STS Supplement'' in Section 8.2. of this Appendix has been replaced by a reference to the ''iTraxx Swaption Standard Terms Supplement'' as this only concerns iTraxx Swaptions. References to the relevant paragraph of the CDX Swaption Standard Terms Supplement or the relevant paragraph of such Supplement have been added where relevant and any reference to the STS Supplement has been removed from Sections 8.3 and 8.4 of this Appendix.

(b) Miscellaneous Amendments

LCH SA is also taking the opportunity of the modification of the Supplement to make a few changes for clarification/harmonization purposes.

In Part C of the Supplement, Section 9.1 (*Creation of Matched Pairs*), a principle governing the size of the Matched Pairs created by LCH SA in the context of a Restructuring or an Exercise has been added to align with equivalent provisions of Parts A and B of the Supplement. We have taken the opportunity to remove the amounts of the Matched Pair from Section 8.1 (*Creation of Matched Pairs*) of Parts A and Part B of the Supplement since such amounts are proposed to be set out in a new Clearing Notice which outlines the maximum applicable Matched Pair notional amounts to allow for greater flexibility in adapting these amounts according to market conditions and evolution of open interest going forward.

Since the Protocol Effectiveness Condition in respect of the ISDA 2019 NTCE Protocol published by ISDA on 27 August 2019 is now satisfied, the conditional with the reference to ''if'' have been removed from Section 2.4 and Appendix XIII (Section 2.6) of Part B of the Supplement and from Section 2.3 and Appendix VIII (Section 2.4) of Part C of the Supplement. An equivalent amendment has been made to Appendix XIII of Part A of the Supplement (Section 2.6) in respect of the 2014 ISDA Credit Derivatives Definitions Protocol published by ISDA on 21 August 2014 for consistency purpose.

References to the Implementation Date as provided for in the 2019 ISDA Narrowly Tailored Credit Event Protocol have been removed from the definition of the '' iTraxx® Swaption Standard

Terms Supplement'' in Section 1.2 of Part C of the Supplement to refer to the current version of this document which is the version published on 20 March 2017. Indeed, at the time the 2019 ISDA NTCE Protocol-related amendments were drafted and submitted to the regulatory process, an initial Swaption Standard Terms Supplement draft taking into account this Protocol was available. Finally, this draft was taken no further and the most recent version which is applicable remains the version published in 2017. Consequently, in Section 2.2 (*Index Swaption Cleared Transaction Confirmation*) of Part C of the Supplement, any confirmation in respect of a Swaption will be amended by specifying in a new indent (d) that the Standard Terms Date applicable to the underlying transaction of a Swaption will be the most updated version of the Standard Terms Supplement to ensure that the applicable version is the one that has taken into account the 2019 ISDA NTCE Protocol (*i.e.,* the versions applicable to Markit iTraxx and CDX published on the Implementation Date of such Protocol). As consequence, the following indents in Section 2.2 have been renumbered from (e) to (i).

Finally, the following corrections have been made to the Supplement:

i. In Sections 7.10 of Parts A and B, the reference to a ''CDS Clearing Member'' has been replaced by ''Clearing Member'' which is the correct defined term to be used;

ii. In Sections 9.1 of Parts A and B, paragraph (c), it is specified that the Self Referencing Transaction is a Clearing Member Self Referencing Transaction to be consistent with the title of Section 9.1;

iii. In Section 1.2 of Part B, in the definition of ''Index Cleared Transaction Confirmation'', the correct name of the publisher of the documentation for Markit CDX has been inserted;

iv. In Section 1.2 of Part C, a typographical error has been corrected in the definition of ''Swaption Restructuring Cleared Transaction'' and the word ''Eligible'' has been removed from the definition of ''Underlying Index Transaction'' as an Eligible Index Swaption is not a defined term; and

v. In Appendix VIII of Part C, the definitions have been removed from Section 1 as these terms are already defined in Section 1.2 of Part C.

iii. Procedures

LCH SA also proposes to modify Section 5 of the Procedures (*CDS Clearing Operations*) in order to include the CDX Swaptions in the scope of the End of Day Price Contribution as set out in Paragraph 5.18.

Therefore, references to ''CDS'' have been changed to ''CDS and an Index Swaption'' in paragraphs 5.18.3 and 5.18.5, for instruments with a CDS Contractual Currency in U.S. Dollar. In paragraph 5.18.4, the first sentence has been modified to ensure perfect clarity, additionally the scope of the End of Day Contributed Prices in respect of CDS with a Contractual Currency in U.S. Dollar has been extended to include Index Swaptions.

In paragraph 5.18 (b), the restriction to Index Swaptions with a CDS Contractual Currency in Euro has been removed and the Delta Hedged Swaption Package has been split into two sub-sections in order to cater for the two different timings for the iTraxx Swaptions on the one hand and the CDX Swaptions on the other.

(b) Statutory Basis

LCH SA believes that the Proposed Rule Change in connection with the clearing of CDS Options on CDX is consistent with the requirements of Section 17A of the Securities Exchange Act of 1934 [4] (the ''Act'') and the regulations thereunder, including the standards under Rule 17Ad–22.[5] Section 17(A)(b)(3)(F) [6] of the Act requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts, and transactions and to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. As noted above, the Proposed Rule Change is designed to manage the risk arising from the clearing of CDX Swaptions and to streamline the description of the existing margin framework for CDS Options to take into account CDX Swaptions and improve the organization and clarity of the CDSClear Margin Framework.

LCH SA believes that the proposed changes to the CDSClear Margin Framework satisfy the requirements of Rule 17Ad–22(b)(2), (e)(1), and (e)(6).[7]

Rule 17Ad–22(b)(2) requires a clearing agency to use margin requirements to limit its credit exposures to participants under normal market conditions and to use risk- based models and parameters to set margin requirements.[8]

Rule 17Ad–22(e)(6) requires a covered clearing agency that provides central counterparty services to cover its credit exposures to its participants by establishing a risk-based margin system that meets certain minimum requirements.[9]

As described above, LCH SA proposes to amend its margin framework to manage the risks associated with clearing CDX Swaptions. Specifically, the proposed rule change amends the existing short charge component of the total initial margin to take into account a specificity in respect of options on CDX.NA.HY consistent with Rule 17Ad–22(e)(6)(i) requiring a covered clearing agency that provides CCP services to establish, implement, maintain and enforce written policies and procedures reasonably designed to result in a margin system that, at a minimum, considers and produces margin levels commensurate with the risks and particular attributes of each relevant product, portfolio, and market.

In addition, the proposed rule change adds the new methodology for calculating Vega Margin, based on a historical model approach rather than a parametric model, to account for the skew risk and volatility of volatility risk specific to CDS Options. These changes are unrelated to the clearing of CDX Swaptions and intended to align LCH SA's approach across all products and business segments, while still relying on use of a risk-based model to set margin requirements and limit LCH SA's credit exposures to participants in clearing CDS and/or CDS Options under normal market conditions, consistent with Rule 17Ad–22(b)(2).

For the same reasons, the Proposed Rule Change would improve LCH SA's ability to manage financial risk exposures that may arise in the course of its ongoing clearance and settlement activities and thus better allow LCH SA to complete the accurate clearance and settlement process in the event of a member default. Similarly, it should enhance LCH SA's ability to help assure the safeguarding of securities and funds which are in the custody or control of LCH SA or for which it is responsible, consistent with the section 17(A)(b)(3)(F).

LCH SA also believes that the Proposed Rule Change is consistent with Rule 17Ad–22(e)(6)(i) and (v) requiring a covered clearing agency to

[4] 15 U.S.C. 78q–1.

[5] 17 CFR 240.17Ad–22.

[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] 17 CFR 240.17Ad–22(b)(2), (e)(1) and (e)(6).

[8] 17 CFR 240.17Ad–22(b)(2).

[9] 17 CFR 240.17Ad–22(e)(6)(i).

establish, implement, maintain and enforce written policies and procedures reasonably designed to ensure the use of an appropriate method for measuring credit exposure that accounts for relevant product risk factors and portfolio effects across products. Its risk-based margin methodology, including the new Vega Margin approach, takes into account, and generates margin levels commensurate with, the risks and particular attributes of each of the CDS and CDS Options at the product and portfolio levels, appropriate to the relevant market it serves. CDX Swaptions initiative will not introduce any new product risk factors. All risk factors of North American CDX indices are already covered as LCH SA already clears them, and the implied volatilities were already captured by the existing model for iTraxx options (partly in the spread margin for the at-the-money volatility moves, and partly in the vega margin for skew and smile risk). Portfolio effects are still captured in the same way, also consistent with the EMIR 80% cap on offsets.

In addition, LCH SA believes that the margin calculation under the revised CDSClear Margin Framework would sufficiently account for the 5-day liquidation period for house account portfolio and 7-day liquidation period for client portfolio and therefore, is reasonably designed to cover LCH SA's potential future exposure to participants in the interval between the last margin collection and the close out of positions following a participant default, consistent with the provisions of Rule 17Ad–22(e)(6)(iii) requiring a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to calculate margin sufficient to cover its potential future exposure to participants in the interval between the last margin collection and the close out of positions following a participant default.[10]

LCH SA also believes that the proposed rule change is consistent with Rule 17Ad–22(e)(1), which requires each covered clearing agency's policies and procedures reasonably designed to provide for a well-founded, clear, transparent, and enforceable legal basis for each aspect of its activities in all relevant jurisdictions. As described above, the proposed rule change would streamline the description of margin methodology in CDSClear legal and Margin Framework. Instead of relying on shocks applied to unobservable parameters of a risk model, the change introduced to the methodology for calculating Vega Margin is focusing on the observable changes in volatilities. LCH SA believes that the Proposed Rule Change change would improve the organization and clarity of these policies and provide for a clear and transparent legal basis for LCH SA's margin requirements, consistent with Rule 17Ad–22(e)(1).[11]

For the reasons stated above, LCH SA believes that the proposed rule change with respect to CDSClear Margin Framework in connection with clearing of CDS Options on CDX is consistent with the requirements of prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts and transactions, and assuring the safeguarding of securities and funds in the custody or control of the clearing agency or for which it is responsible, in accordance with 17(A)(b)(3)(F) of the Act.[12]

B. Clearing Agency's Statement on Burden on Competition.

Section 17A(b)(3)(I) of the Act requires that the rules of a clearing agency not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[13] LCH SA does not believe that the proposed rule change would impose burdens on competition that are not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the proposed changes to CDSClear Margin Framework would apply equally to all Clearing Members whose portfolio includes CDS and/or CDS Options. Because the margin methodology is risk-based, consistent with the requirements in Rule 17Ad–22(b)(2) and (e)(6), depending on a Clearing Member's portfolio, each Clearing Member would be subject to a margin requirement commensurate with the risk particular to its portfolio. Such margin requirement imposes burdens on a Clearing Member but such burdens would be necessary and appropriate to manage LCH SA's credit exposures to its CDSClear participants and to maintain sufficient financial resources to withstand a default of two participant families to which LCH SA has the largest exposures in extreme but plausible market conditions, consistent with the requirements under the Act.

Therefore, LCH SA does not believe that the proposed rule change would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not been solicited or received. LCH SA will notify the Commission of any written comments received by LCH SA.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–LCH SA–2020–005 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–LCH SA–2020–005. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than

[10] 17 CFR 240.17Ad–22(e)(6)(iii).

[11] 17 CFR 240.17Ad–22(e)(1).

[12] 15 U.S.C. 78q–1(b)(3)(F).

[13] 15 U.S.C. 78q–1(b)(3)(I).

those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of LCH SA and on LCH SA's website at: *https://www.lch.com/resources/rules-and-regulations/proposed-rule-changes-0.* All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–LCH SA–2020–005 and should be submitted on or before November 3, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–22474 Filed 10–9–20; 8:45 am]

BILLING CODE 8011–01–P

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: 11 a.m. on Wednesday, October 14, 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: October 7, 2020.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2020–22617 Filed 10–8–20; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90114; File No. SR–NYSECHX–2020–28]

Self-Regulatory Organizations; NYSE Chicago, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt Temporary Interpretation and Policy .10 Under NYSE Chicago Article 6, Rule 13

October 7, 2020.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on September 25, 2020, NYSE Chicago, Inc. (''NYSE Chicago'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes a rule change to adopt temporary Interpretation and Policy .10 (Temporary Extension of the Limited Period for Registered Persons to Function as Principals) under NYSE Chicago Article 6, Rule 13 (Registration Requirements) applicable to Participants. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to adopt temporary Interpretation and Policy .10 (Temporary Extension of the Limited Period for Registered Persons to Function as Principals) under NYSE Chicago Article 6, Rule 13 (Registration Requirements) applicable to Participants.[4] The proposed rule change would extend the 120-day period that certain individuals can function as a principal without having successfully passed an appropriate qualification examination through December 31, 2020,[5] and would apply only to those individuals who were designated to function as a principal prior to September 3, 2020. This proposed rule change is based on a filing recently

[4] The term ''Participant'' means any Participant Firm that holds a valid Trading Permit and any person associated with a Participant Firm who is registered with the Exchange. A Participant shall be considered a ''member'' of the Exchange for purposes of the Exchange Act. *See* Article 1, Rule 1(s).

[5] If NYSE Chicago seeks to provide additional temporary relief from the rule requirements identified in this proposed rule change beyond December 31, 2020, NYSE Chicago will submit a separate rule filing to further extend the temporary extension of time.

submitted by the Financial Regulatory Authority, Inc. (''FINRA'')[6] and is intended to harmonize the Exchange's registration rules with those of FINRA so as to promote uniform standards across the securities industry.

In response to COVID–19, earlier this year FINRA began providing temporary relief by way of frequently asked questions (''FAQs'')[7] to address disruptions to the administration of FINRA qualification examinations caused by the pandemic that have significantly limited the ability of individuals to sit for examinations due to Prometric test center capacity issues.[8]

FINRA published the first FAQ on March 20, 2020, providing that individuals who were designated to function as principals under FINRA Rule 1210.04[9] prior to February 2, 2020, would be given until May 31, 2020, to pass the appropriate principal qualification examination.[10] On May 19, 2020, FINRA extended the relief to pass the appropriate examination until June 30, 2020. Most recently, on June 29, 2020, FINRA again extended the temporary relief providing that individuals who were designated to function as principals under FINRA Rule 1210.04 prior to May 4, 2020, would be given until August 31, 2020, to pass the appropriate principal qualification examination.

One of the impacts of COVID–19 continues to be serious interruptions in the administration of FINRA qualification examinations at Prometric test centers and the limited ability of individuals to sit for the examinations.[11] Although Prometric has begun reopening test centers, Prometric's safety practices mean that currently not all test centers are open, some of the open test centers are at limited capacity, and some open test centers are delivering only certain examinations that have been deemed essential by the local government.[12] Furthermore, Prometric has had to close some reopened test centers due to incidents of COVID–19 cases. The initial nationwide closure in March along with the inability to fully reopen all Prometric test centers due to COVID–19 have led to a significant backlog of individuals who are waiting to sit for FINRA examinations.[13]

In addition, firms are continuing to experience operational challenges with much of their personnel working from home due to shelter-in-place orders, restrictions on businesses and social activity imposed in various states, and adherence to other social distancing guidelines consistent with the recommendations of public health officials.[14] As a result, firms continue to face potentially significant disruptions to their normal business operations that may include a limitation of in-person activities and staff absenteeism as a result of the health and welfare concerns stemming from COVID–19. Such potential disruptions may be further exacerbated and may even affect client services if firms cannot continue to keep principal positions filled as they may have difficulty finding other qualified individuals to transition into these roles or may need to reallocate employee time and resources away from other critical responsibilities at the firm.

These ongoing, extenuating circumstances make it impracticable for Participants to ensure that the individuals whom they have designated to function in a principal capacity, as set forth in Interpretation and Policy .03 under Article 6, Rule 13, are able to successfully sit for and pass an appropriate qualification examination within the 120-calendar day period required under the rule, or to find other qualified staff to fill this position. The ongoing circumstances also require individuals to be exposed to the health risks associated with taking an in-person examination, because the General Securities Principal examination is not available online. Therefore, NYSE Chicago is proposing to continue the temporary relief provided through the FINRA FAQs by adopting Interpretation and Policy .10 under Article 6, Rule 13 to extend the 120-day period during which an individual can function as a principal before having to pass an applicable qualification examination until December 31, 2020.[15] The proposed rule change would apply only to those individuals who were designated to function as a principal prior to September 3, 2020. Any individuals designated to function as a principal on or after September 3, 2020, would need to successfully pass an appropriate qualification examination within 120 days.

NYSE Chicago believes that this proposed continued extension of time is tailored to address the needs and constraints on a Participant's operations during the COVID–19 pandemic, without significantly compromising critical investor protection. The proposed extension of time will help to minimize the impact of COVID–19 on Participants by providing continued flexibility so that Participants can ensure that principal positions remain filled. The potential risks from the proposed extension of the 120-day period are mitigated by the Participant's continued requirement to supervise the activities of these designated individuals and ensure compliance with federal securities laws and regulations, as well as NYSE Chicago rules.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[16] in general, and furthers the objectives of Section 6(b)(5),[17] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in

[6] *See* Securities Exchange Act Release No. 89732 (September 1, 2020), 85 FR 55535 (September 8, 2020) (SR–FINRA–2020–026) (the ''FINRA Filing''). The Exchange notes that the FINRA Filing also provides temporary relief to individuals registered with FINRA as Operations Professionals under FINRA Rule 1220. The Exchange does not have a registration category for Operations Professionals and therefore, the Exchange is not proposing to adopt that aspect of the FINRA Filing.

[7] *See https://www.finra.org/rules-guidance/key-topics/covid-19/faq#qe.*

[8] At the outset of the COVID–19 pandemic, all FINRA qualification examinations were administered at test centers operated by Prometric. Based on the health and welfare concerns resulting from COVID–19, in March Prometric closed all of its test centers in the United States and Canada and began to slowly reopen some of them at limited capacity in May. At this time, not all of these Prometric test centers have reopened at full capacity.

[9] Interpretation and Policy .03 under NYSE Chicago Article 6, Rule 13 is the corresponding rule to FINRA Rule 1210.04.

[10] FINRA Rule 1210.04 (Requirements for Registered Persons Functioning as Principals for a Limited Period) allows a member firm to designate certain individuals to function in a principal capacity for 120 calendar days before having to pass an appropriate principal qualification examination. Interpretation and Policy .03 under NYSE Chicago Article 6, Rule 13 provides the same allowance to Participants.

[11] Information about the continued impact of COVID–19 on FINRA-administered examinations is available at *https://www.finra.org/rules-guidance/keytopics/covid-19/exams.*

[12] Information from Prometric about its safety practices and the impact of COVID–19 on its operations is available at *https://www.prometric.com/corona-virus-update. See also supra* note 11.

[13] Although an online test delivery service has been launched to help address the backlog, the General Securities Principal Examination (Series 24) is not available online. *See supra* note 11.

[14] *See, e.g.,* Centers for Disease Control and Prevention, How to Protect Yourself & Others, *https://www.cdc.gov/coronavirus/2019-ncov/prevent-gettingsick/prevention.html.*

[15] *See supra* note 5.

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

general, to protect investors and the public interest.

The proposed rule change is intended to minimize the impact of COVID–19 on Participant operations by extending the 120-day period certain individuals may function as a principal without having successfully passed an appropriate qualification examination pursuant to Interpretation and Policy .03 under Article 6, Rule 13 until December 31, 2020. The proposed rule change does not relieve Participants from maintaining, under the circumstances, a reasonably designed system to supervise the activities of their associated persons to achieve compliance with applicable securities laws and regulations, and with applicable NYSE Chicago rules that directly serve investor protection. In a time when faced with unique challenges resulting from the COVID–19 pandemic, NYSE Chicago believes that the proposed rule change is a sensible accommodation that will continue to afford Participants the ability to ensure that critical positions are filled and client services maintained, while continuing to serve and promote the protection of investors and the public interest in this unique environment.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is intended to provide temporary relief given the impacts of the COVID–19 pandemic crisis and to also maintain consistency with the rules of other self-regulatory organizations (''SROs'') with respect to the registration requirements applicable to Participants and their registered personnel. In that regard, the Exchange believes that any burden on competition would be clearly outweighed by providing Participants with temporary relief in this unique environment while also ensuring clear and consistent requirements applicable across SROs and mitigating any risk of SROs implementing different standards in these important areas. In its filing, FINRA provides an abbreviated economic impact assessment maintaining that the changes are necessary to temporarily rebalance the attendant benefits and costs of the obligations under FINRA Rule 1210 in response to the impacts of the COVID–19 pandemic that is equally applicable to the changes the Exchange proposes.[18] The Exchange accordingly incorporates FINRA's abbreviated economic impact assessment by reference.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [19] and Rule 19b–4(f)(6) [20] thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii), the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. NYSE Chicago has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative immediately upon filing. As noted above, NYSE Chicago stated that the temporary proposed rule change is based on a recent rule change by FINRA and is intended to harmonize NYSE Chicago's registration rules with those of FINRA to promote uniform standards across the securities industry.[21] NYSE Chicago states that it will also help minimize the impact of the COVID–19 outbreak on NYSE Chicago Participants' operations by allowing them to keep principal positions filled and minimizing disruptions to client services and other critical responsibilities. The ongoing extenuating circumstances of the COVID–19 pandemic make it impractical to ensure that individuals designated to act in principal capacities are able to take and pass the appropriate qualification examination during the 120-calendar day period required under the rules. Shelter-in-place orders, quarantining, restrictions on business and social activity and adherence to other social distancing guidelines consistent with the recommendation of public officials remain in place in various states.[22] Further, NYSE Chicago states that Prometric test centers have experienced serious interruptions in the administration of FINRA qualification examinations, resulting in a backlog of individuals waiting to take these examinations. Following a nationwide closure of all test centers earlier in the year, some test centers have re-opened, but are operating at limited capacity or are only delivering certain examinations that have been deemed essential by the local government.[23] FINRA has launched an online test delivery service to help address this backlog. However, the General Securities Principal (Series 24) Examination is not available online. NYSE Chicago states that the temporary proposed rule change will provide needed flexibility to ensure that these positions remain filled and is tailored to address the constraints on Participants' operations during the COVID–19 pandemic without significantly compromising critical investor protection.[24]

The Commission also notes that the proposal provides only temporary relief from the requirement to pass certain qualification examinations within the 120-day period in the rules. As proposed, this relief would extend the 120-day period that certain individuals can function as principals through December 31, 2020. NYSE Chicago has also stated that if it requires temporary relief from the rule requirements identified in this proposal beyond December 31, 2020, it may submit a separate rule filing to extend the effectiveness of the temporary relief under these rules.[25] For these reasons, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest.[26] Accordingly, the Commission hereby waives the 30-day

[18] FINRA Filing, 85 FR at 55537.

[19] 15 U.S.C. 78s(b)(3)(A).

[20] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. NYSE Chicago has satisfied this requirement.

[21] *See supra* note 6.

[22] *See supra* note 14.

[23] *See supra* notes 11 and 12. NYSE Chicago states that Prometric has also had to close some reopened test centers due to incidents of COVID–19 cases.

[24] NYSE Chicago states that Participants remain subject to the continued requirement to supervise the activities of these designated individuals and ensure compliance with federal securities laws and regulations, as well as NYSE Chicago rules.

[25] *See supra* note 5.

[26] As noted above by the Exchange, this proposed temporary change is based on a recent filing by FINRA that the Commission approved with a waiver of the 30-day operative delay. *See supra* note 6, 85 FR at 55538.

operative delay and designates the proposal operative upon filing.[27]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSECHX–2020–28 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSECHX–2020–28. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, on business days between the hours of 10:00 a.m. and 3:00 p.m., located at 100 F Street NE, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of NYSE Chicago. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–NYSECHX–2020–28 and should be submitted on or before November 3, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–22633 Filed 10–9–20; 8:45 am]

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[27] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[28] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90102; File No. SR–PEARL–2020–17]

Self-Regulatory Organizations; MIAX PEARL, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt the MIAX PEARL Equities Fee Schedule

October 6, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 24, 2020, MIAX PEARL, LLC (''MIAX PEARL'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to adopt a fee schedule setting forth transaction fees and rebates for MIAX PEARL Equities, an equities trading facility of the Exchange (the ''Fee Schedule'').[3] The proposed fees are scheduled to become operative September 25, 2020.

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/pearl* at MIAX PEARL's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On August 14, 2020, the Commission approved MIAX PEARL's proposal to adopt rules governing the trading of equity securities on MIAX PEARL Equities.[4]

The purpose of the proposed rule change is to adopt the Fee Schedule, which would set forth fees and rebates for use of MIAX PEARL Equities. The Fee Schedule will apply equally to all market participants trading equity securities on and/or using services provided by MIAX PEARL Equities. The proposed fees are scheduled to become operative September 25, 2020.

The Exchange will operate in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or rebates/incentives to be insufficient. More specifically, the Exchange will be only one of several equities venues (including both registered exchanges and various alternative trading systems) to which market participants may direct their order flow and execute their trades. Indeed, equity trading is currently

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Rule 1901. The Exchange notes that it submitted a separate filing with the Commission pursuant to Section 19(b)(3)(A) of the Act to adopt non-transaction fees. *See* SR–PEARL–2020–18 (filed September 24, 2020).

[4] *See* Securities Exchange Act Release No. 89563 (August 14, 2020), 85 FR 51510 (August 20, 2020) (SR–PEARL–2020–03) (Order Approving a Proposed Rule Change, as Modified by Amendment No. 1, To Establish Rules Governing the Trading of Equity Securities) (''Approval Order'').

dispersed across 16 exchanges,[5] 31 alternative trading systems,[6] and numerous broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly available information, no single registered equities exchange currently has more than approximately 20% of total market share.[7] Thus, in such a low-concentrated and highly competitive market, no single equities trading venue possesses significant pricing power in the execution of trades, and, as it commences operations, the Exchange anticipates representing a very small percentage of the overall market.

Proposed Transaction Fees and Rebates

The Exchange proposes to adopt a simple maker/taker fee structure where it would generally provide a rebate to Equity Members[8] that add liquidity and charge a fee to Equity Members that remove liquidity. The amount of the proposed fees and rebates described below are competitive and designed to enable the Exchange to attract order flow and to compete with other equity exchanges and trading venues. The Exchange believes its proposed fee structure is consistent with those adopted by other exchanges that employ maker/taker pricing structures and is designed to encourage additional liquidity on the Exchange through competitive rebates and fees. The proposed fees and rebates would be set forth under Section (1)(a), Standard Rates, of the Fee Schedule.

The Exchange proposes to adopt a simple fee structure where it would charge a single fee of $0.0028 per share for orders that remove liquidity in securities priced at or above $1.00. The Exchange proposes to provide a rebate of $0.0028 per share for orders that are displayed[9] on the MIAX PEARL Equities Book[10] and add liquidity in securities priced at or above $1.00.[11] The Exchange proposes to provide a rebate of $0.0022 per share for orders that are non-displayed[12] on the MIAX PEARL Equities Book and add liquidity in securities price at or above $1.00.[13] The Exchange proposes that orders in securities priced below $1.00 would be free, regardless of whether they add or remove liquidity. All orders executed in the Exchange's Opening and Re-Opening processes[14] would also be free.

The Exchange proposes to provide a higher rebate to displayed orders that add liquidity than non-displayed orders to incentivize displayed liquidity on the Exchange to encourage and facilitate price discovery and price information, which the Exchange believes benefits all Equity Members and investors.

The Exchange also proposes to charge a flat fee for routed orders. Specifically, the Exchange proposes to charge $0.0030 per share for routed orders in securities priced at or above $1.00 and 0.30% of the dollar value for routed orders in securities priced below $1.00. These rates would be applicable to all routed orders that: (i) Are executed on an away market; and (ii) remove liquidity from the market to which it was routed (''Routed Removed Volume''). As described in Exchange Rule 2617(b), the Exchange uses unaffiliated routing broker-dealers to route orders to the away Trading Centers. All charges by the Exchange for routing are applicable only in the event that an order is executed; there is no charge for orders that are routed away from the Exchange but are not filled. The Exchange notes that the fees for routing relate to orders routed through an unaffiliated routing broker-dealer. Routing services offered by the Exchange and its unaffiliated routing broker-dealers are completely optional and market participants can readily select between various providers of routing services, including other exchanges and broker-dealers.

General Notes

The Exchange proposes to include a General Notes section at the beginning of the Fee Schedule. The purpose of the General Notes section is provide additional clarity to market participants within the Fee Schedule. The Exchange proposes to include the following General Notes that will be applicable to the entire Fee Schedule:

- Rebates are indicated by parentheses ( ).
- All references to ''per share'' mean ''per share executed.''
- Unless otherwise indicated, rebates and charges for adding, removing or routing liquidity are listed as per share rebates and charges.
- Web CRD fees set forth in Section 2(c) of the MIAX PEARL Options Fee Schedule will be assessed on MIAX PEARL Equity Members (as applicable) and collected by FINRA.

The Exchange notes that the proposed General Notes section is based on similar sections included in the fee schedules of other equities exchanges[15] and the Exchange believes that including a General Notes section in the beginning of the Fee Schedule makes the Fee Schedule more comprehensive and user-friendly

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act[16] in general, and furthers the objectives of Section 6(b)(4) of the Act[17] in particular, in that it is an equitable allocation of reasonable fees and other charges among its members and issuers and other persons using its facilities. The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

Upon launch, the Exchange will operate in a highly fragmented and competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or rebates/incentives to be insufficient. The Exchange believes that the proposed Fee Schedule reflects a simple and competitive pricing structure designed to incentivize market participants to add aggressively priced displayed liquidity and direct their order flow to the Exchange, which the Exchange believes

[5] *See* Cboe Global Markets, U.S Equities Market Volume Summary, available at *https://markets.cboe.com/us/equities/market_share/.*

[6] *See* FINRA ATS Transparency Data, available at *https://otctransparency.finra.org/otctransparency/AtsIssueData.* A list of alternative trading systems registered with the Commission is available at *https://www.sec.gov/foia/docs/atslist.htm.*

[7] *See* Cboe Global Markets U.S. Equities Market Volume Summary, available at *http://markets.cboe.com/us/equities/market_share/.*

[8] The term ''Equity Member'' means a Member authorized by the Exchange to transact business on MIAX PEARL Equities. *See* Exchange Rule 1901.

[9] *See* Exchange Rule 2614(c)(3).

[10] The term ''MIAX PEARL Equities Book'' shall mean the electronic book of orders in equity securities maintained by the System. *See* Exchange Rule 1901.

[11] This pricing is referred to by the Exchange on the proposed Fee Schedule in the column titled ''Adding Liquidity Displayed Order.''

[12] *See* Exchange Rule 2614(c)(4).

[13] This pricing is referred to by the Exchange on the proposed Fee Schedule in the column titled ''Adding Liquidity Non-Displayed Order.''

[14] *See* Exchange Rule 2615 for a description of the Exchange's Opening and Re-Opening Processes.

[15] *See* Cboe BZX Exchange, Inc. Fee Schedule, General Notes section; Cboe BYX Exchange, Inc., General Notes section; Cboe EDGA Exchange, Inc., General Notes section; Cboe EDGX Exchange, Inc., General Notes section.

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(4) and (5).

would promote price discovery and price formation and deepen liquidity that is subject to the Exchange's transparency, regulation, and oversight as an exchange, thereby enhancing market quality to the benefit of all Members and investors.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [18]

As the Commission itself recognized, the market for trading services in NMS stocks has become ''more fragmented and competitive.'' [19] Indeed, equity trading is currently dispersed across 16 exchanges,[20] 31 alternative trading systems,[21] and numerous broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly-available information, no single exchange currently has more than 20% market share (whether including or excluding auction volume).[22] Therefore, no exchange possesses significant pricing power in the execution of equity order flow. More specifically, as noted earlier, the Exchange has yet to launch trading operations and thus has a market share of 0% of executed volume of equities trading.

The Exchange has designed its proposed Fee Schedule to balance the need to attract order flow as a new exchange entrant with the desire to provide a simple fee structure to market participants. The Exchange believes its proposed structure enables the Exchange to compete for order flow. The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue to reduce use of certain categories of products, in response to fee changes. With respect to nonmarketable order which provide liquidity on an Exchange, Equity Members can choose from any one of the 16 currently operating registered exchanges to route such order flow. Accordingly, competitive forces reasonably constrain exchange transaction fees that relate to orders that would provide displayed liquidity on an exchange. Stated otherwise, changes to exchange transaction fees can have a direct effect on the ability of an exchange to compete for order flow. Given this competitive environment, the Exchange's proposed transaction fees and rebates represent a reasonable attempt to attract order flow to a new exchange entrant.

The Exchange believes the proposed transaction fees and rebates on MIAX PEARL Equities are reasonable, equitable and not unfairly discriminatory. The Exchange notes that it proposes a simple fee structure, with a standard fee and rebate structure for displayed and non-displayed orders priced at or above $1.00, while also providing executions in securities priced below $1.00 and those that occur in the Exchange's Opening and Re-Opening processes free of charge. This fee structure is designed to allow the Exchange to attract order flow from day one while providing market participants with a clear and concise Fee Schedule.

MIAX PEARL Equities will operate within a highly competitive market in which market participants can readily send order flow to several other competing venues if, among other things, they deem fees at a particular venue to be unreasonable or excessive. The proposed fee structure is intended to attract order flow to MIAX PEARL, not only from the established incumbent exchanges that have fee structures that are highly tailored to attract order flow from specific types of market participants, but also new exchanges with similar fee structures as proposed herein.

The Exchange believes its proposed fee of $0.0028 per share for orders that remove liquidity in securities priced above $1.00 is reasonable, equitable and not unfairly discriminatory because it will apply to all orders from all market participants and regardless of whether they are displayed or non-displayed. The Exchange notes that this fee is also comparable to or lower than the standard fee to remove liquidity charged by other exchanges.[23]

The Exchange believes that it is appropriate, reasonable, and consistent with the Act to provide a standard rebate of $0.0028 per share for displayed orders that add liquidity in securities priced at or above $1.00 because this rebate is consistent with transaction rebates provided by other exchanges.[24] The Exchange further believes that this rebate structure is equitably allocated and not unfairly discriminatory because it applies equally to all Equity Members. The Exchange believes that charging a fee to the Equity Member removing liquidity, and providing a rebate to the Equity Member adding liquidity, is reasonable, equitable and not unfairly discriminatory because it incentivizes liquidity provision on the Exchange. The Exchange also notes that several other exchanges charge fees for removing liquidity and provide rebates for adding liquidity, and that this aspect of the Exchange's proposed Fee Schedule does not raise any new or novel issues that have not previously been considered by the Commission in connection with the fees and rebates of other exchanges.[25]

The Exchange also believes that it is reasonable, equitable and not unfairly discriminatory to provide a higher rebate to displayed orders that add liquidity than to non-displayed orders as this rebate structure is designed to incentivize Equity Members to send the Exchange displayable orders, thereby contributing to price discovery and price formation, consistent with the

[18] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) (File No. S7–10–04) (''Regulation NMS'').

[19] *See* Securities Exchange Act Release No. 82873 (March 14, 2018), 83 FR 13008 (March 26, 2018) (File No. S7–05–18) (Transaction Fee Pilot for NMS Stocks).

[20] *See supra* note 5.

[21] *See supra* note 6.

[22] *See supra* note 5.

[23] For example, the New York Stock Exchange trading fee schedule on its public website reflects fees to ''take'' liquidity ranging from $0.0024–$0.00275 depending on the type of market participant, order and execution; *see https://www.nyse.com/markets/nyse/trading-info/fees.* The Nasdaq Stock Market trading fee schedule on its public website reflects standard fees to ''remove'' liquidity of $0.0030 per share for shares executed at or above $1.00 or 0.30% of total dollar volume for shares executed below $1.00; *see http://nasdaqtrader.com/Trader.aspx?id=PriceListTrading2.* The Cboe BZX trading fee schedule on its public website reflects standard fees for ''removing'' liquidity of $0.0030 for shares executed at or above $1.00 or 0.30% of total dollar volume for shares executed below $1.00; *see https://markets.cboe.com/us/equities/membership/fee_schedule/bzx/.*

[24] For example, the New York Stock Exchange trading fee schedule on its public website reflects a standard rebate for ''adding'' liquidity of $0.0012 for shares executed at or above $1.00, with various tiers that provide the ability of a firm to receive a rebate of $0.0029 per share or higher; *see https://www.nyse.com/markets/nyse/trading-info/fees.* The Nasdaq Stock Market trading fee schedule on its public website reflects a standard rebate for ''adding'' liquidity for shares executed at or above $1.00 of $0.0020 in Tape A and B securities and $0.0015 in Tape C securities, with various tiers that provide the ability of a firm to receive a rebate of $0.0029 per share or higher; *see http://nasdaqtrader.com/Trader.aspx?id=PriceListTrading2.* The Cboe BZX trading fee schedule on its public website reflects a standard rebate for ''adding'' liquidity of $0.0020 for shares executed at or above $1.00, with various tiers that provide the ability of a firm to receive a rebate of $0.0029 per share or higher; *see https://markets.cboe.com/us/equities/membership/fee_schedule/bzx/.*

[25] *See supra* notes 23 and 24.

overall goal of enhancing market quality. Moreover, the Exchange notes that there is precedent for exchanges to provide rebates that distinguish between displayed and non-displayed volume to incentivize displayed orders and facilitate price discovery.[26]

The Exchange believes its proposal to not charge transaction fees that occur as part of the Exchange's Opening and Re-Opening or in securities priced below $1.00 is reasonable, equitable and not unfairly discriminatory because it will incentivize Equity Members to send greater order flow to the Exchange in these scenarios, potentially providing greater liquidity on the Exchange. In addition, the Exchange believes that its proposal to not charge these fees is fair and equitable because it provides certainty for Equity Members with respect to execution costs across all trades, including trades occurring as part of the Exchange's Opening and Re-Opening and trades in securities priced below $1.00. The Exchange also believes that this proposal is nondiscriminatory because it will apply equally to all Equity Members.

With respect to orders routed to other markets, the Exchange also believes that it is appropriate, reasonable, and consistent with the Act to charge a standard fee for routed orders because this fee is similar to the fees charged by other exchanges for routed orders that remove liquidity from the destination market.[27] The Exchange's initial fee for routing is intended to be a simple and transparent fee for Equity Members that wish to use routing services provided by the Exchange. The Exchange reiterates that the routing services offered by the Exchange and its unaffiliated routing broker-dealers are completely optional and that the Exchange operates in a highly competitive market in which market participants can readily select between various providers of routing services with different product offerings and different pricing. The Exchange believes that its flat fee structure for orders routed to all away venues is a fair and equitable approach to pricing, as it will provide certainty with respect to execution fees. As a general matter, the Exchange believes that the proposed fees will allow it to recoup and cover its costs of providing routing services. The Exchange also believes the standard fee for Routed Removed Volume is an equitable and not an unfairly discriminatory allocation of fees because it applies equally to all Equity Members.

The Exchange believes its proposal to include a General Notes section in the Fee Schedule promotes just and equitable principles of trade, removes impediments to and perfects the mechanism of a free and open market and a national market system, and, in general protects investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers. The Exchange believes that the proposal to adopt a General Notes section in the beginning of the Fee Schedule will provide greater clarity to Equity Members, non-Members, market participants and the public regarding the Exchange's fees and rebates, and it is in the public interest for the Fee Schedule to be transparent, comprehensive and user-friendly so as to eliminate the potential for confusion.

In conclusion, the Exchange also submits that its proposed fee structure satisfies the requirements of Sections 6(b)(4) and 6(b)(5) of the Act for the reasons discussed above in that it provides for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities, does not permit unfair discrimination between customers, issuers, brokers, or dealers, and is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and in general to protect investors and the public interest, particularly as the proposal neither targets nor will it have a disparate impact on any particular category of market participant. As described more fully below in the Exchange's statement regarding the burden on competition, the Exchange believes that it is subject to significant competitive forces, and that its proposed fee and rebate structure is an appropriate effort to address such forces.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Rather, the Exchange believes that the proposed change would encourage the submission of additional order flow to a public exchange, thereby promoting market depth, execution incentives and enhanced execution opportunities, as well as price discovery and transparency for all Equity Members and non-Members. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes ''more efficient pricing of individual stocks for all types of orders, large and small.'' [28]

The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes that the proposed pricing structure will increase competition and is intended to draw volume to the Exchange as it commences operations. The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow or discontinue to reduce use of certain categories of products, in response to new or different pricing structures being introduced into the market. Accordingly, competitive forces constrain the Exchange's transaction fees and rebates, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable. As a new exchange, the Exchange expects to face intense competition from existing exchanges and other non-exchange venues that provide markets for equities trading. With respect to the Exchange's initial pricing whereby it will operate with a neutral net capture with respect to transactions being executed on MIAX PEARL Equities, the Exchange is proposing this pricing initially upon its launch and for a limited time thereafter in an effort to encourage market participants to join, connect to, and participate on the Exchange. The Exchange expects to modify its pricing structure after it has gained sufficient participation from market participants to eliminate the neutral net capture and instead be profitable with respect to such transactions. Although this pricing incentive is intended to attract liquidity to the Exchange, most other exchanges in operation today already offer multiple incentives to their participants, including tiered pricing that provides higher rebates or discounted executions,

[26] *Id.*

[27] For example, the New York Stock Exchange trading fee schedule on its public website reflects a standard fee for routing of $0.0035, with a tier that provides a firm the ability to pay a reduced routing fee of $0.0030; *see https://www.nyse.com/markets/nyse/trading-info/fees.* The Nasdaq Stock Market trading fee schedule on its public website reflects a standard routing fee of $0.0030; *see http://nasdaqtrader.com/Trader.aspx?id=PriceListTrading2.* The Cboe BZX trading fee schedule on its public website reflects a standard fee for routing of $0.0030; see *https://markets.cboe.com/us/equities/membership/fee_schedule/bzx/.*

[28] *See supra* note 18.

and other exchanges will be able to modify such incentives in order to compete with the Exchange.

With respect to the specific pricing resulting in the neutral net capture, the Exchange also notes that the proposed fee to remove liquidity is neither the lowest fee in the market today [29] nor is the proposed rebate provided to adding liquidity the highest rebate in the market today.[30] Accordingly, with respect to a participant deciding to either submit an order to add liquidity or seeking to remove liquidity, there are multiple exchanges that will continue to be competitively priced for such orders when compared to the Exchange's pricing. Further, while pricing incentives do cause shifts of liquidity between trading centers, market participants make determinations on where to provide liquidity or route orders to take liquidity based on factors other than pricing, including technology, functionality, and other considerations. Consequently, the Exchange believes that the degree to which its fees and rebates could impose any burden on competition is extremely limited, and does not believe that such fees would burden competition of Equity Members or competing venues in a manner that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed fees and rebates apply equally to all Equity Members. The proposed pricing structure is intended to encourage market participants to add liquidity to the Exchange by providing rebates that are comparable to those offered by other exchanges as well as to provide a competitive rate charged for removing liquidity, which the Exchange believes will help to encourage Equity Members to send orders to the Exchange to the benefit of all Exchange participants. As the proposed rates are equally applicable to all market participants, the Exchange does not believe there is any burden on intramarket competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[31] and Rule 19b–4(f)(2) [32] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–PEARL–2020–17 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–PEARL–2020–17. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–PEARL–2020–17 and should be submitted on or before November 3, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[33]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–22477 Filed 10–9–20; 8:45 am]

BILLING CODE 8011–01–P

[29] For example, the Investors Exchange fee schedule on its public website reflects standard fees for matched liquidity of $0.0009 for shares executed at or above $1.00, which would apply to all orders removing liquidity; see *https://iextrading.com/trading/fees/*. Other markets offering ''taker/maker'' pricing provide rebates to provide liquidity; *see, e.g.,* Nasdaq BX fee schedule, at *http://www.nasdaqtrader.com/Trader.aspx?id=bx_pricing;* Cboe BYX fee schedule at *https://markets.cboe.com/us/equities/membership/fee_schedule/byx/.*

[30] *See supra* note 24.

[31] 15 U.S.C. 78s(b)(3)(A)(ii).

[32] 17 CFR 240.19b–4(f)(2).

[33] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90118; File No. SR–CboeBZX–2020–053]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1, To List and Trade Shares of the 2x Long VIX Futures ETF, a Series of VS Trust, Under Rule 14.11(f)(4) (Trust Issued Receipts)

October 7, 2020.

I. Introduction

On June 23, 2020, Cboe BZX Exchange, Inc. (''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares (''Shares'') of the 2x Long VIX Futures ETF (''Fund''), a Series of VS Trust

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

(''Trust''). On June 26, 2020, the Exchange filed Amendment No. 1 to the proposed rule change. The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on July 10, 2020.[3] On August 13, 2020, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] This order institutes proceedings pursuant to Section 19(b)(2)(B) of the Act[6] to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.

II. Description of and Comment on the Proposal[7]

A. Description of the Proposal

The Exchange proposes to list and trade the Shares pursuant to BZX Rule 14.11(f)(4), which governs the listing and trading of Trust Issued Receipts on the Exchange.

Volatility Shares LLC (''Sponsor''), a Delaware limited liability company, is the sponsor of the Trust.[8] The Sponsor is a commodity pool operator.[9] Tidal ETF Services LLC serves as the administrator, and U.S. Bank National Association serves as custodian of the Fund and its Shares. U.S. Bancorp Fund Services, LLC is the sub-administrator and transfer agent. Wilmington Trust Company, a Delaware trust company, is the sole trustee of the Trust.

The Fund will seek to provide a return that is 200% of the return of its benchmark index for a single day. Therefore, if the Fund is successful in meeting its objective, its value (before fees and expenses) on a given day should gain approximately 200% of the return of its benchmark index for a single day; conversely, its value (before fees and expenses) should lose approximately 200% of the return of its benchmark index for a single day when it declines.

The benchmark index seeks to offer long exposure to market volatility through publicly traded futures markets. The benchmark for the Fund is the Long VIX Futures Index (''Index''), ticker symbol LONGVOL,[10] which measures the daily performance of a theoretical portfolio of first- and second-month futures contracts on the Cboe Volatility Index (''VIX'').[11] The Index is comprised of, and the value of the Fund will be based on, VIX futures contracts traded on the Cboe Futures Exchange, Inc. (''VIX Futures Contracts'').[12]

The Fund would primarily invest in VIX Futures Contracts based on components of the Index to pursue its investment objective. In the event accountability rules, price limits, position limits, margin limits or other exposure limits are reached with respect to VIX Futures Contracts, the Sponsor might cause the Fund to obtain exposure to the Index through over-the-counter swaps referencing the Index or particular VIX Futures Contracts comprising the Index (''VIX Swap Agreements'').[13] The VIX Swap Agreements in which the Fund may invest may be cleared or non-cleared.

In addition to VIX Swap Agreements, if the Fund is unable to meet its investment objective through investments in VIX Futures Contracts, the Fund may also obtain exposure to the Index through listed VIX options contracts traded on the Cboe Exchange, Inc. (''VIX Options Contracts'').

The Fund may also invest in Cash and Cash Equivalents that may serve as collateral for the VIX Futures Contracts, VIX Swap Agreements, and VIX Options Contracts (collectively, the ''VIX Derivative Products'').[14]

The Fund would seek to remain fully invested at all times in VIX Derivative Products (as well as the Cash and Cash Equivalents that may serve as collateral) that provide exposure to the Index consistent with its investment objective without regard to market conditions, trends or direction. The Sponsor would rely upon a pre-determined model to reposition the Fund's investments in accordance with its investment objective.

B. Comment on the Proposal

A commenter opposes the proposed rule change and states that 2x long volatility is not a profitable investment during bull markets. The commenter points to the predominantly negative annual returns of another exchange-traded product linked to long volatility, which the commenter characterizes as the predecessor to the Fund. The commenter also asserts that 2x long volatility does not make sense as a product, as volatility is already volatile.[15]

III. Proceedings To Determine Whether To Approve or Disapprove SR–CboeBZX–2020–053, as Modified by Amendment No. 1, and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act[16] to determine whether the proposed rule change, as modified by Amendment No. 1, should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy

[3] *See* Securities Exchange Act Release No. 89234 (July 6, 2020), 85 FR 41644 (''Notice''). Comments on the proposed rule change can be found at: *https://www.sec.gov/comments/sr-cboebzx-2020-053/srcboebzx2020053.htm.*

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 89545, 85 FR 51124 (August 19, 2020). The Commission designated October 8, 2020 as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

[6] 15 U.S.C. 78s(b)(2)(B).

[7] Additional information regarding the Fund, the Trust, and the Shares can be found in the Notice, *supra* note 3.

[8] The Sponsor is not a broker-dealer or affiliated with a broker-dealer. In the event that (a) the Sponsor becomes a broker-dealer or newly affiliated with a broker-dealer, or (b) any new sponsor is a broker-dealer or becomes affiliated with a broker-dealer, it will implement and maintain a fire wall with respect to its relevant personnel or such broker-dealer affiliate, as applicable, regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the portfolio.

[9] The Exchange represents that the Fund will file a registration statement on Form S–1 under the Securities Act of 1933, and that the Shares will not be listed on the Exchange until there is an effective registration statement for the Shares.

[10] The Index is sponsored by Cboe Global Indexes (''Index Sponsor''). The Index Sponsor is not a registered broker-dealer, but is affiliated with a broker-dealer. The Index Sponsor has implemented and will maintain a fire wall with respect to the broker-dealer affiliate regarding access to information concerning the composition and/or changes to the Index. In addition, the Index Sponsor has implemented and will maintain procedures that are designed to prevent the use and dissemination of material, non-public information regarding the Index.

[11] The VIX is an index designed to measure the implied volatility of the S&P 500 over 30 days in the future. The VIX is calculated based on the prices of certain put and call options on the S&P 500. The VIX is reflective of the premium paid by investors for certain options linked to the level of the S&P 500.

[12] VIX Futures Contracts are measures of the market's expectation of the level of VIX at certain points in the future. While the VIX represents a measure of the current expected volatility of the S&P 500 over the next 30 days, the prices of VIX Futures Contracts are based on the current expectation of what the expected 30-day volatility will be on the contracts' expiration date.

[13] The Fund may also invest in VIX Swap Agreements if the market for a specific VIX Futures Contract experiences emergencies (*e.g.,* natural disaster, terrorist attack or an act of God) or disruptions (*e.g.,* a trading halt or a flash crash) or in situations where the Sponsor deems it impractical or inadvisable to buy or sell VIX Futures Contracts (such as during periods of market volatility or illiquidity).

[14] ''Cash and Cash Equivalents'' means the instruments defined in BZX Rule 14.11(i)(4)(C)(iii).

[15] *See* letter dated July 10, 2020 from John Motson, available at: *https://www.sec.gov/comments/sr-cboebzx-2020-053/srcboebzx2020053-7409699-219192.htm.*

[16] 15 U.S.C. 78s(b)(2)(B).

issues raised by the proposal. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,[17] the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposal's consistency with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be ''designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade,'' and ''to protect investors and the public interest.'' [18]

IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(5) or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.[19]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change, as modified by Amendment No. 1, should be approved or disapproved by November 3, 2020. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by November 17, 2020.

The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, which are set forth in the Notice, in addition to any other comments they may wish to submit about the proposed rule change. In this regard, the Commission seeks commenters' views regarding whether the Exchange's proposal to list and trade the Shares, which seek to provide daily investment results that correspond to 200% of the return of an index designed to measure the daily performance of a theoretical portfolio of first- and second-month VIX Futures Contracts, is adequately designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest, and is consistent with the maintenance of a fair and orderly market under the Act. The Commission also seeks commenters' views regarding whether the Exchange has adequately described the potential impact of sudden fluctuations in market volatility on the Index and on the Fund's operation and performance for the Commission to make a determination under Section 6(b)(5) of the Act. In particular, the Commission seeks comment regarding the Fund's operation during periods with large percentage increases in volatility, and the potential market impact of the Fund's daily rebalance.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeBZX–2020–053 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeBZX–2020–053. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeBZX–2020–053 and should be submitted by November 3, 2020. Rebuttal comments should be submitted by November 17, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–22639 Filed 10–9–20; 8:45 am]

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[17] *Id.*

[18] 15 U.S.C. 78f(b)(5).

[19] Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Public Law 94–29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[20] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90096; File No. 4–757]

Joint Industry Plan; Notice of Filing of a National Market System Plan Regarding Consolidated Equity Market Data.

October 6, 2020.

I. Introduction

Pursuant to Section 11A of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 608 of Regulation National Market System (''NMS'') thereunder,[2] notice is hereby given that on August 11, 2020, Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe Exchange, Inc., Investors Exchange LLC, Long Term Stock Exchange, Inc., MEMX LLC, Nasdaq BX, Inc., Nasdaq ISE, LLC, Nasdaq PHLX LLC, Nasdaq Stock Market LLC, New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc., NYSE

[1] 15 U.S.C. 78k–1.

[2] 17 CFR 242.608.

National, Inc., and Financial Industry Regulatory Authority, Inc. (''FINRA'') (collectively, the ''SROs'' or ''Participants'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') a proposed new single national market system plan governing the public dissemination of real-time consolidated equity market data for national market system (''NMS'') stocks (the ''CT Plan'').[3] The Commission is publishing this notice to solicit comments on the proposed CT Plan from interested persons.

II. Description of the CT Plan

Set forth in this Section II is the statement of the purpose of the National Market System Plan Regarding Consolidated Equity Market Data, along with information pursuant to Rules 608(a)(4) and (5) under the Act,[4] as prepared and submitted by the SROs to the Commission.[5]

A. Statement of Purpose

On May 6, 2020, the Commission ordered the SROs to act jointly in developing and filing with the Commission by August 11, 2020, a proposed new single NMS plan to govern the public dissemination of real-time consolidated equity market data for NMS stocks.[6] The SROs are filing the proposed Plan, as directed in the Order.[7] Following the Operative Date (as defined and described in Section A.3 below), the Plan would replace (1) the Consolidated Tape Association Plan (''CTA Plan''), (2) the Consolidated Quotation Plan (''CQ Plan''), and (3) the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation, and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis (''UTP Plan''). The SROs propose that the Plan be in the form of a limited liability company (''LLC'') agreement for a new company, CT Plan LLC (the ''Company''), with each SRO being a ''Member'' of the Company.

While the Order requires Operating Committee approval for actions other than the selection of Non-SRO Voting Representatives and the decision to enter executive session, because the Plan would be in the form of an LLC agreement for the Company, the SROs propose that certain provisions of the Plan concerning solely the operation of the Company as an LLC, and unrelated to consolidation and distribution of equity market data, will require a majority vote of the Members as opposed to the augmented majority vote of the Operating Committee. In particular, the SROs propose the following actions be subject to a majority vote of the Members: (1) The selection of Officers of the Company (other than the Chair and Secretary), if needed, and (2) certain decisions concerning the operation of the Company as an LLC and approval of amendments to LLC-related provisions of the Plan, including provisions related to indemnification, dissolution of the Company, and tax-related matters. Neither of these topics would affect the consolidation and distribution of equity market data, and therefore, the SROs believe that the Members should have the sole authority to make decisions related to these topics (with Commission approval where necessary).

2. Governing or Constituent Documents

Not applicable.

3. Implementation of Plan

As set forth in the proposed Plan, the SROs propose that the Plan would become effective after (1) it is approved by the Commission pursuant to Rule 608 of Regulation NMS and (2) the Company has been formed by filing a certificate of formation with the Delaware Secretary of State. The SROs propose that the Plan would become operative on the first day of the month that is at least 90 days after the last of the following have occurred (the ''Operative Date''): (a) The SRO Voting Representatives and Non-SRO Voting Representatives of the Operating Committee have been determined; (b) fees for market data disseminated pursuant to the Plan have been established by the Operating Committee, are effective as an amendment to the Plan pursuant to Rule 608 of Regulation NMS, and are ready to be implemented on the Operative Date; (c) the Company has entered into an agreement with the necessary Processor(s); (d) the Company has entered into an agreement with an Administrator selected pursuant to Section 6.3 of the Plan and such Administrator has completed the transition from prior Administrators under the CQ Plan, CTA Plan, and UTP Plan such that it is able to provide services under the Administrative Services Agreement, including that (1) new contracts between the Company and Vendors and the Company and Subscribers have been finalized such that all Vendors and Subscribers under the CQ Plan, CTA Plan, and UTP Plan are ready to transition to such new contracts by the Operative Date, (2) the Administrator has in place a system to administer distributions, and (3) the Administrator has in place a system to administer fees; and (e) the Operating Committee and, if applicable, the Commission has approved all policies and procedures that are necessary or appropriate for the operation of the Company.

4. Development and Implementation Phases

Until the Operative Date, the Members will continue to operate pursuant to the CQ Plan, CTA Plan, and UTP Plan with respect to the public dissemination of real-time consolidated equity market data for NMS stocks rather than the Plan.

5. Analysis of Impact on Competition

The SROs believe the proposed Plan complies with the Order. The proposed Plan incorporates the existing substantive provisions of the CTA Plan, CQ Plan and UTP Plan, which have been approved by the Commission, together with the governance modifications required by the Commission's Order.

6. Written Understanding or Agreements Relating to Interpretation of, or Participation in, Plan

Not applicable.

7. Approval of Amendment of the Plan

Not applicable.

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[3] *See* Letter from James P. Dombach and Howard L. Kramer, Murphy & McGonigle, P.C., to Vanessa Countryman, Secretary, Commission (Aug. 11, 2020) (''Transmittal Letter''). *See also* Attachment A (Limited Liability Agreement of CT Plan LLC).

[4] *See* 17 CFR 242.608(a)(4) and (a)(5).

[5] *See* Transmittal Letter, *supra* note 3. The statement of the purpose of the proposed CT Plan and the information required by Rule 608(a)(4) and (5) are reproduced verbatim from the Transmittal Letter; cross-references have been revised to conform with the footnote sequencing of this notice.

[6] *See* Order Directing the Exchanges and the Financial Industry Regulatory Authority to Submit a New National Market System Plan Regarding Consolidated Equity Market Data, Release No. 34–88827 (May 6, 2020), 85 FR 28702 (May 13, 2020) (File No. 4–757) (the ''Order'').

[7] As the Commission is aware, some of the SROs have challenged the Order in the D.C. Circuit. Those SROs (the ''Petitioners'') have joined in this submission, including the statement that the Plan complies with the Order, solely to satisfy the requirements of the Order and Rule 608. Nothing in this submission should be construed as an agreement by Petitioners with any analysis or conclusions set forth in the Order or as a concession by Petitioners regarding the Order's legality. Petitioners reserve all rights in connection with their pending challenge of the Order.

The provisions reflected in the Plan do not necessarily reflect each SRO's views related to governing and operating the consolidation and dissemination of equity market data. Further, while each SRO believes that the proposed Plan is compliant with the Order, one or more SROs intend to submit public comments regarding the proposed Plan.

8. Terms and Conditions of Access

The Plan provides that any entity registered as a national securities exchange or national securities association under the Exchange Act may become a Member by: (i) Providing written notice to the Company, (ii) executing a joinder to the Plan, at which time Exhibit A of the Plan shall be amended to reflect the addition of such exchange or association as a Member, (iii) paying a Membership Fee to the Company, and (iv) executing a joinder to any other agreements to which all of the other Members have been made party in connection with being a Member.

9. Method of Determination and Imposition, and Amount of Fees and Charges

Not applicable.

10. Method and Frequency of Processor Evaluation

Not applicable.[8]

11. Dispute Resolution

The Plan does not include provisions regarding resolution of disputes between or among the Members.

III. Solicitation of Comments

The Commission seeks comment on the proposed CT Plan. Interested persons are invited to submit written data, views, and comments concerning the foregoing, including whether the proposal is consistent with the Act and the rules thereunder, as well as with the Order. In addition to the specific questions set forth below, the Commission asks commenters to consider generally whether the proposed CT Plan is appropriately structured, and whether its provisions are appropriately drafted, to support the ''prompt, accurate, reliable, and fair collection, processing, distribution, and publication of information with respect to quotations for and transactions in such securities and the fairness and usefulness of the form and content of such information.'' [9]

Accordingly, the Commission requests comments on matters including, but not limited to, the following:

Effective and Operative Dates

1. Paragraph (b) of the Recitals of the proposed CT Plan provides that the CT Plan will not become effective (''Effective Date'') until the later of two things occurs: (1) The proposed Agreement has been approved by the Commission, and (2) the Members have formed the CT Plan as an LLC pursuant to the Delaware Act by filing a certificate of formation (the ''Certificate'') with the Delaware Secretary of State. Do commenters believe that the timing provisions set forth in the Recitals could result in an undue delay of the effectiveness of the CT Plan? Do commenters believe that the CT Plan should require that the Certificate be filed within a certain period of time following Commission action, if any, on the CT Plan? Would 10 days be an appropriate period of time for filing the Certificate? If not, what time period do commenters believe would be appropriate?

2. Paragraph (c) of the Recitals of the proposed CT Plan provides that, following the Effective Date, the CT Plan will not become operative as an NMS Plan that governs the dissemination of real-time consolidated equity market data until the first day of the month that is at least 90 days after the last of five specified actions has occurred (the ''Operative Date''). Do commenters agree that the completion of all five specified actions is necessary prior to the Operative Date? Should the CT Plan set deadlines for some or all of the specified actions? Should the CT Plan require that the Operating Committee provide periodic updates as to the status of implementation of the specified actions? If so, should these updates be made public? Should the CT Plan include deadlines requiring that the Operating Committee be constituted within a set time if the Commission approves the CT Plan? Should the CT Plan explicitly specify that constituting the Operating Committee must be the first action undertaken by the CT Plan after the Effective Date? Should the Operating Committee be required within set times to establish fees, enter into contracts with an Administrator and Processor(s), and approve or file with the Commission, as applicable, all ''policies and procedures that are necessary or appropriate for the operation of the Company''? What policies and procedures do commenters believe are necessary or appropriate for the operation of the CT Plan? Should the CT Plan specify which policies and procedures are necessary or appropriate? Is the proposed 90-day period appropriate and reasonable, or should it be longer or shorter?

Plan Structure as an LLC Agreement

3. The Commission requests comment generally on the distinctions drawn in the proposed CT Plan between actions that are governed by the Operating Committee, which includes Non-SRO Voting Representatives as required by the Order,[10] and other specified actions that are governed solely by the SROs as the ''Members'' of the LLC. Does the proposed CT Plan appropriately draw these distinctions in a way that supports the purpose of the CT Plan, consistent with the Order? [11] Do commenters believe that these distinctions will result in a significant and inappropriate dilution of Non-SRO Voting Representatives' influence on CT Plan matters that are relevant to the operation of the CT Plan as an NMS plan for the collection, processing, and dissemination of equity market data? What revisions to the plan provisions, if any, do commenters believe would be appropriate to ensure that the distinctions drawn in the CT Plan between matters to be decided by the Operating Committee and matters to be decided solely by the SROs do not inappropriately dilute the Non-SRO Voting Representatives' participation and influence on the Operating Committee?

Definitions

4. Article I, Section 1.1(p) of the proposed CT Plan defines the term ''CT Feeds'' as the CT Quote Data Feed(s) and the CT Trade Data Feed(s). Do commenters believe that this definition makes sufficiently clear that three tapes—Tape A, Tape B, and Tape C—would remain under the CT Plan as proposed?

5. Article I, Section 1.1(n) of the proposed CT Plan defines the term ''Covered Persons'' as representatives of the Members, the Non-SRO Voting Representatives, SRO Applicants, the Administrator, and the Processors; affiliates, employees, and Agents of the Operating Committee, a Member, the Administrator, and the Processors; any third parties invited to attend meetings of the Operating Committee or subcommittees; and the employers of Non-SRO Voting Representatives. Covered Persons do not include staff of the Commission. The Commission requests comment on the proposed definition. Should other types of representatives be specified in the proposed definition? For example, should the proposed definition specifically include Member Observers, as defined in Article I, Section 1.1(oo) of the proposed CT Plan?

6. Article I, Section 1.1(bb) of the proposed CT Plan defines ''Fees'' as fees

[8] The Commission notes that Article V, Section 5.2 of the proposed CT Plan governs the evaluation of processor performance. *See also infra* Question 37.

[9] *See* Order, *supra* note 6, 85 FR at 28703 (citing 15 U.S.C. 78k–1(c)(1)(B)).

[10] *See id.* at 28730.

[11] *See id.* at 28703.

charged to vendors and subscribers for Transaction Reports and Quotation Information in Eligible Securities, as defined in the CT Plan. The Commission requests comment on this definition. Does it accurately reflect all of the types of information currently made available from the existing NMS plans for equity market data and other types of fees that the CT Plan may charge to subscribers?

7. Article I, Section 1.1(oo) of the proposed CT Plan defines the term ''Member Observer'' to mean any individual, other than a Voting Representative, that a Member, in its sole discretion, determines is necessary in connection with such Member's compliance with its obligations under Rule 608(c) of Regulation NMS to attend Operating Committee and subcommittee meetings. What are commenters' views on whether an SRO would reasonably find it necessary to select a Member Observer to comply with its obligations under Rule 608(c) of Regulation NMS? Under what circumstances, if any, would the representation of an SRO on the Operating Committee by its selected SRO Voting Representative be an insufficient means for the SRO to fulfill its obligations under Rule 608 of Regulation NMS? Should persons who hold certain positions within an SRO be prohibited from serving as Member Observers? For example, should a person who has direct responsibility for the management, marketing, sale, or development of proprietary equity data products offered separately be permitted to serve as a Member Observer? If Member Observers are necessary, should only persons who perform certain roles within an SRO (*e.g.,* legal or compliance personnel) be able to serve as Member Observers? Should the CT Plan limit the number of Member Observers that each SRO would be permitted to name or the frequency with which the person serving as a Member Observer can be changed? If so, how?

8. Article I, Section 1.1(kkk) of the proposed CT Plan defines ''Public Information'' to include, among other things, any information that is not either Restricted Information or Highly Confidential Information or that has not been designated as Confidential Information, and the duly approved minutes of the Operating Committee. The Commission requests comment on the proposed definition of Public Information. Should other types of information be included in the proposed definition? For example, should the proposed definition include minutes of the meetings of any subcommittees of the Operating Committee?

Organization and Membership of LLC

9. Do commenters believe that the organizational, governance, and managerial structure outlined in Articles II, III, and IV of the proposed CT Plan are in the public interest?

10. Do commenters believe that the organizational, governance, and managerial structure set forth in the proposed CT Plan—including the limitation of membership in the LLC to SROs and the prescribed role and responsibilities of the Operating Committee—is consistent with the purposes of the CT Plan with respect to the dissemination of equity market data and the statutory mandate of ensuring the ''prompt, accurate, reliable and fair collection, processing, distribution, and publication of information with respect to quotations for and transactions in such securities and the fairness and usefulness of the form and content of such information''? [12] If not, what changes to the organizational, governance, and managerial terms of the proposed CT Plan do commenters believe should be made to be consistent with the purposes of the CT Plan?

11. Article III, Section 3.7 of the proposed CT Plan describes the obligations and liabilities of the SROs as Members of the LLC, including among other things, a provision that SROs shall have no liability for the debt, liabilities, commitments, or any other obligations of the CT Plan or for any losses of the CT Plan. Given the role and public purpose of the CT Plan as part of the national market system, do commenters believe that the provisions set forth in Section 3.7 are consistent with the SROs' obligations to, and purposes of, the CT Plan?

12. Article III, Section 3.7(e) of the proposed CT Plan states, ''[t]o the fullest extent permitted by law, no Member shall, in its capacity as a Member, owe any duty (fiduciary or otherwise) to the Company or to any other Member other than the duties expressly set forth in this Agreement.'' The Commission requests comment on the limitations proposed in this provision and the potential impact to the CT Plan's responsibilities for the collection, processing, and dissemination of equity market data.

13. Do commenters believe that the proposed CT Plan includes all of the necessary provisions for an LLC agreement to function appropriately as an NMS plan? If not, please describe the additional provisions that should be included in the CT Plan.

[12] *See id.* (citing 15 U.S.C. 78k–1(c)(1)(B)).

Responsibilities of the Operating Committee

14. Article IV, Section 4.1(a) of the proposed CT Plan states that the responsibilities of the Operating Committee include ''interpreting the Agreement and its provisions.'' Do commenters believe it is appropriate for the Operating Committee to develop its own interpretation of the meaning of the CT Plan and its provisions? Should all interpretations of the CT Plan be required to be in writing? Should all interpretations of the CT Plan be required to be made publicly available for comment before being adopted or taking effect? Should all interpretations of the CT Plan be submitted in writing to the Commission or to Commission staff before being adopted or taking effect? Should the CT Plan include policies and procedures to distinguish operational interpretations of the CT Plan from amendments required to be submitted to the Commission under Rule 608 of Regulation NMS?

15. Article IV, Section 4.1(b) of the proposed CT Plan proposes to allow the Operating Committee to delegate ''administrative functions'' to a subcommittee or to one or more of the Members (*i.e.,* SROs) or to one or more Non-SRO Voting Representatives or to another person, such as the Administrator. Thus, the Operating Committee would be empowered to delegate an administrative function only to SROs, or only to Non-SRO Voting Representatives. Should the CT Plan specify the ''administrative functions'' that would be covered by this provision? Do commenters believe the CT Plan should permit the Operating Committee to delegate ''administrative functions'' to a subcommittee consisting only of SROs? Do commenters have concerns that, under this proposed provision, an SRO-only subcommittee could discuss the details of an administrative matter without input from Non-SRO Voting Representatives? Do commenters believe the CT Plan should permit the Operating Committee to delegate ''administrative functions'' to a subcommittee consisting only of Non-SRO Voting Representatives? Section 4.1(b) also provides that a subcommittee cannot take any actions that require approval of the Operating Committee. Does the limitation that a subcommittee cannot take actions that require Operating Committee approval mitigate concerns about the delegation of ''administrative functions''? What, if any, actions could a subcommittee take without approval of the Operating Committee pursuant to Section 4.3?

Composition and Selection of Operating Committee

16. Article IV, Section 4.2(b) of the proposed CT Plan discusses Non-SRO Voting Representatives, including term limits, the selection process for the initial Non-SRO Voting Representatives, and the nomination and election process for Non-SRO Voting Representative replacements. Do commenters believe that the proposed process—including public notice requesting nominations, listing nominated individuals, and soliciting and discussing any public comments received—is fair and transparent? Do commenters believe that the CT Plan should be required to use any means beyond publication on its website to seek interested, qualified candidates to be nominated and for public comment to be solicited? If so, which means? Do commenters believe that a Non-SRO Voting Representative should be permitted, in addition to nominating himself or herself, to nominate other persons to serve as a Non-SRO Voting Representative? If so, should that be explicitly stated in the CT Plan?

17. With respect to Article IV, Section 4.2(b), do commenters believe that the CT Plan should prescribe specified periods of time for the nomination of, initial selection of, and selection of replacement Non-SRO Voting Representatives? Does the absence of such requirements provide needed flexibility to the selection process? Alternatively, could the absence of specified deadlines result in unnecessary delays in the initial formation of the Operating Committee or hinder non-SRO representation? If so, what amount of time do commenters believe would be appropriate for achieving each phase of the selection process? For example, would 30 days be an appropriate time frame for each of the specified periods—nomination, initial selection, and selection of replacements for Non-SRO Voting Representatives?

18. Article IV, Section 4.2(b) provides that Non-SRO Voting Representatives shall serve for two-year terms for a maximum of two terms total, whether consecutive or non-consecutive. Is the proposed maximum of two terms an appropriate limit on the number of terms a Non-SRO Voting Representative may serve on the Operating Committee? Should the limit on the number of terms be increased or decreased? Should it be eliminated? Do commenters believe that similar term limits should apply to SRO Voting Representatives? What are commenters' views on whether a lifetime limitation on service that applies only to Non-SRO Voting Representatives would support the meaningful and informed participation of Non-SRO Voting Representatives on the Operating Committee? Do commenters believe there is a sufficiently large pool of qualified and informed persons able to serve as Non-SRO Voting Representatives to sustain a diversity of views on the Operating Committee over time if the proposed term limits were adopted?

Action of Operating Committee

19. Article IV, Section 4.3(c) of the proposed CT Plan delineates several circumstances, in addition to those described in the Order—which are the selection of Non-SRO Voting Representatives and the decision to enter Executive Session—in which an augmented majority vote of the Operating Committee would not be required. The Commission requests comment on each of the proposed CT Plan provisions that would permit action by a majority vote of the SROs. Specifically, do commenters believe that the CT Plan should include additional details on the proposed provisions with respect to: (i) The operation of the CT Plan as an LLC, (ii) modifications to LLC-related provisions of the proposed CT Plan,[13] and (iii) the selection (including appointment and removal) of Officers of the CT Plan, other than the Chair? Would permitting action by the SROs alone with respect to these elements of CT Plan operation be consistent with providing a meaningful role to non-SROs in the governance of the collection, processing, and dissemination of equity market data? Should an augmented majority vote of the Operating Committee be required for any or all aspects of the operation of the CT Plan as an LLC? If so, which ones?

Meetings of the Operating Committee

20. Article IV, Section 4.4(g) of the proposed CT Plan would permit Member Observers to attend Executive Sessions of the Operating Committee. Do commenters believe that permitting Member Observers to attend Executive Sessions is necessary? If so, under what circumstances do commenters believe Member Observers should attend? Should the CT Plan limit the ability of some or all Member Observers to attend Executive Session, Operating Committee, or subcommittee meetings? If so, under what circumstances should such attendance be limited and to what subset, if any, of Member Observers should such limitations apply?

21. Article IV, Section 4.4(g) of the proposed CT Plan provides that items for discussion within an Executive Session should be limited to those ''for which it is appropriate to exclude Non-SRO Voting Representatives,'' identified as: (i) Any topic that requires discussion of Highly Confidential Information; (ii) vendor or subscriber audit findings; and (iii) litigation matters. The proposed CT Plan further provides that the above items are ''not dispositive of all matters that may by their nature require discussion in an Executive Session.'' The Commission requests comment on the specified items proposed in the CT Plan as appropriate topics for Executive Session. Do commenters agree, for example, that any topic that requires discussion of Highly Confidential Information should not be considered by the full Operating Committee? Do commenters believe that there are sufficient mechanisms in place under the CT Plan to ensure that the use of Executive Session is appropriate? If not, what mechanisms should be added? Should the list of permissible topics for Executive Session be delineated more specifically in the CT Plan? What, if any, additional permissible topics should be included? What, if any, topics should be specifically excluded? Would the proposed provision that the topics identified in the CT Plan are ''not dispositive of all matters that may by their nature require discussion in an Executive Session'' allow the SROs excessive discretion to limit or prevent the participation of Non-SRO Voting Representatives in certain CT Plan matters? Should the CT Plan specify a limited set of categories of items that could be discussed in Executive Session? If so, what categories should be included, and what level of detail regarding these categories would be appropriate?

Certain Transactions

22. Article IV, Section 4.5 of the proposed CT Plan provides that the CT Plan is not prohibited from employing or dealing with persons in which an SRO or any of its affiliates has a connection or a direct or indirect interest. What relevant CT Plan employment relationships or business dealings do commenters believe might be covered by this provision? Are there specific types of employment relationships or business dealings that should be prohibited? Are there specific types of employment relationships or business dealings that should be permitted? If the CT Plan permits such employment relationships or business dealings, should it also require the relevant SROs to maintain information

[13] *See infra* Questions 51–52.

barriers between themselves and the affiliates or persons that have employment relationships or business dealings with the CT Plan? If so, what type of information barrier would be appropriate? In commenters' views, could Section 4.5 permit conflicts of interest that should be disclosed under the conflicts of interest policy? If so, what modifications to that policy, if any, should be made? Do commenters think that any additional disclosure, recusal, or voting procedures should be required before the CT Plan employs or deals with persons in which an SRO or any of its affiliates has a direct or indirect interest or a connection?

Company Opportunities

23. Article IV, Section 4.6 of the proposed CT Plan permits the SROs to engage in business activities outside of the business activities of the CT Plan, including through investments or business relationships with other persons engaged in market data services or through strategic relationships with businesses that are or may be competitive with the CT Plan. What specific types of business activities would be covered by this provision? Would any of these business activities create a conflict of interest with an SRO's obligations with respect to the CT Plan under the federal securities laws, rules, and regulations? Are any potential conflicts of interest sufficiently mitigated by the conflicts of interest policy? If not, how should the CT Plan address such conflicts of interest?

24. Section 4.6(b) provides that none of the SROs shall be obligated to recommend or take any action that prefers the interest of the CT Plan or any other Member over its own interests, and it also provides that none of the SROs will be obligated to inform or present to the CT Plan any opportunity, relationship, or investment. This provision defines investments or other business relationships with persons engaged in the business of the CT Plan other than through the CT Plan as ''Other Business.'' What specific types of opportunities, relationships, or investments would be covered by this provision? Would any of these opportunities, relationships, or investments create a conflict of interest with an SRO's obligations with respect to the CT Plan under the federal securities laws, rules, and regulations? Exhibit B of the proposed CT Plan provides a list of questions and instructions tailored to elicit responses that disclose potential conflicts of interest. In response to these questions, would the SROs be required to disclose certain opportunities, relationships, or investments? Would these disclosures sufficiently mitigate any conflicts of interest? If not, how should the CT Plan address such conflicts of interest? Should the CT Plan require that an SRO's representatives (SRO Voting Representative or Member Observer, as applicable) be recused from discussion of, or voting on, matters relating to opportunities, relationships, or investments when the SRO's interests may be in conflict with the goals of the CT Plan?

25. Do commenters believe that Section 4.6(b) could be interpreted in a manner that could result in the SROs acting inconsistently with their obligations under the federal securities laws, rules, and regulations? Could this language result in an SRO voting against needed improvements to the provision of consolidated equity market data? Do commenters have other concerns with the proposed provision? If so, how could such concerns be mitigated?

Subcommittees

26. Article IV, Section 4.7(a) of the proposed CT Plan provides that subcommittee chairs will be selected by the Chair from SRO Voting Representatives or Member Observers with input from the Operating Committee. What are commenters' views on whether Non-SRO Voting Representatives should be unable to serve as a subcommittee chair? What are commenters' views on whether Member Observers should be permitted to serve as a subcommittee chair? Do commenters believe that the CT Plan should permit Non-SRO Voting Representatives to serve as chair, co-chair, or vice-chair of any subcommittees of the Operating Committee? Should subcommittees of the Operating Committee be required to have the same relative balance of membership between SRO Voting Representatives and Non-SRO Voting Representatives as the Operating Committee itself? Should Member Observers be permitted to participate in subcommittee deliberations?

27. Section 4.7(c) provides that SRO Voting Representatives, Member Observers, and other persons as deemed appropriate by the SRO Voting Representatives may meet in a subcommittee to discuss an item subject to attorney-client privilege of the CT Plan or that is attorney work product of the CT Plan. What are commenters' views on the scope of the ''other persons'' who may be deemed appropriate by the SRO Voting Representatives to discuss an item subject to attorney-client privilege of the CT Plan or that is attorney work product of the CT Plan? Should there be any limitations? If so, what limitations would be appropriate?

Officers

28. Article IV, Section 4.8 of the proposed CT Plan provides that in addition to the Chair and the Secretary of the CT Plan, the SROs, as Members of the CT Plan, may designate other Officers of the CT Plan, with such authority as the SROs may, from time to time, delegate to them. Section 4.8 further provides that the SROs may remove any CT Plan Officer by majority vote. What are commenters' views on these provisions? Do commenters think it is appropriate that decisions relating to Officers and duties may be made solely by the SROs? Do commenters believe that the positions and duties of any Officers should be specified in the CT Plan? Should there be limitations on eligibility to serve as an Officer of the CT Plan? For example, should SRO Voting Representatives or Member Observers be eligible to serve as Officers of the CT Plan? Should Non-SRO Voting Representatives be restricted from serving as Officers of the CT Plan? Do commenters believe the CT Plan should specify considerations for removal of an Officer?

29. Section 4.8(a) of the proposed CT Plan provides that each Officer shall hold office until such Officer's successor shall be duly designated or until such Officer's death, resignation, or removal. Do commenters believe that term limits should apply to any specific or to all Officers of the CT Plan? What are commenters' views on the impact to the CT Plan if such term limits were adopted?

Disclosure of Potential Conflicts of Interest; Recusal

30. Article IV, Section 4.10 of the proposed CT Plan sets forth provisions for recusals and for the disclosure of conflicts of interest and provides that the Members, the Processors, the Administrator, the Non-SRO Voting Representatives, and each service provider or subcontractor engaged in CT Plan business that has access to Restricted or Highly Confidential Information shall be subject to Section 4.10 and Exhibit B to the CT Plan. Exhibit B to the CT Plan provides a list of questions and instructions tailored to elicit responses that disclose potential conflicts of interest. Do commenters believe that Member Observers should be expressly subject to Section 4.10 and Exhibit B? If so, do commenters believe that the same disclosure requirements and recusal provisions that apply to Members and other identified persons

would sufficiently mitigate any conflicts of interest faced by Member Observers? If not, what additional disclosures or recusal provisions do commenters believe would be appropriate? Do commenters believe that Officers of the CT Plan should be expressly subject to Section 4.10 and Exhibit B? If so, do commenters believe that the same disclosure requirements and recusal provisions that apply to Members and other identified persons would sufficiently mitigate any conflicts of interest faced by Officers? If not, what additional disclosures or recusal provisions do commenters believe would be appropriate?

31. Article IV, Section 4.6 of the proposed CT Plan addresses the ability of SROs to engage in certain business activities outside of the business activities of the CT Plan. Do commenters believe that the disclosure requirements under Section 4.10 and Exhibit B elicit sufficient relevant information to mitigate conflicts of interest that may result from such business activities? If not, how should the SROs update the conflicts of interest policy of the CT Plan to address this?

32. Article IV, Section 4.10(d) of the proposed CT Plan provides that, if the Commission's approval of the conflicts of interest policies filed by the CQ Plan, the CTA Plan, or UTP Plan is stayed or overturned (for example, by a court), the requirements of Section 4.10 and Exhibit B of the CT Plan shall not apply. What are commenters' views on whether such a provision is necessary or appropriate for the CT Plan? Do commenters believe that the CT Plan should, at a minimum, contain provisions for addressing conflicts of interest that are not subject to elimination, or provisions specifying that the CT Plan must be amended to include a new policy with respect to conflicts of interest before the existing policy can be removed?

Confidentiality Policy

33. Article IV, Section 4.11(a) of the proposed CT Plan states that the SROs and the Non-SRO Voting Representatives are subject to the Confidentiality Policy set forth in Exhibit C to the CT Plan. Do commenters believe that Section 4.10(a) should be modified to expressly apply to Member Observers? Do commenters believe that the definition of Member Observer should be more narrowly tailored to limit the individuals within an SRO that have access to Highly Confidential or Confidential Information? Should Member Observers be prohibited from receiving Restricted or Highly Confidential Information, or be excluded from being present when such information is discussed? Should Member Observers be required to demonstrate a legitimate or particularized need for specific Restricted or Highly Confidential Information before being granted access? Are there other confidentiality provisions that should expressly apply to Member Observers?

34. Article IV, Section 4.11(b) of the proposed CT Plan provides that, if the Commission's approval of the confidentiality policies filed by the CQ Plan, the CTA Plan, or UTP Plan is stayed or overturned (for example, by a court), the requirements of Section 4.11 and Exhibit C of the CT Plan shall not apply. What are commenters' views on whether such a provision is necessary or appropriate for the CT Plan? Do commenters believe that the CT Plan should, at a minimum, contain provisions for identifying and protecting confidential information that are not subject to elimination, or provisions specifying that the CT Plan must be amended to include a new policy with respect to confidential information before the existing policy can be removed?

Processor Functions and Responsibilities

35. Article V, Section 5.1 of the proposed CT Plan specifies the general functions of the Processors, as more fully set forth in an agreement to be entered between the CT Plan and the Processors (the ''Processor Services Agreements''). Do commenters believe this approach is appropriate? Do commenters believe that further details on the terms and responsibilities of the Processors should be specified in the body of the CT Plan? If so, what additional types of terms and responsibilities of the Processors should be specified in the CT Plan? For example, should the CT Plan specify the factors to be considered for termination of the Processors?

36. Article V, Section 5.1 of the proposed CT Plan requires, among other things, that the CT Plan require the Processors to collect from the SROs, and consolidate and disseminate to vendors and subscribers, Transaction Reports and Quotation Information in Eligible Securities in a manner designed to assure the prompt, accurate, and reliable collection, processing, and dissemination of information with respect to all Eligible Securities in a fair and non-discriminatory manner. Do commenters believe that the terms of the CT Plan should also require the Processors to ensure the ''fairness and usefulness of the form and content of such information,'' consistent with Section 11A(c)(1)(B) of the Act? [14]

37. Article V, Section 5.2 of the proposed CT Plan provides that the Processors' performance shall be subject to review at any time as determined by a vote of Operating Committee, provided that a review shall be conducted at least once every two calendar years but not more frequently than once each calendar year unless there is a material default that has not been cured within the specified applicable cure period. What are commenters' views on the proposed frequency of reviews of the Processors? The proposed CT Plan does not specify the criteria under which the Processors will be evaluated. Do commenters believe that further detail should be specified in the CT Plan regarding the Operating Committee's review of the performance of the Processors under the Processor Services Agreements? For example, should the CT Plan specify certain performance metrics to be used in reviewing the performance of the Processors, and if so, are there particular metrics that should be used? Do commenters believe that the CT Plan should specify a maximum cure period for material defaults by Processors under the Processor Services Agreements? If so, what period would be appropriate? Should the Commission also be notified and supplied with a copy of any reports regarding any recommendations the Operating Committee may approve as a result of the review of the Processors?

38. Article V, Section 5.3 of the proposed CT Plan provides that the Operating Committee shall establish procedures for selecting Processors and that these procedures shall at a minimum set forth (a) the entity that will draft the request for proposal, assist the Operating Committee in evaluating bids, and otherwise provide assistance to the Operating Committee; (b) the minimum technical and operational requirements to be fulfilled by the Processor; (c) the criteria to be considered in selecting the Processor; and (d) the entities (other than Voting Representatives) that are eligible to comment on the selection of the Processor (collectively, the ''Processor Selection Procedures''). Do commenters believe that the Processor Selection Procedures should set forth any terms in addition to those set forth in Article V, Section 5.3(b)? For example, should the Processor Selection Procedures specify a maximum time period to select a new Processor? Additionally, do commenters believe that the Processor Selection

[14] 15 U.S.C. 78k–1(c)(1)(B).

Procedures should require that a subcommittee of disinterested members of the Operating Committee—those not affiliated with a person seeking to act as the Processor—vote and select a new Processor? Should a subcommittee of disinterested members be required to evaluate the proposals and make a recommendation to the Operating Committee? Should the CT Plan specifically provide that Non-SRO Voting Representatives should be eligible to comment on the selection of a new Processor? Should the CT Plan specifically provide that any other persons should be eligible to comment on the selection of a new Processor? If so, which persons and why?

39. Should the CT Plan specify in detail the minimum performance standards applicable to the Processor? For example, should the CT Plan set minimum standards for the timely dissemination of information, bandwidth, or other metrics? If so, what minimum standards would be appropriate?

Administrator Functions and Responsibilities

40. Article VI, Section 6.1 of the proposed CT Plan specifies the general functions of the Administrator, as more fully set forth in an agreement to be entered between the CT Plan and the Administrator (the ''Administrator Services Agreement''). Do commenters believe this approach is appropriate? Do commenters believe that further details on the terms and responsibilities of the Administrator should be specified in the body of the CT Plan? If so, what additional types of terms and responsibilities of the Administrator should be specified in the CT Plan?

41. Article VI, Section 6.1 of the proposed CT Plan specifies that the Administrator should perform administrative functions on behalf of the CT Plan, including the preparation of the CT Plan's audited financial reports. Do commenters believe that the Administrator's duties with respect to the preparation of financial reports should also include unaudited reports?

42. Article VI, Section 6.2 of the proposed CT Plan provides for the evaluation of the Administrator, specifying that the Administrator shall be subject to review at any time as determined by the Operating Committee, provided that the Administrator shall be subject to review at least every two years and not more frequently than once each calendar year, and that the Operating Committee shall appoint a subcommittee or other persons to conduct the review. What are commenters' views on the appropriate scope of ''other persons'' who may participate in conducting the review? What are commenters' views on the proposed frequency of reviews of the Administrator? The proposed CT Plan does not specify the criteria under which the Administrator will be evaluated. Do commenters believe that such criteria should be specified in the CT Plan regarding the CT Plan's review of the performance of the Administrator under the Administrator Services Agreement? If so, what types of performance metrics used in the review should be specified in the CT Plan? Should the Administrator evaluation process be conducted by an independent third party? Should the CT Plan specify the terms for the termination and removal of the Administrator? If so, what terms or criteria should be specified? Do commenters believe that the CT Plan should specify a maximum cure period for material defaults by the Administrator under the Administrator Services Agreement? If so, what period would be appropriate?

43. Article VI, Section 6.3 of the proposed CT Plan describes the process for selecting a new Administrator. Do commenters believe that the Administrator Selection Procedures should set forth any additional terms other than those set forth in Article VI, Section 6.3? For example, should the Administrator Selection Procedures specify a maximum time period to select a new Administrator?

44. Article VI, Section 6.3 of the proposed CT Plan provides that the Operating Committee may solicit and consider, as part of the process of establishing Administrator Selection Procedures, the timely comment of any entity affected by the operation of the CT Plan. Article VI, Section 6.3(d) provides that the Administrator Selection Procedures should specify certain entities (other than Voting Representatives) that should be eligible to comment on the selection of a new Administrator. Do commenters believe that this requirement is appropriate? Do commenters believe that the entities selected by the Operating Committee should be specified in the CT Plan rather than the Administrator Selection Procedures? If so, what types of entities should be eligible or ineligible to comment on the selection of a new Administrator? Do commenters believe there may be circumstances in which these two provisions might come into conflict—*i.e.,* that the Administrator Selection Procedures might fail to include, as an entity eligible to comment, an entity that is affected by the operation of the CT Plan? Do commenters believe that the provisions of the CT Plan should be revised to prevent such an occurrence?

45. Should the CT Plan specify in detail the minimum performance standards applicable to the Administrator? If so, what minimum standards would be appropriate?

Regulatory and Operational Halts

46. Article VII, Section 7.1 of the proposed CT Plan describes the SROs' responsibilities relating to regulatory and operational trading halts, including when a Primary Listing Exchange may declare a trading halt, the process for initiating a trading halt, and the process for reopening following a halt. What are commenters' views on these provisions? Are the proposed provisions describing the circumstances in which a Primary Listing Market may declare or terminate a market-wide halt in trading in its listed stocks consistent with the maintenance of fair, orderly, and efficient markets? If not, how should these provisions be modified?

Capital Contributions; Capital Accounts; Allocations

47. Articles VIII and IX of the proposed CT Plan govern the use of capital accounts under the CT Plan, including contributions to and distributions from such accounts, and allocations to the SROs. What are commenters' views regarding these provisions? Would these provisions serve to prohibit unreasonable discrimination with regard to the allocation of capital contributions, distributions, and profits and losses among the SROs? If not, how should these provisions be modified?

Dissolution and Termination of the CT Plan LLC

48. Article XI of the proposed CT Plan provides the terms for the dissolution and termination of the LLC as determined by the SROs. Do commenters believe that the dissolution and termination of the LLC should require consideration by or the consent of the Non-SRO Voting Representatives?

Exculpation and Indemnification

49. Article XII of the proposed CT Plan includes provisions governing the exculpation and indemnification of certain parties involved in the operation of the CT Plan. Do commenters believe that these provisions cover the appropriate parties? If not, how should these provisions be modified? For example, should the proposed exculpation and indemnification provisions also cover Non-SRO Voting Representatives?

50. Article XII, Section 12.1(b) of the proposed CT Plan sets forth the rights and responsibilities of an Exculpated Party. Do commenters believe that these rights and responsibilities are consistent with the obligations of SROs with respect to the operation of an NMS plan? If not, how should these provisions be modified?

Governing Law

51. Article XIII, Section 13.4 of the proposed CT Plan sets forth the governing law of the CT Plan and states that the rights and obligations of the SROs, the Processors and the Administrator, vendors, subscribers, and other persons contracting with the CT Plan in respect of the matters covered by the CT Plan should at all times also be subject to any applicable provisions of the Act and any rules and regulations promulgated thereunder. Do commenters believe that any of the other provisions of the proposed CT Plan are potentially inconsistent with Section 13.4? If so, how should the proposed CT Plan be modified?

Amendments

52. Article XIII, Section 13.5 of the proposed CT Plan governs amendments to the CT Plan. Section 13.5(b) provides that Articles IX (Allocations), X (Records and Accounting; Reports), XI (Dissolution and Termination), and XII (Exculpation and Indemnification) may be modified upon approval by a majority of Members; provided, however, that Operating Committee approval will be required for modifications to the allocation of all items of income, gain, loss, and deduction. Do commenters believe that amendments to Articles IX through XII of the CT Plan should be subject to the approval only of SROs? Do commenters believe that Non-SRO Voting Representatives should also have voting rights with respect to the approval of amendments to Articles IX through XII of the CT Plan?

53. Article XIII, Section 13.5(d) of the proposed CT Plan describes the types of amendments that would be defined as a Ministerial Amendment to the CT Plan and, therefore, could be submitted to the Commission by the Chair of the Operating Committee upon 48 hours' advanced notice to the Operating Committee.[15] Do commenters believe that the definition of Ministerial Amendments is appropriate? Are there specific types of amendments that should be included in or excluded from the definition of Ministerial Amendments?

Distributions—Exhibit D

54. Paragraph (j) of Exhibit D to the proposed CT Plan provides the definition of the term Net Distributable Operating Income. Do commenters believe that this definition provides sufficient and appropriate detail for the CT Plan to calculate the Net Distributable Operating Income? Do commenters believe that further details would be appropriate or necessary for the CT Plan to determine the Net Distributable Operating Income?

Analysis of Impact on Competition

55. In their analysis of the impact of the proposed CT Plan on competition, the SROs state that the proposed CT Plan complies with the Order and that the CT Plan ''incorporates the existing substantive provisions of the CTA Plan, CQ Plan, and UTP Plan, which have been approved by the Commission, together with the governance provisions required by the Commission's Order.'' [16] What effect, if any, do commenters believe the specific terms of the proposed CT Plan as submitted by the SROs would have on competition?

56. Paragraph (c) of the Recitals of the proposed CT Plan specify a number of steps to be undertaken before the CT Plan becomes operational as the NMS plan responsible for the dissemination of equity market data, but do not include specified time periods in which these actions must be commenced or completed.[17] What effect, if any, do commenters believe the lack of such time periods or deadlines would have on competition?

57. Article IV, Section 4.2(b) of the proposed CT Plan provides that Non-SRO Voting Representatives shall serve for two-year terms for a maximum of two terms total, whether consecutive or non-consecutive, but places no similar limitations on the terms of SRO Voting Representatives. What effect, if any, do commenters believe this limitation on Non-SRO Voting Representatives would have on competition?

58. Article I, Section 1.1(oo) of the proposed CT Plan would allow SROs to select Member Observers, and Article IV, Section 4.4(g) of the proposed CT Plan would permit Member Observers to attend general and Executive Session meetings of the CT Plan. What effect, if any, do commenters believe the ability of the SROs to select Member Observers, who would have access to Confidential Information and Highly Confidential Information, would have on competition?

59. Article IV, Section 4.6(b) of the proposed CT Plan provides that none of the SROs shall be obligated to recommend or take any action that prefers the interest of the CT Plan or any other Member over its own interests. Do commenters believe that this provision would facilitate competition in the provision of equity market data? Do commenters believe that this provision would hinder competition in the provision of equity market data?

60. Article XII, Section 12.1(b) of the proposed CT Plan provides that whenever a Member or an SRO Voting Representative (defined as an ''Exculpated Party'') is permitted or required to take any action or to make a decision in its ''sole discretion'' or ''discretion'' or that it deems ''necessary,'' or ''necessary or appropriate'' or under a grant of similar authority or latitude, the Exculpated Party may, insofar as Applicable Law permits, make such decision in its sole discretion (regardless of whether there is a reference to ''sole discretion'' or ''discretion''). The Exculpated Party (i) shall be entitled to consider such interests and factors as it desires (including its own interests), (ii) shall have no duty or obligation (fiduciary or otherwise) to give any consideration to any interest of or factors affecting the Company or the Members, and (iii) shall not be subject to any other or different standards imposed by this Agreement, or any other agreement contemplated hereby, under any Applicable Law or in equity. What effect, if any, do commenters believe these provisions would have on competition?

61. Do commenters believe that there is data that is relevant to an analysis of the effect on competition of the proposed CT Plan as submitted by the SROs? Commenters are encouraged to provide any such data they possess or to which they have access.

[15] A Ministerial Amendment is defined in Section 13.5(d) of the proposed CT Plan as one that pertains solely to: (i) Admitting a new Member to the Company; (2) changing the name or address of a Member; (3) incorporating a change that the Commission has implemented by rule and that requires no conforming language to the text of this Agreement; (4) incorporating a change (A) that the Commission has implemented by rule, (B) that requires conforming language to the text of this Agreement, and (C) whose conforming language to the text of this Agreement has been approved by the affirmative vote of the Operating Committee pursuant to Section 4.3; (5) incorporating a change (A) that a Governmental Authority requires relating to the governance or operation of an LLC, (B) that requires conforming language to the text of this Agreement, and (C) whose conforming language to the text of this Agreement has been approved by the affirmative vote of the Operating Committee pursuant to Section 4.3 or upon approval by a majority of Members pursuant to Section 13.5(b), as applicable; or (6) incorporating a purely technical change, such as correcting an error or an inaccurate reference to a statutory provision, or removing language that has become obsolete.

[16] *See supra* Section II.A.5.

[17] *See supra* Section II.A.3.

Dispute Resolution

62. The Transmittal Letter states that the proposed CT Plan does not include provisions regarding resolution of disputes between or among the Members.[18] Do commenters believe that the CT Plan should include dispute resolution provisions? If so, should those provisions be general dispute resolution provisions, or should they be limited to specific types of disputes?

* * * * *

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number 4–757 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549–1090.

All submissions should refer to File Number 4–757. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all written statements with respect to the proposed CT Plan that are filed with the Commission, and all written communications relating to the proposed CT Plan between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the Participants' principal offices. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number 4–757 and should be submitted on or before November 12, 2020.

By the Commission.

J. Matthew DeLesDernier,

Assistant Secretary.

Attachment A

LIMITED LIABILITY COMPANY AGREEMENT OF CT PLAN LLC a Delaware limited liability company

This LIMITED LIABILITY COMPANY AGREEMENT (this ''*Agreement*'') dated as of the [•] day of [•], [•] is made and entered into by and among the parties identified in *Exhibit A,* as *Exhibit A* may be amended from time to time (the ''*Members*''), which are the members of CT Plan LLC, a Delaware limited liability company (the ''*Company*''). The Members shall constitute the ''members'' (as that term is defined in the Delaware Act) of the Company.

Recitals

(a) On May 6, 2020, the Commission ordered the Members to act jointly in developing and filing with the Commission by August 11, 2020, a proposed new single national market system (''NMS'') plan to govern the public dissemination of real-time consolidated equity market data for NMS stocks. *See* Order Directing the Exchanges and the Financial Industry Regulatory Authority to Submit a New National Market System Plan Regarding Consolidated Equity Market Data, Release No. 34–88827 (May 6, 2020), 85 FR 28702 (May 13, 2020) (File No. 4–757) (the ''Order''). This Agreement is being filed with the Commission, as directed in the Order.

(b) This Agreement will become effective after the last of the following has occurred (the ''Effective Date''):

(i) this Agreement is approved by the Commission pursuant to Rule 608 of Regulation NMS as an NMS plan governing the public dissemination of real-time consolidated market data for Eligible Securities; and

(ii) the Members have formed the Company as a limited liability company pursuant to the Delaware Act by filing a certificate of formation (the ''*Certificate*'') with the Delaware Secretary of State.

(c) Following the Effective Date, this Agreement will become operative as an NMS Plan that governs the public dissemination of real-time consolidated equity market data for Eligible Securities on the first day of the month that is at least 90 days after the last of the following have occurred (the ''Operative Date''):

(i) the SRO Voting Representatives and Non-SRO Voting Representatives of the Operating Committee have been determined pursuant to Section 4.2 of the Agreement;

(ii) Fees have been established by the Operating Committee, are effective as an amendment to this Agreement pursuant to Rule 608 of Regulation NMS, and are ready to be implemented on the Operative Date;

(iii) the Company has entered into an agreement with the Processors currently performing under the CQ Plan, CTA Plan, and UTP Plan;

(iv) the Company has entered into an agreement with an Administrator selected pursuant to Section 6.3 and such Administrator has completed the transition from prior Administrators under the CQ Plan, CTA Plan, and UTP Plan such that it is able to provide services under the Administrative Services Agreement, as determined by the Operating Committee pursuant to Section 4.3, including that (1) new contracts between the Company and Vendors and the Company and Subscribers have been finalized such that all Vendors and Subscribers under the CQ Plan, CTA Plan, and UTP Plan are ready to transition to such new contracts by the Operative Date, (2) the Administrator has in place a system to administer Distributions, and (3) the Administrator has in place a system to administer Fees; and

(v) the Operating Committee and, if applicable, the Commission have approved all policies and procedures that are necessary or appropriate for the operation of the Company.

(d) Until the Operative Date, the Members will continue to operate pursuant to the CQ Plan, CTA Plan, and UTP Plan with respect to the public dissemination of real-time consolidated equity market data for Eligible Securities rather than this Agreement.

(e) As of the Operative Date, the Members shall conduct, through the Company, the Processor and Administrator functions related to the public dissemination of real-time consolidated equity market data for Eligible Securities required by the Commission to be performed by the Members under the Exchange Act.

(f) It is understood and agreed that, in performing their obligations and duties under this Agreement, the Members are performing and discharging functions and responsibilities related to the operation of the national market system for and on behalf of the Members in their capacities as self-regulatory organizations, as required under the Section 11A of the Exchange Act, and pursuant to Rule 603(b) of Regulation NMS thereunder. It is further understood and agreed that this

[18] *See supra* Section II.A.11.

Agreement and the operations of the Company shall be subject to ongoing oversight by the Commission.

Article I. Definitions

Section 1.1 Definitions

As used throughout this Agreement and the Exhibits:

(a) ''*Administrator*'' means the Person selected by the Company to perform the administrative functions described in this Agreement pursuant to the Administrative Services Agreement.

(b) ''*Advisory Committee Member*'' means an individual selected pursuant to Section III(e)(ii)(A) of the CTA Plan and Section IV(E)(b)(i) of the UTP Plan to be a member of the Advisory Committees of the CTA Plan and UTP Plan.

(c) ''*Affiliate*'' means, as to any Person, any other Person that, directly or indirectly, Controls, is Controlled by, or is under common Control with such Person. Affiliate or Affiliated, when used as an adjective, shall have a correlative meaning.

(d) ''*Agent*'' means, for purposes of *Exhibit C,* agents of the Operating Committee, a Member, the Administrator, and the Processors, including, but not limited to, attorneys, auditors, advisors, accountants, contractors or subcontractors.

(e) ''*Applicable Law*'' means all applicable provisions of (a) constitutions, treaties, statutes, laws (including the common law), rules, regulations, decrees, ordinances, codes, proclamations, declarations or orders of any Governmental Authority; (b) any consents or approvals of any Governmental Authority; and (c) any orders, decisions, advisory or interpretative opinions, injunctions, judgments, awards, decrees of, or agreements with, any Governmental Authority.

(f) ''*Best Bid and Offer*'' has the meaning ascribed to the term ''best bid and best offer'' by Rule 600(b)(8) of Regulation NMS.

(g) ''*Capital Contributions*'' means any cash, cash equivalents, or other property that a Member contributes to the Company with respect to its Membership Interest.

(h) ''*Chair*'' shall mean the individual elected pursuant to Section 4.4(e).

(i) ''*Code*'' means the Internal Revenue Code of 1986, as amended.

(j) ''*Commission*'' or ''*SEC*'' means the U.S. Securities and Exchange Commission.

(k) ''*Company Indemnified Party*'' means a Person, and any other Person of whom such Person is the legal representative, that is or was a Member or an SRO Voting Representative.

(l) ''*Confidential Information*'' means, except to the extent covered by the definitions for Restricted Information, Highly Confidential Information, or Public Information: (i) Any non-public data or information designated as Confidential by the Operating Committee pursuant to Section 4.3; (ii) any document generated by a Member or Non-SRO Voting Representative and designated by that Member or Non-SRO Voting Representative as Confidential; and (iii) the individual views and statements of Covered Persons and SEC staff disclosed during a meeting of the Operating Committee or any subcommittees thereunder.

(m) ''*Control*'' means, with respect to any Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities (or other ownership interest), by contract or otherwise.

(n) ''*Covered Persons*'' means representatives of the Members, the Non-SRO Voting Representatives, SRO Applicants, the Administrator, and the Processors; affiliates, employees, and Agents of the Operating Committee, a Member, the Administrator, and the Processors; any third parties invited to attend meetings of the Operating Committee or subcommittees; and the employers of Non-SRO Voting Representatives. Covered Persons do not include staff of the SEC.

(o) ''*CQ Plan*'' means the Restated CQ Plan.

(p) ''*CT Feeds*'' means the CT Quote Data Feed(s) and the CT Trade Data Feed(s).

(q) ''*CT Quote Data Feed(s)*'' means the service(s) that provides Vendors and Subscribers with (i) National Best Bids and Offers and their sizes and the Members' identifiers providing the National Best Bids and Offers; (ii) each Member's Best Bids and Offers and their sizes and the Member's identifier; and (iii) in the case of FINRA, the identifier of the FINRA Participant(s) that constitute(s) FINRA's Best Bids and Offers, in each case for Eligible Securities.

(r) ''*CT Trade Data Feed(s)*'' means the service(s) that provides Vendors and Subscribers with Transaction Reports for Eligible Securities.

(s) ''*CTA Plan*'' means the Second Restatement of the CTA Plan.

(t) ''*Current*'' means, with respect to Transaction Reports or Quotation Information, such Transaction Reports or Quotation Information during the fifteen (15) minute period immediately following the initial transmission thereof by the Processors.

(u) ''*Delaware Act*'' means the Delaware Limited Liability Company Act, Title 6, Chapter 18, §§ 18–101, *et seq.,* and any successor statute, as amended.

(v) ''*Distribution*'' means a distribution to the Members of revenues of the Company under this Agreement pursuant to Section 8.3 and *Exhibit D* of the Agreement.

(w) ''*Eligible Security*'' means (i) any equity security, as defined in Section 3(a)(11) of the Exchange Act, or (ii) a security that trades like an equity security, in each case that is listed on a national securities exchange.

(x) ''*ET*'' means Eastern Time.

(y) ''*Exchange Act*'' means the Securities Exchange Act of 1934, as amended.

(z) ''*Executive Session*'' means a meeting of the Operating Committee pursuant to Section 4.4(g), which includes SRO Voting Representatives, Member Observers, SEC Staff, and other persons as deemed appropriate by the SRO Voting Representatives.

(aa) ''*Extraordinary Market Activity*'' means a disruption or malfunction of any electronic quotation, communication, reporting, or execution system operated by, or linked to, the Processors or a Trading Center or a member of such Trading Center that has a severe and continuing negative impact, on a market-wide basis, on quoting, order, or trading activity or on the availability of market information necessary to maintain a fair and orderly market. For purposes of this definition, a severe and continuing negative impact on quoting, order, or trading activity includes (i) a series of quotes, orders, or transactions at prices substantially unrelated to the current market for the security or securities; (ii) duplicative or erroneous quoting, order, trade reporting, or other related message traffic between one or more Trading Centers or their members; or (iii) the unavailability of quoting, order, transaction information, or regulatory messages for a sustained period.

(bb) ''*Fees*'' means fees charged to Vendors and Subscribers for Transaction Reports and Quotation Information in Eligible Securities.

(cc) ''*Final Decision of the Operating Committee*'' means an action or inaction of the Operating Committee as a result of the vote of the Operating Committee, but will not include the individual votes of a Voting Representative.

(dd) ''*FINRA*'' means the Financial Industry Regulatory Authority, Inc.

(ee) ''*FINRA Participant*'' means a FINRA member that utilizes the facilities of FINRA pursuant to applicable FINRA rules.

(ff) ''*Fiscal Year*'' means the fiscal year of the Company adopted pursuant to Section 10.1(a) of this Agreement.

(gg) ''*GAAP*'' means United States generally accepted accounting principles in effect from time to time, consistently applied.

(hh) ''*Governmental Authority*'' means (a) the U.S. federal government or government of any state of the U.S., (b) any instrumentality or agency of any such government, (c) any other individual, entity or organization authorized by law to perform any executive, legislative, judicial, regulatory, administrative, military or police functions of any such government, or (d) any intergovernmental organization of U.S. entities, but ''Governmental Authority'' excludes any self-regulatory organization registered with the Commission.

(ii) ''*Highly Confidential Information*'' means any highly sensitive Member-specific, customer-specific, individual-specific, or otherwise sensitive information relating to the Operating Committee, Members, Vendors, Subscribers, or customers that is not otherwise Restricted Information. Highly Confidential Information includes: The Company's contract negotiations with the Processors or Administrator; personnel matters; information concerning the intellectual property of Members or customers; and any document subject to the Attorney-Client Privilege or Work Product Doctrine.

(jj) ''*Limit Up Limit Down*'' means the Plan to Address Extraordinary Market Volatility pursuant to Rule 608 of Regulation NMS under the Exchange Act.

(kk) ''*Losses*'' means losses, judgments, penalties (including excise and similar taxes and punitive damages), fines, settlements, and reasonable expenses (including reasonable attorneys' fees) actually incurred by such Company Indemnified Party as a Party to a Proceeding.

(ll) ''*Market*'' means (i) in respect of FINRA or a national securities association, the facilities through which FINRA Participants display quotations and report transactions in Eligible Securities to FINRA and (ii) in respect of each national securities exchange, the marketplace for Eligible Securities that such exchange operates.

(mm) ''*Market-Wide Circuit Breaker*'' means a halt in trading in all stocks in all Markets under the rules of a Primary Listing Market.

(nn) ''*Material SIP Latency*'' means a delay of quotation or last sale price information in one or more securities between the time data is received by the Processors and the time the Processors disseminate the data, which delay the Primary Listing Market determines, in consultation with, and in accordance with, publicly disclosed guidelines established by the Operating Committee, to be (a) material and (b) unlikely to be resolved in the near future.

(oo) ''*Member Observer*'' means any individual, other than a Voting Representative, that a Member, in its sole discretion, determines is necessary in connection with such Member's compliance with its obligations under Rule 608(c) of Regulation NMS to attend Operating Committee and subcommittee meetings.

(pp) ''*Membership Fee*'' means the fee to be paid by a new Member pursuant to Section 3.2.

(qq) ''*Membership Interest*'' means an interest in the Company owned by a Member.

(rr) ''*Nasdaq*'' means The Nasdaq Stock Market LLC.

(ss) ''*National Best Bid and Offer*'' has the meaning ascribed to the term ''national best bid and national best offer'' by Rule 600(b)(43) of Regulation NMS.

(tt) ''*National securities association*'' means a securities association that is registered under Section 15A of the Exchange Act.

(uu) ''*National securities exchange*'' means a securities exchange that is registered under Section 6 of the Exchange Act.

(vv) ''*Network A Security*'' means an Eligible Security for which NYSE is the Primary Listing Market.

(ww) ''*Network B Security*'' means an Eligible Security for which a national securities exchange other than NYSE or Nasdaq is the Primary Listing Market.

(xx) ''*Network C Security*'' means an Eligible Security for which Nasdaq is the Primary Listing Market.

(yy) ''*Non-Affiliated SRO*'' means a Member that is not affiliated with any other Member.

(zz) ''*Non-SRO Voting Representative*'' means an individual selected pursuant to Section 4.2(b) to serve on the Operating Committee.

(aaa) ''*NYSE*'' means the New York Stock Exchange LLC.

(bbb) ''*Officer*'' means each individual designated as an officer of the Company pursuant to Section 4.8.

(ccc) ''*Operating Committee*'' means the committee established under Article IV of this Agreement, each member of which shall be deemed a ''manager'' (as defined in the Delaware Act) and shall be referred to herein as a Voting Representative.

(ddd) ''*Operational Halt*'' means a halt in trading in one or more securities only on a Member's Market declared by such Member and is not a Regulatory Halt.

(eee) ''*Party to a Proceeding*'' means a Company Indemnified Party that is, was, or is threatened to be made, a party to a Proceeding, or is involved in a Proceeding, by reason of the fact that such Company Indemnified Party is or was a Member and/or an SRO Voting Representative.

(fff) ''*PDP*'' means a Member or non-Member's proprietary market data product that includes Transaction Reports and Quotation Information data in Eligible Securities from a Member's Market or a Trading Center, and if from a Member, is filed with the Commission.

(ggg) ''*Person*'' means an individual, corporation, partnership, joint venture, limited liability company, Governmental Authority, unincorporated organization, trust, association, or other entity.

(hhh) ''*Primary Listing Market*'' means the national securities exchange on which an Eligible Security is listed. If an Eligible Security is listed on more than one national securities exchange, Primary Listing Market means the exchange on which the security has been listed the longest.

(iii) ''*Proceeding*'' means any threatened, pending or completed suit, proceeding, or other action, whether civil, criminal, administrative, or arbitrative, or any appeal in such action or any inquiry or investigation that could lead to such an action.

(jjj) ''*Processor(s)*'' means the entity(ies) selected by the Company to perform the processing functions described in this Agreement and pursuant to the Processor Services Agreement(s), including the operation of the System.

(kkk) ''*Public Information*'' means: (i) Any information that is not either Restricted Information or Highly Confidential Information or that has not been designated as Confidential Information; (ii) any Confidential Information that has been approved by the Operating Committee for release to the public; (iii) the duly approved minutes of the Operating Committee with detail sufficient to inform the public on matters under discussion and the views expressed thereon (without attribution); (iv) Vendor, Subscriber and performance metrics; (v) Processor transmission metrics; and (vi) any information that is otherwise publicly available, except for information made public as a result of a violation of the Company's Confidentiality Policy or Applicable Law. Public Information includes, but is not limited to, any topic discussed during a meeting of the

Operating Committee, an outcome of a topic discussed, or a Final Decision of the Operating Committee.

(lll) ''*Regulatory Halt*'' means a halt declared by the Primary Listing Market in trading in one or more securities on all Trading Centers for regulatory purposes, including for the dissemination of material news, news pending, suspensions, or where otherwise necessary to maintain a fair and orderly market. A Regulatory Halt includes a trading pause triggered by Limit Up Limit Down, a halt based on Extraordinary Market Activity, a trading halt triggered by a Market-Wide Circuit Breaker, and a SIP Halt.

(mmm) ''*Restricted Information*'' means highly sensitive customer-specific financial information, customer-specific audit information, other customer financial information, and personal identifiable information.

(nnn) ''*Quotation Information*'' means all bids, offers, displayed quotation sizes, market center identifiers and, in the case of FINRA, the identifier of the FINRA Participant that entered the quotation, all withdrawals, and all other information pertaining to quotations in Eligible Securities required to be collected and made available to the Processors pursuant to this Agreement.

(ooo) ''*Regular Trading Hours*'' has the meaning provided in Rule 600(b)(68) of Regulation NMS. Regular Trading Hours can end earlier than 4:00 p.m. ET in the case of an early scheduled close.

(ppp) ''*Retail Representative*'' means an individual who (1) represents the interests of retail investors, (2) has experience working with or on behalf of retail investors, (3) has the requisite background and professional experience to understand the interests of retail investors, the work of the Operating Committee of the Company, and the role of market data in the U.S. equity market, and (4) is not affiliated with a Member or broker-dealer.

(qqq) ''*Self-regulatory organization*'' or ''*SRO*'' has the meaning provided in Section 3(a)(26) of the Exchange Act.

(rrr) ''*SIP Halt*'' means a Regulatory Halt to trading in one or more securities that a Primary Listing Market declares in the event of a SIP Outage or Material SIP Latency.

(sss) ''*SIP Halt Resume Time*'' means the time that the Primary Listing Market determines as the end of a SIP Halt.

(ttt) ''*SIP Outage*'' means a situation in which a Processor has ceased, or anticipates being unable, to provide updated and/or accurate quotation or last sale price information in one or more securities for a material period that exceeds the time thresholds for an orderly failover to backup facilities established by mutual agreement among the Processors, the Primary Listing Market for the affected securities, and the Operating Committee unless the Primary Listing Market, in consultation with the affected Processor and the Operating Committee, determines that resumption of accurate data is expected in the near future.

(uuu) ''*SRO Applicant*'' means (1) any Person that is not a Member and for which the Commission has published a Form 1 to be registered as a national securities exchange or national securities association to operate a Market, or (2) a national securities exchange that is not a Member and for which the Commission has published a proposed rules change to operate a Market.

(vvv) ''*SRO Group*'' means a group of Members that are Affiliates.

(www) ''*SRO Voting Representative*'' means an individual designated by each SRO Group and each Non-Affiliated SRO pursuant to Section 4.2(a) to vote on behalf of such SRO Group or such Non-Affiliated SRO.

(xxx) ''*Subscriber*'' means a Person that receives Current Transaction Reports or Quotation Information from the Processors or a Vendor and that itself is not a Vendor.

(yyy) ''*System*'' means all data processing equipment, software, communications facilities, and other technology and facilities, utilized by the Company or the Processors in connection with the collection, consolidation, and dissemination of Transaction Reports, Quotation Information, and other information concerning Eligible Securities.

(zzz) ''*Taxes*'' means taxes, levies, imposts, charges, and duties (including withholding tax, stamp, and transaction duties) imposed by any taxing authority together with any related interest, penalties, fines, and expenses in connection with them.

(aaaa) ''*Trading Center*'' has the same meaning as that term is defined in Rule 600(b)(82) of Regulation NMS.

(bbbb) ''*Transaction Reports*'' means reports required to be collected and made available pursuant to this Agreement containing the stock symbol, price, and size of the transaction executed, the Market in which the transaction was executed, and related information, including a buy/sell/cross indicator, trade modifiers, and any other required information reflecting completed transactions in Eligible Securities.

(cccc) ''*Transfer*'' means to directly sell, transfer, assign, pledge, encumber, hypothecate, or similarly dispose of, either voluntarily or involuntarily, by operation of law or otherwise, or to enter into any contract, option, or other arrangement or understanding with respect to the sale, transfer, assignment, pledge, encumbrance, hypothecation, or similar disposition of any Membership Interests owned by a Person or any interest (including a beneficial interest) in any Membership Interests owned by a Person. ''Transfer'' when used as a noun shall have a correlative meaning.

(dddd) ''*UTP Plan*'' means the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis.

(eeee) ''*Vendor*'' means a Person that the Administrator has approved to re-distribute Current Transaction Reports or Quotation Information to the Person's employees or to others.

(ffff) ''*Voting Representative*'' means an SRO Voting Representative or a Non-SRO Voting Representative.

Section 1.2 Interpretation

For purposes of this Agreement: (a) The words ''include,'' ''includes,'' and ''including'' shall be deemed to be followed by the words ''without limitation''; (b) the word ''or'' is not exclusive; and (c) the words ''herein,'' ''hereof,'' ''hereby,'' ''hereto,'' and ''hereunder'' refer to this Agreement as a whole. The definitions given for any defined terms in this Agreement shall apply equally to both the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine, and neuter forms. Unless the context otherwise requires, references herein: (x) to Articles, Sections, and Exhibits mean the Articles and Sections of, and Exhibits attached to, this Agreement; (y) to an agreement, instrument, or other document mean such agreement, instrument, or other document as amended, supplemented, and modified from time to time to the extent permitted by the provisions thereof; and (z) to a statute mean such statute as amended from time to time and includes any successor legislation thereto and any rules and regulations promulgated thereunder. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The Exhibits referred to herein shall be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim herein.

Article II. Organization

Section 2.1 Formation

(a) The Members formed the Company as a limited liability company on [•], [•] pursuant to the Delaware Act by filing a certificate of formation (the ''*Certificate*'') with the Delaware Secretary of State.

(b) This Agreement shall constitute the ''limited liability company agreement'' (as that term is used in the Delaware Act) of the Company. The rights, powers, duties, obligations, and liabilities of the Members shall be determined pursuant to the Delaware Act and this Agreement. To the extent that the rights, powers, duties, obligations, and liabilities of any Member are different by reason of any provision of this Agreement than they would be under the Delaware Act in the absence of such provision, this Agreement shall, to the extent permitted by the Delaware Act, control.

Section 2.2 Name

The name of the Company is ''CT Plan LLC'' and all Company business shall be conducted in that name or such other name or names as the Operating Committee may designate; *provided,* that the name shall always contain the words ''Limited Liability Company'' or the abbreviation ''L.L.C.'' or the designation ''LLC.''

Section 2.3 Registered Office; Registered Agent; Principal Office; Other Offices

(a) The registered office of the Company required by the Delaware Act to be maintained in the State of Delaware shall be the office of the initial registered agent named in the Certificate or such other office (which need not be a place of business of the Company) as the Operating Committee may designate from time to time in the manner provided by the Delaware Act and Applicable Law.

(b) The registered agent for service of process of the Company in the State of Delaware shall be the initial registered agent named in the Certificate or such other Person or Persons as the Operating Committee may designate from time to time in the manner provided by the Delaware Act and Applicable Law.

(c) The principal office of the Company shall be located at such place as the Operating Committee may designate from time to time, which need not be in the State of Delaware, and the Company shall maintain its books and records there. The Company shall give prompt notice to each of the Members of any change to the principal office of the Company.

(d) The Company may have such other offices as the Operating Committee may designate from time to time.

Section 2.4 Purpose; Powers

(a) The purposes of the Company are to engage in the following activities on behalf of the Members:

(i) The collection, consolidation, and dissemination of Transaction Reports, Quotation Information, and such other information concerning Eligible Securities as the Members shall agree as provided herein;

(ii) contracting for the distribution of such information;

(iii) contracting for and maintaining facilities to support any activities permitted in this Agreement and guidelines adopted hereunder, including the operation and administration of the System;

(iv) providing for those other matters set forth in this Agreement and in all guidelines adopted hereunder;

(v) operating the System to comply with Applicable Laws; and

(vi) engaging in any other business or activity that now or hereafter may be necessary, incidental, proper, advisable, or convenient to accomplish any of the foregoing purposes and that is not prohibited by the Delaware Act, the Exchange Act, or other Applicable Law.

(b) The Company shall have all the powers necessary or convenient to carry out the purposes for which it is formed, including the powers granted by the Delaware Act.

(c) It is expressly understood that each Member shall be responsible for the collection of Transaction Reports and Quotation Information within its Market and that nothing in this Agreement shall be deemed to govern or apply to the manner in which each Member does so.

Section 2.5 Term

The term of the Company commenced as of the date the Certificate was filed with the Secretary of State of the State of Delaware, and shall continue in existence perpetually until the Company is dissolved in accordance with the provisions of the Certificate or this Agreement. Notwithstanding the foregoing, this Agreement shall not become effective until the Effective Date.

Section 2.6 No State-Law Partnership

The Members intend that the Company not be a partnership (including a limited partnership) or joint venture, and that no Member be a partner or joint venturer of any other Member by virtue of this Agreement for any purposes other than as set forth in Sections 10.2 and 10.3, and neither this Agreement nor any other document entered into by the Company or any Member relating to the subject matter of this Agreement shall be construed to suggest otherwise.

Article III. Membership

Section 3.1 Members

The Members of the Company shall consist of the Persons identified in *Exhibit A,* as updated from time to time to reflect the admission of new Members pursuant to this Agreement.

Section 3.2 New Members

(a) Any national securities association or national securities exchange whose market, facilities, or members, as applicable, trades Eligible Securities may become a Member by (i) providing written notice to the Company, (ii) executing a joinder to this Agreement, at which time *Exhibit A* shall be amended to reflect the addition of such association or exchange as a Member, (iii) paying a Membership Fee to the Company as determined pursuant to Section 3.2(b), and (iv) executing a joinder to any other agreements to which all of the other Members have been made party in connection with being a Member. Membership Fees paid shall be added to the general revenues of the Company.

(b) The Membership Fee shall be based upon the following factors:

(i) The portion of costs previously paid by the Company (or by the Members prior to the formation of the Company) for the development, expansion, and maintenance of the System which, under GAAP, would have been treated as capital expenditures and would have been amortized over the five years preceding the admission of the new Member (and for this purpose all such capital expenditures shall be deemed to have a five-year amortizable life); and

(ii) an assessment of costs incurred and to be incurred by the Company for modifying the System or any part thereof to accommodate the new Member, which are not otherwise required to be paid or reimbursed by the new Member.

(a) Participants of the CQ Plan, CTA Plan, and UTP Plan are not be required to pay the Membership Fee.

Section 3.3 Transfer of Membership Interests

Except as set forth in Section 3.4, a Member shall not have the right to Transfer (whether in whole or in part) its Membership Interest in the Company.

Section 3.4 Withdrawal From Membership

(a) Any Member may voluntarily withdraw from the Company at any time on not less than 30 days' prior written notice (the ''Withdrawal Date''), by (i) providing such notice of such withdrawal to the Company, (ii) causing the Company to file with the Commission an amendment to effectuate the withdrawal and (iii) Transferring such Member's Membership Interest to the Company.

(b) A Member shall automatically be withdrawn from the Company upon such Member no longer being a registered national securities association or registered national securities exchange. Such Member's Membership Interest will automatically transfer to the Company. The Company shall file with the Commission an amendment to effectuate the withdrawal.

(c) A withdrawal of a Member shall not be effective until approved by the Commission after filing an amendment to the Agreement in accordance with Section 13.5.

(d) From and after the Withdrawal Date of such Member:

(i) Such Member shall remain liable for any obligations under this Agreement of such Member (including indemnification obligations) arising prior to the Withdrawal Date (but such Member shall have no further obligations under this Agreement or to any of the other Members arising after the Withdrawal Date);

(ii) Such Member shall be entitled to receive a portion of the Net Distributable Operating Income (if any) in accordance with *Exhibit D* attributable to the period prior to the Withdrawal Date of such Member;

(iii) Such Member shall cease to have the right to have its Transaction Reports, Quotation Information, or other information disseminated over the System; and

(iv) Profits and losses of the Company shall cease to be allocated to the Capital Account of such Member.

Section 3.5 Member Bankruptcy

In the event a Member becomes subject to one or more of the events of bankruptcy enumerated in Section 18–304 of the Delaware Act, that event by itself shall not cause a withdrawal of such Member from the Company so long as such Member continues to be a national securities association or national securities exchange.

Section 3.6 Undertaking by All Members

Following the Operative Date, each Member shall be required, pursuant to Rule 608(c), to comply with the provisions hereof and enforce compliance by its members with the provisions hereof.

Section 3.7 Obligations and Liability of Members

(a) Except as otherwise provided in this Agreement or Applicable Law, no Member shall be obligated to contribute capital or make loans to the Company.

(b) Except as provided in this Agreement or Applicable Law, no Member shall have any liability whatsoever in its capacity as a Member, whether to the Company, to any of the Members, to the creditors of the Company or to any other Person, for the debts, liabilities, commitments or any other obligations of the Company or for any losses of the Company. Notwithstanding the foregoing, to the extent that amounts have not been paid to the Processors or Administrator under the terms of the Processor Services Agreements and Administrative Services Agreement, respectively, or this Agreement, as and when due, (i) each Member shall be obligated to return to the Company its pro rata share of any moneys distributed to such Member in the one year period prior to such default in payment (such pro rata share to be based upon such Member's proportionate receipt of the aggregate distributions made to all Members in such one year period) until an aggregate amount equal to the amount of any such defaulted payments has been re-contributed to the Company and (ii) the Company shall promptly pay such amount to the Processors or Administrator, as applicable.

(c) In accordance with the Delaware Act, a member of a limited liability company may, under certain circumstances, be required to return amounts previously distributed to such member. It is the intent of the Members that no distribution to any Member pursuant to this Agreement shall be deemed a return of money or other property paid or distributed in violation of the Delaware Act. The payment of any such money or distribution of any such property to a Member shall be deemed to be a compromise within the meaning of the Delaware Act, and the Member receiving any such money or property shall not be required to return any such money or property to any Person; *provided, however,* that a Member shall be required to return to the Company any money or property distributed to it in clear and manifest accounting or similar error or as otherwise provided in Section 3.7(b). However, if any court of competent jurisdiction holds that, notwithstanding the provisions of this Agreement, any Member is obligated to make any such payment, such obligation shall be the obligation of such Member and not of the Operating Committee.

(d) No Member (unless duly authorized by the Operating Committee) has the authority or power to represent, act for, sign for or bind the Company or to make any expenditure on behalf of the Company; *provided, however,* that the Tax Matters Partner may represent, act for, sign for or bind the Company as permitted under Sections 10.2 and 10.3 of this Agreement.

(e) To the fullest extent permitted by law, no Member shall, in its capacity as a Member, owe any duty (fiduciary or otherwise) to the Company or to any other Member other than the duties expressly set forth in this Agreement.

Article IV. Management of the Company

Section 4.1 Operating Committee

(a) Except for situations in which the approval of the Members is required by this Agreement, the Company shall be managed by the Operating Committee. Unless otherwise expressly provided to the contrary in this Agreement, no Member shall have authority to act for, or to assume any obligation or responsibility on behalf of, the Company, without the prior approval of the Operating Committee. Without limiting the generality of the foregoing and except as otherwise expressly provided in this Agreement, the Operating Committee shall have full and complete discretion to manage and control the business and affairs of the Company, to make all decisions affecting the business and affairs of the Company, and to take all such actions as it deems necessary or appropriate to accomplish the purposes of the Company, including the following:

(i) Proposing amendments to this Agreement or implementing other policies and procedures as necessary to ensure prompt, accurate, reliable, and fair collection, processing, distribution, and publication of information with respect to Transaction Reports and Quotation Information in Eligible Securities and the fairness and usefulness of the form and content of that information;

(ii) selecting, overseeing, specifying the role and responsibilities of, and evaluating the performance of, the Administrator, the Processors, an auditor, and other professional service providers, provided that any expenditures for professional services that are paid for from the Company's revenues must be for activities

consistent with the terms of this Agreement and must be authorized by the Operating Committee;

(iii) developing and maintaining fair and reasonable Fees and consistent terms for the distribution, transmission, and aggregation of core data;

(iv) reviewing the performance of the Processors and ensuring the public reporting of Processors' performance and other metrics and information about the Processors;

(v) assessing the marketplace for equity market data products and ensuring that the CT Feeds are priced in a manner that is fair and reasonable, and designed to ensure the widespread availability of CT Feeds data to investors and market participants;

(vi) designing a fair and reasonable revenue allocation formula for allocating plan revenues to be applied by the Administrator, and overseeing, reviewing, and revising that formula as needed;

(vii) interpreting the Agreement and its provisions; and

(viii) carrying out such other specific responsibilities as provided under this Agreement.

(b) The Operating Committee may delegate all or part of its administrative functions under this Agreement to a subcommittee, to one or more of the Members, to one or more Non-SRO Voting Representatives, or to other Persons (including the Administrator), and any Person to which administrative functions are so delegated shall perform the same as agent for the Company, in the name of the Company. For the avoidance of doubt, no delegation to a subcommittee shall contravene Section 4.3 and no subcommittee shall take actions requiring approval of the Operating Committee pursuant to Section 4.3 unless such approval shall have been obtained. Any authority delegated hereunder is subject to the provisions of Section 4.3 hereof.

(c) It is expressly agreed and understood that neither the Company nor the Operating Committee shall have authority in any respect of any Member's proprietary systems. Neither the Company nor the Operating Committee shall have any authority over the collection and dissemination of quotation or transaction information in Eligible Securities in any Member's Market, or, in the case of FINRA, from FINRA Participants.

Section 4.2 Composition and Selection of Operating Committee

(a) *SRO Voting Representatives.* The Operating Committee shall include one SRO Voting Representative designated by each SRO Group and each Non-Affiliated SRO to vote on behalf of such SRO Group or such Non-Affiliated SRO. Each SRO Group and each Non-Affiliated SRO may designate an alternate individual or individuals who shall be authorized to vote on behalf of such SRO Group or such Non-Affiliated SRO, respectively, in the absence of the designated SRO Voting Representative.

(b) *Non-SRO Voting Representatives.* The Operating Committee shall include one Non-SRO Voting Representative from each of the following categories: (A) An institutional investor; (B) a broker-dealer with a predominantly retail investor customer base; (C) a broker-dealer with a predominantly institutional investor customer base; (D) a securities market data vendor that is not affiliated or associated with a Member, broker-dealer, or investment adviser with third-party clients; (E) an issuer of NMS stock that is not affiliated or associated with a Member, broker-dealer, or investment adviser with third-party clients; and (F) a Retail Representative. Non-SRO Voting Representatives shall serve for two-year terms for a maximum of two terms total, whether consecutive or non-consecutive. Non-SRO Voting Representatives will be selected pursuant to the following procedures:

(i) The initial Non-SRO Voting Representative for each category shall be selected by a majority vote of the Advisory Committee Members. The Advisory Committee Members shall follow the procedure set forth in subparagraph (b)(v) below.

(ii) Although the Non-SRO Voting Representatives will be selected at the same time, the Non-SRO Voting Representatives' terms will be staggered to allow for continuity of representation. The Non-SRO Voting Representatives' terms will begin in accordance with the following timeline after the Effective Date of the Agreement:

(A) Issuer Representative: First Quarterly Operating Committee Meeting after Effective Date;

(B) Retail Representative: First Quarterly Operating Committee Meeting after Effective Date;

(C) Institutional investor: First Quarterly Operating Committee Meeting after Effective Date

(D) Securities market data vendor: Third Quarterly Operating Committee Meeting after Effective Date;

(E) Broker-dealer with a predominantly retail investor customer base: Third Quarterly Operating Committee Meeting after Effective Date; and

(F) Broker-dealer with a predominantly institutional investor customer base: Third Quarterly Operating Committee Meeting Effective Date.

(iii) Although certain Non-SRO Voting Representatives' official, two-year terms will not begin until the Third Quarterly Operating Committee Meeting after the Effective Date, such Non-SRO Voting Representatives will temporarily serve as a Non-SRO Voting Representative as of their selection. Such Non-SRO Voting Representatives may still be selected for another two-year term.

(iv) After the expiration of a Non-SRO Voting Representative's term, an individual will be selected by a majority of the then-serving Non-SRO Voting Representatives to fill the position.

(v) Procedure for Nominating and Electing Non-SRO Voting Representatives.

(A) At least two months prior to the expiring term of a Non-SRO Voting Representative, the Operating Committee shall post a notice on its website requesting nominations from the public for the upcoming open position. Members may submit individuals for consideration during the nomination process, and the Non-SRO Voting Representative may nominate themselves as long as they have not served the maximum number of terms.

(B) At least one month prior to the expiring term of a Non-SRO Voting Representative, the Non-SRO Voting Representatives shall review the nominated individuals to confirm, by a majority vote, the nominated individuals that meet the requirements of the category up for election.

(C) Within a week of the Non-SRO Voting Representatives finalizing the list of eligible individuals, the Operating Committee shall post a notice on the Company website listing the individuals nominated for the open position and requesting comment from the public. After the Non-SRO Voting Representatives screen comments for appropriateness, the public comments will be posted on the Company's website. Prior to electing an individual from the list of nominations, the Non-SRO Voting Representatives will consider and discuss the public comments.

(D) The Non-SRO Voting Representatives whose terms are expiring may vote in the election for an open position; *provided, however,* that a Non-SRO Voting Representative may not vote in the election for an open position for which they are nominated.

(E) In the event that no nominated individual receives a majority of votes, the individual(s) with the lowest number of votes will be eliminated from consideration. The Non-SRO Voting Representatives will repeat this process

until an individual receives a majority of votes. In the event two candidates remain, the Person receiving the most votes will be elected.

(vi) A Non-SRO Voting Representative may resign from the Operating Committee by tendering their resignation to the Chair of the Operating Committee. In the event a Non-SRO Voting Representative leaves his or her employment or changes his or her duties within the firm to a position unrelated to the category he or she represents before the expiration of his or her term, the Non-SRO Voting Representative shall tender his or her resignation to the Chair of the Operating Committee or be removed upon an affirmative vote of the Operating Committee pursuant to Section 4.3.

(vii) In the event a Non-SRO Voting Representative resigns or is removed from the Operating Committee, the Operating Committee shall, as soon as practicable, follow the procedure set forth in subparagraph (b)(v). The individual selected shall serve out the remaining term of the resigning Non-SRO Voting Representative and, if the remaining term after selection is less than one year, such individual will automatically serve an additional two-year term. If the remaining term after selection is greater than one year, the Operating Committee shall follow the procedure set forth in subparagraph (b)(v) at the end of the term. Under either circumstance, such individual may be elected for one additional two-year term before reaching the term limit.

(viii) Each Non-SRO Voting Representative will agree in writing to comply with the requirements of Section 4.10 and Exhibit B thereto and the Confidentiality Policy set forth in Exhibit C.

(c) An SRO Applicant will be permitted to appoint one individual to attend (subject to Section 4.4(i)) regularly scheduled Operating Committee meetings in the capacity of a non-voting observer (each, an ''*SRO Applicant Observer*''). Each SRO Applicant may designate an alternate individual or individuals who shall be authorized to act as the SRO Applicant Observer on behalf of the SRO Applicant in the absence of the designated SRO Applicant Observer. If the SRO Applicant's Form 1 petition or Section 19(b)(1) filing is withdrawn, returned, or is otherwise not actively pending with the Commission for any reason, then the SRO Applicant will no longer be eligible to have an SRO Applicant Observer attend Operating Committee meetings.

(d) Notwithstanding anything to the contrary herein, (i) a national securities exchange that has ceased operations as a Market (or has yet to commence operation as a Market) and that is a Non-Affiliated SRO will not be permitted to designate an SRO Voting Representative and (ii) an SRO Group in which all national securities exchanges have ceased operations as a Market (or have yet to commence operation as a Market) will not be permitted to designate an SRO Voting Representative. Such SRO Group or Non-Affiliated SRO may attend the Operating Committee as an observer but may not attend the Executive Session of the Operating Committee. In the event such an SRO Group or Non-Affiliated SRO does not commence operation as a Market for six months after first attending an Operating Committee meeting, such SRO Group or Non-Affiliated SRO may no longer attend the Operating Committee until it commences/re-commences operation as a Market.

Section 4.3 Action of Operating Committee

(a) The SRO Voting Representatives and Non-SRO Voting Representatives shall be allocated votes as follows:

(i) Each SRO Voting Representative shall be authorized to cast one vote on behalf of the SRO Group or Non-Affiliated SRO that he or she represents, *provided, however,* that each SRO Voting Representative representing an SRO Group or Non-Affiliated SRO whose combined market center(s) have consolidated equity market share of more than fifteen (15) percent during four of the six calendar months preceding an Operating Committee vote shall be authorized to cast two votes. For purposes of this Section 4.3(a)(i), ''consolidated equity market share'' means the average daily dollar equity trading volume of Eligible Securities of an SRO Group or Non-Affiliated SRO as a percentage of the average daily dollar equity trading volume of all of the SRO Groups and Non-Affiliated SROs, as reported under this Agreement. For the avoidance of doubt, FINRA shall not be considered to operate a market center within the meaning of this Section 4.3(a)(i) solely by virtue of facilitating trade reporting of Eligible Securities through the FINRA/Nasdaq Trade Reporting Facility Carteret, the FINRA/Nasdaq Trade Reporting Facility Chicago, the FINRA/NYSE Trade Reporting Facility, or any other trade reporting facility that FINRA may operate from time to time in affiliation with a registered national securities exchange to provide a mechanism for FINRA Participants to report transactions in Eligible Securities effected otherwise than on an exchange.

(ii) With respect to any action on which the Non-SRO Voting Representatives may vote, the aggregate number of votes attributed to the Non-SRO Voting Representatives eligible to vote on such action shall at all times equal one half of the aggregate number of votes attributed to the votes of the SRO Voting Representatives who are eligible to vote on such action, and the number of Non-SRO Voting Representative votes shall increase or decrease as necessary to maintain the ratio between votes attributed to the SRO Voting Representatives and votes attributed to the Non-SRO Voting Representatives. Votes attributed to Non-SRO Voting Representatives will be allocated equally among Non-SRO Voting Representatives eligible to vote, in fractional shares if necessary.

(b) All actions of the Operating Committee will require an augmented majority vote consisting of the affirmative vote of not less than (2/3rd) two-thirds of all votes allocated in the manner described in Section 4.3(a) to Voting Representatives who are eligible to vote on such action, combined with a majority (greater than (50) fifty percent of the votes) of all votes allocated in the manner described in Section 4.3(a) to SRO Voting Representatives who are eligible to vote on such action.

(c) Notwithstanding Section 4.3(b), the following actions will not require an augmented majority vote of the Operating Committee:

(i) the selection of Non-SRO Voting Representatives pursuant to Section 4.2(b);

(ii) the decision to enter Executive Session pursuant to Section 4.4(g);

(iii) decisions concerning the operation of the Company as an LLC as specified in Section 10.3 and Section 11.2;

(iv) modifications to LLC-related provisions of the Agreement pursuant to Section 13.5(b); and

(v) the selection of Officers of the Company, other than the Chair, pursuant to Section 4.8.

Section 4.4 Meetings of the Operating Committee

(a) Subject to Section 4.4(g), meetings of the Operating Committee may be attended by each Voting Representative, Member Observers, SRO Applicant Observers, SEC staff, and other persons as deemed appropriate by the Operating Committee. Meetings shall be held at such times and locations as shall from time to time be determined by the Operating Committee. Member Observers shall be entitled to receive notice of all meetings of the Company and to attend and participate in any

discussion at any such meeting, but shall not be entitled to vote on any matter.

(b) Special meetings of the Operating Committee may be called by the Chair on at least 24 hours' notice to each Voting Representative and all persons eligible to attend Operating Committee meetings.

(c) Any action requiring a vote can be taken at a meeting only if a quorum of all Voting Representatives is present. A quorum is equal to the minimum votes necessary to obtain approval under Section 4.3(b), *i.e.,* Voting Representatives reflecting 2/3rd of Operating Committee votes eligible to vote on such action and SRO Voting Representatives reflecting 50% of SRO Voting Representative votes eligible to vote on such action.

(i) Any Voting Representative recused from voting on a particular action (i) mandatorily pursuant to Section 4.10(b) or (ii) upon a Voting Representative's voluntary recusal, shall not be considered in the numerator or denominator of the calculations in paragraph (c) for determining whether a quorum is present.

(ii) A Voting Representative is considered present at a meeting only if such Voting Representative is either in physical attendance at the meeting or participating by conference telephone or other electronic means that enables each Voting Representative to hear and be heard by all others present at the meeting.

(d) A summary of any action sought to be resolved at a meeting shall be sent to each Voting Representative entitled to vote on such matter at least one week prior to the meeting via electronic mail, portal notification, or regular U.S. or private mail (or if one week is not practicable, then with as much time as may be reasonably practicable under the circumstances); *provided, however,* that this requirement to provide a summary of any action prior to a meeting may be waived by the vote of the percentage of the Committee required to vote on any particular matter, under Section 4.3 above.

(e) Beginning with the first quarterly meeting of the Operating Committee following the Operative Date, the Chair of the Operating Committee shall be elected for a one-year term from the constituent SRO Voting Representatives (and an election for the Chair shall be held every year). Subject to the requirements of Section 4.3 hereof, the Chair shall have the authority to enter into contracts on behalf of the Company and otherwise bind the Company, but only as directed by the Operating Committee. The Chair shall designate a Person to act as Secretary to record the minutes of each meeting. The location of meetings shall be in a location capable of holding the number of attendees of such meetings, or such other locations as may from time to time be determined by the Operating Committee.

(i) To elect a Chair, the Operating Committee will elicit nominations for those individuals to be considered for Chair.

(ii) In the event that no nominated Person is elected by an affirmative vote of the Operating Committee pursuant to Section 4.3, the Person(s) with the lowest number of votes will be eliminated from consideration. The Operating Committee will repeat this process until a Person is elected by affirmative vote of the Operating Committee pursuant to Section 4.3. In the event two candidates remain and neither is elected by an affirmative vote of the Operating Committee pursuant to Section 4.3, the Person receiving the most votes from SRO Voting Representatives will be elected.

(f) Meetings may be held by conference telephone or other electronic means that enables each Voting Representative to hear and be heard by all others present at the meeting.

(g) Notwithstanding any other provision of this Agreement, SRO Voting Representatives, Member Observers, SEC Staff, and other persons as deemed appropriate by the SRO Voting Representatives may meet in Executive Session of the Operating Committee to discuss an item of business for which it is appropriate to exclude Non-SRO Voting Representatives. A request to create an Executive Session must be included on the written agenda for an Operating Committee meeting, along with the clearly stated rationale as to why such item to be discussed would be appropriate for Executive Session. The creation of an Executive Session will be by a majority vote of SRO Voting Representatives with votes allocated pursuant to Section 4.3(a)(1). The Executive Session shall only discuss the topic for which it was created and shall be disbanded upon fully discussing the topic.

(i) Items for discussion within an Executive Session should be limited to such topics as:

(A) Any topic that requires discussion of Highly Confidential Information;

(B) Vendor or Subscriber Audit Findings; and

(C) Litigation matters.

(ii) The list provided in subparagraph (i) is not dispositive of all matters that may by their nature require discussion in an Executive Session. The mere fact that a topic is controversial or a matter of dispute does not, by itself, make a topic appropriate for Executive Session. The minutes for an Executive Session shall include the reason for including any item in Executive Session.

(iii) Requests to discuss a topic in Executive Session must be included on the written agenda for the Operating Committee meeting, along with the clearly stated rationale for each topic as to why such discussion is appropriate for Executive Session. Such rationale may be that the topic to be discussed falls within the list provided in subparagraph (g)(i).

(iv) Any action that requires a vote in Executive Session will require a majority of the votes allocated in the manner described in Section 4.3(a) to SRO Voting Representatives eligible to vote on such action.

Section 4.5 Certain Transactions

The fact that a Member or any of its Affiliates is directly or indirectly interested in or connected with any Person employed by the Company to render or perform a service, or from which or to whom the Company may buy or sell any property, shall not prohibit the Company from employing or dealing with such Person.

Section 4.6 Company Opportunities

(a) Each Member, its Affiliates, and each of their respective equity holders, controlling persons and employees may have business interests and engage in business activities in addition to those relating to the Company. Neither the Company nor any Member shall have any rights by virtue of this Agreement in any business ventures of any such Person.

(b) Each Member expressly acknowledges that (i) the other Members are permitted to have, and may presently or in the future have, investments or other business relationships with Persons engaged in the business of the Company other than through the Company (an ''*Other Business*''), (ii) the other Members have and may develop strategic relationships with businesses that are and may be competitive or complementary with the Company, (iii) the other Members shall not be obligated to recommend or take any action that prefers the interests of the Company or any Member over its own interests, (iv) none of the other Members will be prohibited by virtue of their ownership of equity in the Company or service on the Operating Committee (or body performing similar duties) from pursuing and engaging in any such activities, (v) none of the other

Members will be obligated to inform or present to the Company any such opportunity, relationship, or investment, (vi) such Member will not acquire or be entitled to any interest or participation in any Other Business as a result of the participation therein of any of the other Members, and (vii) the involvement of another Member in any Other Business in and of itself will not constitute a conflict of interest by such Person with respect to the Company or any of the Members.

Section 4.7 Subcommittees

(a) Subject to Section 4.1, the Operating Committee shall have the power and right, but not the obligation, to create and disband subcommittees of the Operating Committee and to determine the duties, responsibilities, powers, and composition of such subcommittees. Subcommittee chairs will be selected by the Chair of the Operating Committee from SRO Voting Representatives or Member Observers with input from the Operating Committee.

(b) SRO Voting Representatives, Non-SRO Voting Representatives, Member Observers, SEC Staff, and other persons as deemed appropriate by the Operating Committee may attend meetings of any subcommittees.

(c) Notwithstanding paragraph (b), SRO Voting Representatives, Member Observers, and other persons as deemed appropriate by the SRO Voting Representatives may meet in a subcommittee to discuss an item subject to the attorney-client privilege of the Company or that is attorney work product of the Company.

Section 4.8 Officers

(a) In addition to the Chair and Secretary, the Members may (but need not), from time to time, designate and appoint one or more persons as an Officer of the Company by a majority vote of the Members. Other than the Chair, no Officer need be a Voting Representative. Any Officers so designated shall have such authority and perform such duties as the Members may, from time to time, delegate to them. Any such delegation may be revoked at any time by a majority vote of the Members in their sole discretion. The Members may assign titles to particular Officers. Each Officer shall hold office until such Officer's successor shall be duly designated or until such Officer's death, resignation, or removal as provided in this Agreement. Any number of offices may be held by the same individual. Officers shall not be entitled to receive salary or other compensation, unless approved by the Members by a majority vote.

(b) Any Officer may resign at any time. Such resignation shall be made in writing and shall take effect at the time specified in the notice, or if no time be specified, at the time of its receipt by the Members. The acceptance of a resignation shall not be necessary to make it effective.

(c) Any Officer may be removed at any time upon the majority vote of the Members.

Section 4.9 Commission Access to Information

Nothing in this Agreement shall be interpreted to limit or impede the rights of the Commission to access information of the Company or any of the Members (including their employees) pursuant to U.S. federal securities laws and the rules and regulations promulgated thereunder.

Section 4.10 Disclosure of Potential Conflicts of Interest; Recusal

(a) *Disclosure Requirements.* The Members, the Processors, the Administrator, the Non-SRO Voting Representatives, and each service provider or subcontractor engaged in Company business (including the audit of Subscribers' data usage) that has access to Restricted or Highly Confidential information (for purposes of this section, ''*Disclosing Parties*'') shall complete the applicable questionnaire to provide the required disclosures set forth below to disclose all material facts necessary to identify potential conflicts of interest. The Operating Committee, a Member, Processors, or Administrator may not use a service provider or subcontractor on Company business unless that service provider or subcontractor has agreed in writing to provide the disclosures required by this section and has submitted completed disclosures to the Administrator prior to starting work. If state laws, rules, or regulations, or applicable professional ethics rules or standards of conduct, would act to restrict or prohibit a Disclosing Party from making any particular required disclosure, a Disclosing Party shall refer to such law, rule, regulation, or professional ethics rule or standard and include in response to that disclosure the basis for its inability to provide a complete response. This does not relieve the Disclosing Party from disclosing any information it is not restricted from providing.

(i) A potential conflict of interest may exist when personal, business, financial, or employment relationships could be perceived by a reasonable objective observer to affect the ability of a person to be impartial.

(ii) Updates to Disclosures. Following a material change in the information disclosed pursuant to Section 4.10(a), a Disclosing Party shall promptly update its disclosures. Additionally, a Disclosing Party shall update annually any inaccurate information prior to the Operating Committee's first quarterly meeting of a calendar year.

(iii) Public Dissemination of Disclosures. The Disclosing Parties shall provide the Administrator with its disclosures and any required updates. The Administrator shall ensure that the disclosures are promptly posted to the Company's website.

(iv) The Company will arrange for Disclosing Parties that are not Members or Non-SRO Voting Representatives to comply with the required disclosures and recusals under this Section 4.10 and *Exhibit B* in their respective agreements with either the Company, a Member, the Administrator, or the Processors.

(b) Recusal.

(i) A Disclosing Party may not appoint as its Voting Representative a person that is responsible for or involved with the procurement for, or development, modeling, pricing, licensing, or sale of PDP offered to customers of the CT Feeds if the person has a financial interest (including compensation) that is tied directly to the Disclosing Party's market data business or the procurement of market data and if that compensation would cause a reasonable objective observer to expect the compensation to affect the impartiality of the representative.

(ii) A Disclosing Party (including its representative(s), employees, and agents) will be recused from participating in Company activities if it has not submitted a required disclosure form or the Operating Committee votes that its disclosure form is materially deficient. The recusal will be in effect until the Disclosing Party submits a sufficiently complete disclosure form to the Administrator.

(iii) A Disclosing Party, including its representative(s), and its Affiliates and their representative(s), are recused from voting on matters in which it or its Affiliate (i) is seeking a position or contract with the Company or (ii) have a position or contract with the Company and whose performance is being evaluated by the Company.

(iv) All recusals, including a person's determination of whether to voluntarily recuse himself or herself, shall be reflected in the meeting minutes.

(c) *Required Disclosures.* As part of the disclosure regime, the Members, the Processors, the Administrator, Non-SRO

Voting Representatives, and service providers and subcontractors must respond to questions that are tailored to elicit responses that disclose the potential conflicts of interest as set forth in *Exhibit B.*

(d) If the Commission's approval order of the conflicts of interest policies filed by the CQ Plan, CTA Plan, or UTP Plan is stayed or overturned by a Governmental Authority, the requirements of this Section 4.10 and *Exhibit B* shall not apply.

Section 4.11 Confidentiality Policy

(a) The Members and Non-SRO Voting Representatives are subject to the Confidentiality Policy set forth in *Exhibit C* to the Plan. The Company will arrange for Covered Persons that are not Members or Non-SRO Voting Representatives to comply with the Confidentiality Policy under their respective agreements with either the Company, a Member, the Administrator, or the Processors.

(b) If the Commission's approval order of the confidentiality policy filed by the CQ Plan, CTA Plan, or UTP Plan is stayed or overturned by a Governmental Authority, the requirements of this Section 4.11 and *Exhibit C* shall not apply.

Article V. The Processors; Information; Indemnification

Section 5.1 General Functions of the Processors

Subject to the general direction of the Operating Committee, as more fully set forth in the agreement to be entered into between the Company and the Processors (the ''*Processor Services Agreements*''), the Company shall require the Processors to perform certain processing functions on behalf of the Company. Among other things, the Company shall require the Processors to collect from the Members, and consolidate and disseminate to Vendors and Subscribers, Transaction Reports and Quotation Information in Eligible Securities in a manner designed to assure the prompt, accurate, and reliable collection, processing, and dissemination of information with respect to all Eligible Securities in a fair and non-discriminatory manner.

Section 5.2 Evaluation of the Processors

The Processors' performance of their functions under the Processor Services Agreements shall be subject to review at any time as determined by a vote of the Operating Committee pursuant to Section 4.3; *provided, however,* that a review shall be conducted at least once every two calendar years but not more frequently than once each calendar year (unless the Processors have materially defaulted in their obligations under the Processor Services Agreements and such default has not been cured within the applicable cure period set forth in the Processor Services Agreements, in which event such limitation shall not apply). The Operating Committee may review the Processors at staggered intervals.

Section 5.3 Process for Selecting New Processors

(a) No later than upon the termination or withdrawal of a Processor or the expiration of a Processor Services Agreement with a Processor, the Operating Committee shall establish procedures for selecting a new Processor (the ''*Processor Selection Procedures*''). The Operating Committee, as part of the process of establishing Processor Selection Procedures, may solicit and consider the timely comment of any entity affected by the operation of this Agreement.

(b) The Processor Selection Procedures shall be established by the affirmative vote of the Operating Committee pursuant to Section 4.3, and shall set forth, at a minimum:

(i) The entity that will:

(A) Draft the Operating Committee's request for proposal for bids on a new Processor;

(B) assist the Operating Committee in evaluating bids for the new Processor; and

(C) otherwise provide assistance and guidance to the Operating Committee in the selection process;

(ii) the minimum technical and operational requirements to be fulfilled by the Processor;

(iii) the criteria to be considered in selecting the Processor; and

(iv) the entities (other than Voting Representatives) that are eligible to comment on the selection of the Processor.

Section 5.4 Transmission of Information to Processors by Members

(a) Quotation Information.

(i) Each Member shall, during the time it is open for trading, be responsible for promptly collecting and transmitting to the Processors accurate Quotation Information in Eligible Securities through any means set forth in the Processor Services Agreements to ensure that the Company complies with its obligations under the Processor Services Agreements.

(ii) Quotation Information shall include:

(A) Identification of the Eligible Security, using the Listing Market's symbol;

(B) the price bid and offered, together with size;

(C) for FINRA, the FINRA Participant along with the FINRA Participant's market participant identification or Member from which the quotation emanates;

(D) appropriate timestamps;

(E) identification of quotations that are not firm; and

(F) through appropriate codes and messages, withdrawals and similar matters.

(iii) In addition, Quotation Information shall include:

(A) In the case of a national securities exchange, the reporting Participant's matching engine publication timestamp; or

(B) in the case of FINRA, the quotation publication timestamp that FINRA's bidding or offering member reports to FINRA's quotation facility in accordance with FINRA rules. In addition, if FINRA's quotation facility provides a proprietary feed of its quotation information, then the quotation facility shall also furnish the Processors with the time of the quotation as published on the quotation facility's proprietary feed. FINRA shall convert any quotation times reported to it to nanoseconds and shall furnish such times to the Processors in nanoseconds since Epoch.

(b) Transaction Reports.

(i) Each Member shall, during the time it is open for trading, be responsible for promptly transmitting to the Processor Transaction Reports in Eligible Securities executed in its Market by means set forth in the Processor Services Agreements.

(ii) Transaction Reports shall include:

(A) Identification of the Eligible Security, using the Listing Market's symbol;

(B) the number of shares in the transaction;

(C) the price at which the shares were purchased or sold;

(D) the buy/sell/cross indicator;

(E) appropriate timestamps;

(F) the Market of execution; and

(G) through appropriate codes and messages, late or out-of-sequence trades, corrections, and similar matters.

(iii) In addition, Transaction Reports shall include the time of the transaction as identified in the Participant's matching engine publication timestamp. However, in the case of FINRA, the time of the transaction shall be the time of execution that a FINRA member reports to a FINRA trade reporting facility in accordance with FINRA rules. In

addition, if the FINRA trade reporting facility provides a proprietary feed of trades reported by the trade reporting facility to the Processor, then the FINRA trade reporting facility shall also furnish the Processors with the time of the transmission as published on the facility's proprietary feed. The FINRA trade reporting facility shall convert times that its members report to it to nanoseconds and shall furnish such times to the Processors in nanoseconds since Epoch.

(iv) Each Member shall (a) transmit all Transaction Reports in Eligible Securities to the Processors as soon as practicable, but not later than 10 seconds, after the time of execution, (b) establish and maintain collection and reporting procedures and facilities reasonably designed to comply with this requirement, and (c) designate as ''late'' any last sale price not collected and reported in accordance with the above-referenced procedures or as to which the Member has knowledge that the time interval after the time of execution is significantly greater than the time period referred to above. The Members shall seek to reduce the time period for reporting last sale prices to the Processors as conditions warrant.

(v) The following types of transactions are not required to be reported to the Processors pursuant to this Agreement:

(A) Transactions that are part of a primary distribution by an issuer or of a registered secondary distribution or of an unregistered secondary distribution;

(B) transactions made in reliance on Section 4(a)(2) of the Securities Act of 1933;

(C) transactions in which the buyer and the seller have agreed to trade at a price unrelated to the current market for the security (*e.g.,* to enable the seller to make a gift);

(D) the acquisition of securities by a broker-dealer as principal in anticipation of making an immediate exchange distribution or exchange offering on an exchange;

(E) purchases of securities pursuant to a tender offer;

(F) purchases or sales of securities effected upon the exercise of an option pursuant to the terms thereof or the exercise of any other right to acquire securities at a pre-established consideration unrelated to the current market; and

(G) transfers of securities that are expressly excluded from trade reporting under FINRA rules.

(c) The following symbols shall be used to denote the applicable Member:

Code	Member
A	NYSE American LLC.
Z	Cboe BZX Exchange, Inc.
Y	Cboe BYX Exchange, Inc.
B	Nasdaq BX, Inc.
W	Cboe Exchange, Inc.
M	NYSE Chicago, Inc.
J	Cboe EDGA Exchange, Inc.
K	Cboe EDGX Exchange, Inc.
I	Nasdaq ISE, LLC.
V	Investors' Exchange LLC.
D	Financial Industry Regulatory Authority, Inc.
Q	The Nasdaq Stock Market LLC.
C	NYSE National, Inc.
N	New York Stock Exchange LLC.
P	NYSE Arca, Inc.
X	Nasdaq PHLX LLC.
L	Long-Term Stock Exchange Inc.
U	MEMX LLC.

(d) Indemnification.

(i) Each Member agrees, severally and not jointly, to indemnify and hold harmless and defend the Company, each other Member, the Processors, the Administrator, the Operating Committee, and each of their respective directors, officers, employees, agents, and Affiliates (each, an ''*Member Indemnified Party*'') from and against any and all loss, liability, claim, damage, and expense whatsoever incurred or threatened against such Member Indemnified Party as a result of a system error or disruption at such Member's Market affecting any Transaction Reports, Quotation Information, or other information reported to the Processors by such Member and disseminated by the Processors to Vendors and Subscribers. This indemnity shall be in addition to any liability that the indemnifying Member may otherwise have.

(ii) Promptly after receipt by a Member Indemnified Party of notice of the commencement of any action, such Member Indemnified Party will, if it intends to make a claim in respect thereof against an indemnifying Member, notify the indemnifying Member in writing of the commencement thereof; *provided, however,* that the failure to so notify the indemnifying Member will only relieve the indemnifying Member from any liability which it may have to any Member Indemnified Party to the extent such indemnifying Member is actually prejudiced by such failure. In case any such action is brought against any Member Indemnified Party and it promptly notifies an indemnifying Member of the commencement thereof, the indemnifying Member will be entitled to participate in, and, to the extent that it elects (jointly with any other indemnifying Member similarly notified), to assume and control the defense thereof with counsel chosen by it. After notice from the indemnifying Member of its election to assume the defense thereof, the indemnifying Member will not be liable to such Indemnified Party for any legal or other expenses subsequently incurred by such Member Indemnified Party in connection with the defense thereof but the Member Indemnified Party may, at its own expense, participate in such defense by counsel chosen by it without, however, impairing the indemnifying Member's control of the defense. If the indemnifying Member has assumed the defense in accordance with the terms hereof, the indemnifying Member may enter into a settlement or consent to any judgment without the prior written consent of the Member Indemnified Party if (i) such settlement or judgment involves monetary damages only, all of which will be fully paid by the indemnifying Member and without admission of fault or culpability on behalf of any Member Indemnified Party, and (ii) a term of the settlement or judgment is that the Person or Persons asserting such claim unconditionally and irrevocably release all Member Indemnified Parties from all liability with respect to such claim; otherwise, the consent of the Member Indemnified Party shall be required in order to enter into any settlement of, or consent to the entry of a judgment with respect to, any claim (which consent shall not be unreasonably withheld, delayed, or conditioned).

Section 5.5 Operational Issues

(a) Each Member shall be responsible for collecting and validating quotes and last sale reports within its own system prior to transmitting this data to the Processors.

(b) Each Member may utilize a dedicated Member line into the Processors to transmit Transaction Reports and Quotation Information to the Processors.

(c) Whenever a Member determines that a level of trading activity or other unusual market conditions prevent it from collecting and transmitting Transaction Reports or Quotation Information to the Processor, or where a trading halt or suspension in an Eligible Security is in effect in its Market, the Member shall promptly notify the Processors of such condition or event and shall resume collecting and transmitting Transaction Reports and Quotation Information to it as soon as the condition or event is terminated. In the event of a system malfunction resulting in the inability of a Member or its members to transmit Transaction Reports or Quotation Information to the

Processors, the Member shall promptly notify the Processors of such event or condition. Upon receiving such notification, the Processors shall take appropriate action, including either closing the quotation or purging the system of the affected quotations.

Article VI. The Administrator

Section 6.1 General Functions of the Administrator

Subject to the general direction of the Operating Committee, as more fully set forth in the agreement entered into between the Company and the Administrator (the ''*Administrative Services Agreement*''), the Administrator shall perform administrative functions on behalf of the Company including recordkeeping; administering Vendor and Subscriber contracts; administering Fees, including billing, collection, and auditing of Vendors and Subscribers; administering Distributions; tax functions of the Company; and the preparation of the Company's audited financial reports.

Section 6.2 Evaluation of the Administrator

The Administrator's performance of its functions under the Administrative Services Agreement shall be subject to review at any time as determined by an affirmative vote of the Operating Committee pursuant to Section 4.3; *provided, however,* that a review shall be conducted at least once every two calendar years but not more frequently than once each calendar year (unless the Administrator has materially defaulted in its obligations under the Administrative Services Agreement and such default has not been cured within the applicable cure period set forth in the Administrative Services Agreement, in which event such limitation shall not apply). The Operating Committee shall appoint a subcommittee or other Persons to conduct the review. The Company shall require the reviewer to provide the Operating Committee with a written report of its findings and to make recommendations (if necessary), including with respect to the continuing operation of the Administrator. The Administrator shall be required to assist and participate in such review. The Operating Committee shall notify the Commission of any recommendations it may approve as a result of the review of the Administrator and shall supply the Commission with a copy of any reports that may be prepared in connection therewith.

Section 6.3 Process for Selecting New Administrator

Prior to the Operative Date, upon the termination or withdrawal of the Administrator, or upon the expiration of the Administrative Services Agreement, the Operating Committee shall establish procedures for selecting a new Administrator (the ''Administrator Selection Procedures''). The Administrator selected by the Operating Committee may not be owned or controlled by a corporate entity that, either directly or via another subsidiary, offers for sale its own PDP. The Operating Committee, as part of the process of establishing Administrator Selection Procedures, may solicit and consider the timely comment of any entity affected by the operation of this Agreement. The Administrator Selection Procedures shall be established by the Voting Representatives pursuant to Section 4.3, and shall set forth, at a minimum:

(a) The entity that will:

(i) Draft the Operating Committee's request for proposal for bids on a new Administrator;

(ii) assist the Operating Committee in evaluating bids for the new Administrator; and

(iii) otherwise provide assistance and guidance to the Operating Committee in the selection process.

(b) the minimum technical and operational requirements to be fulfilled by the Administrator;

(c) the criteria to be considered in selecting the Administrator; and

(d) the entities (other than Voting Representatives) that are eligible to comment on the selection of the Administrator.

Article VII. Regulatory Matters

Section 7.1 Regulatory and Operational Halts

(a) Operational Halts. A Member shall notify the Processors if it has concerns about its ability to collect and transmit quotes, orders, or last sale prices, or where it has declared an Operational Halt or suspension of trading in one or more Eligible Securities, pursuant to the procedures adopted by the Operating Committee.

(b) Regulatory Halts.

(i) The Primary Listing Market may declare a Regulatory Halt in trading for any security for which it is the Primary Listing Market:

(A) As provided for in the rules of the Primary Listing Market;

(B) if it determines there is a SIP Outage, Material SIP Latency, or Extraordinary Market Activity; or

(C) in the event of national, regional, or localized disruption that necessitates a Regulatory Halt to maintain a fair and orderly market.

(ii) In making a determination to declare a Regulatory Halt under subparagraph (b)(i), the Primary Listing Market will consider the totality of information available concerning the severity of the issue, its likely duration, and potential impact on Member Firms and other market participants and will make a good-faith determination that the criteria of subparagraph (b)(i) have been satisfied and that a Regulatory Halt is appropriate. The Primary Listing Market will consult, if feasible, with the affected Trading Center(s), the other Members, or the Processors, as applicable, regarding the scope of the issue and what steps are being taken to address the issue. Once a Regulatory Halt under subparagraph (b)(i) has been declared, the Primary Listing Market will continue to evaluate the circumstances to determine when trading may resume in accordance with the rules of the Primary Listing Market.

(c) Initiating a Regulatory Halt.

(i) The start time of a Regulatory Halt is when the Primary Listing Market declares the halt, regardless of whether an issue with communications impacts the dissemination of the notice.

(ii) If a Processor is unable to disseminate notice of a Regulatory Halt or the Primary Listing Market is not open for trading, the Primary Listing Market will take reasonable steps to provide notice of a Regulatory Halt, which shall include both the type and start time of the Regulatory Halt, by dissemination through:

(A) PDP;

(B) posting on a publicly-available Member website; or

(C) system status messages.

(iii) Except in exigent circumstances, the Primary Listing Market will not declare a Regulatory Halt retroactive to a time earlier than the notice of such halt.

(iv) Resumption of Trading After Regulatory Halts Other Than SIP Halts. The Primary Listing Market will declare a resumption of trading when it makes a good-faith determination that trading may resume in a fair and orderly manner and in accordance with its rules.

(v) For a Regulatory Halt that is initiated by another Member that is a Primary Listing Market, a Member may resume trading after the Member receives notification from the Primary Listing Market that the Regulatory Halt has been terminated.

(d) Resumption of Trading After SIP Halt.

(i) The Primary Listing Market will determine the SIP Halt Resume Time. In

making such determination, the Primary Listing Market will make a good-faith determination and consider the totality of information to determine whether resuming trading would promote a fair and orderly market, including input from the Processors, the other Members, or the operator of the system in question (as well as any Trading Center(s) to which such system is linked), regarding operational readiness to resume trading. The Primary Listing Market retains discretion to delay the SIP Halt Resume Time if it believes trading will not resume in a fair and orderly manner.

(ii) The Primary Listing Market will terminate a SIP Halt with a notification that specifies a SIP Halt Resume Time. The Primary Listing Market shall provide a minimum notice of a SIP Halt Resume Time, as specified by the rules of the Primary Listing Market, during which period market participants may enter quotes and orders in the affected securities. During Regular Trading Hours, the last SIP Halt Resume Time before the end of Regular Trading Hours shall be an amount of time as specified by the rules of the Primary Listing Market. The Primary Listing Market may stagger the SIP Halt Resume Times for multiple symbols in order to reopen in a fair and orderly manner.

(iii) During Regular Trading Hours, if the Primary Listing Market does not open a security within the amount of time as specified by the rules of the Primary Listing Market after the SIP Halt Resume Time, a Member may resume trading in that security. Outside Regular Trading Hours, a Member may resume trading immediately after the SIP Halt Resume Time.

(e) Member to Halt Trading During Regulatory Halt. A Member will halt trading for any security traded on its Market if the Primary Listing Market declares a Regulatory Halt for the security.

(f) Communications. Whenever, in the exercise of its regulatory functions, the Primary Listing Market for an Eligible Security determines it is appropriate to initiate a Regulatory Halt, the Primary Listing Market will notify all other Members and the affected Processors of such Regulatory Halt as well as provide notice that a Regulatory Halt has been lifted using such protocols and other emergency procedures as may be mutually agreed to between the Members and the Primary Listing Market. The affected Processors shall disseminate to Members notice of the Regulatory Halt (as well as notice of the lifting of a Regulatory Halt) (i) through the CT Feeds or (ii) any other means the affected Processors, in its sole discretion, considers appropriate. Each Member shall be required to continuously monitor these communication protocols established by the Operating Committee and the Processors during market hours, and the failure of a Member to do so shall not prevent the Primary Listing Market from initiating a Regulatory Halt in accordance with the procedures specified herein.

Section 7.2 Hours of Operation of the System

(a) Quotation Information shall be entered, as applicable, by Members as to all Eligible Securities in which they make a market during Regular Trading Hours on all days the Processors are in operation. Transaction Reports shall be entered between 9:30 a.m. and 4:00:10 p.m. ET by Members as to all Eligible Securities in which they execute transactions during Regular Trading Hours on all days the Processors are in operation.

(b) Members that execute transactions in Eligible Securities outside of Regular Trading Hours, shall report such transactions as follows:

(i) Transactions in Eligible Securities executed between 4:00 a.m. and 9:29:59 a.m. ET and between 4:00:01 p.m. and 8:00 p.m. ET, shall be designated with an appropriate indicator to denote their execution outside normal market hours;

(ii) transactions in Eligible Securities executed after 8:00 p.m. and before 12:00 a.m. (midnight) shall be reported to the Processors between the hours of 4:00 a.m. and 8:00 p.m. ET on the next business day (T+1), and shall be designated ''as/of'' trades to denote their execution on a prior day, and be accompanied by the time of execution;

(iii) transactions in Eligible Securities executed between 12:00 a.m. (midnight) and 4:00 a.m. ET shall be transmitted to the Processors between 4:00 a.m. and 9:30 a.m. ET, on trade date, shall be designated with an appropriate indicator to denote their execution outside normal market hours, and shall be accompanied by the time of execution; and

(iv) transactions reported pursuant to this Section 7.3 shall be included in the calculation of total trade volume for purposes of determining Net Distributable Operating Revenue, but shall not be included in the calculation of the daily high, low, or last sale.

(c) Late trades shall be reported in accordance with the rules of the Member in whose Market the transaction occurred and can be reported between the hours of 4:00 a.m. and 8:00 p.m. ET.

(d) The Processors shall collect, process and disseminate Quotation Information in Eligible Securities at other times between 4:00 a.m. and 9:30 a.m. ET, and after 4:00 p.m. ET, when any Member or FINRA Participant is open for trading, until 8:00 p.m. ET (the ''*Additional Period*''); *provided, however,* that the National Best Bid and Offer quotation will not be disseminated before 4:00 a.m. or after 8:00 p.m. ET. Members that enter Quotation Information or submit Transaction Reports to the Processors during the Additional Period shall do so for all Eligible Securities in which they enter quotations.

Article VIII. Capital Contributions; Capital Accounts

Section 8.1 Capital Accounts

(a) A separate capital account (''*Capital Account*'') shall be established and maintained by the Company for each Member in accordance with section 704(b) of the Code and Treasury Regulation section 1.704–1 (b)(2)(iv). There shall be credited to each Member's Capital Account (i) the Capital Contributions (at fair market value in the case of contributed property) made by such Member (which shall be deemed to be zero for the initial Members), (ii) allocations of Company profits and gain (or items thereof) to such Member pursuant to Section 10.2 and (iii) any recaptured tax credits, or portion thereof, to the extent such increase to the tax basis of a Member's interest in the Company may be allowed pursuant to the Code. Each Member's Capital Account shall be decreased by (x) the amount of distributions (at fair market value in the case of property distributed in kind) to such Member, (y) allocations of Company losses to such Member (including expenditures which can neither by capitalized nor deducted for tax purposes, organization and syndication expenses not subject to amortization and loss on sale or disposition of the Company's assets, whether or not disallowed under sections 267 or 707 of the Code) pursuant to Section 10.2 and (z) any tax credits, or portion thereof, as may be required to be charged to the tax basis of a Membership Interest pursuant to the Code. Capital Accounts shall not be adjusted to reflect a Member's share of liabilities under section 752 of the Code.

(b) The fair market value of contributed, distributed, or revalued property shall be agreed to by the Operating Committee or, if there is no such agreement, by an appraisal.

(c) The foregoing provisions and the other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with

Treasury Regulation section 1.704–1(b) promulgated under section 704(b) of the Code, and shall be interpreted and applied in a manner consistent with such Treasury Regulations.

Section 8.2 Additional Capital Contributions

Except with the approval of the Operating Committee or as otherwise provided in this Section 8.2, no Member shall be obligated or permitted to make any additional contribution to the capital of the Company. The Members agree to make additional Capital Contributions from time to time as appropriate in respect of reasonable administrative and other reasonable expenses of the Company.

Section 8.3 Distributions

Except as set forth in this Section 8.3 and Section 11.2, and subject to the provisions of Section 13.1, Distributions shall be made to the Members at the times and in the aggregate amounts set forth in *Exhibit D.* Notwithstanding any provisions to the contrary contained in this Agreement, the Company shall not make a Distribution to a Member on account of its interest in the Company if such Distribution would violate Section 18–607 of the Delaware Act or other Applicable Law. Distributions may be made in cash or, if determined by the Operating Committee, in-kind. The Operating Committee may reserve amounts for anticipated expenses or contingent liabilities of the Company. In the event that additional Capital Contributions are called for, and any Member fails to provide the full amount of such additional Capital Contributions as set forth in the relevant resolution of the Operating Committee, any Distributions to be made to such defaulting Member shall be reduced by the amount of any required but unpaid Capital Contribution due from such Member.

Article IX. Allocations

Section 9.1 Calculation of Profits and Losses

To the fullest extent permitted by Applicable Law, the profits and losses of the Company shall be determined for each fiscal year in a manner consistent with GAAP.

Section 9.2 Allocation of Profits and Losses

(a) Except as otherwise set forth in this Section 9.2, for Capital Account purposes, all items of income, gain, loss, and deduction shall be allocated among the Members in accordance with *Exhibit D.*

(b) For federal, state and local income tax purposes, items of income, gain, loss, deduction, and credit shall be allocated to the Members in accordance with the allocations of the corresponding items for Capital Account purposes under this Section 9.2, except that items with respect to which there is a difference between tax and book basis will be allocated in accordance with Section 704(c) of the Code, the Treasury Regulations thereunder and Treasury Regulations Section 1.704–1(b)(4)(i).

(c) Notwithstanding any provision set forth in this Section 9.2, no item of deduction or loss shall be allocated to a Member to the extent the allocation would cause a negative balance in such Member's Capital Account (after taking into account the adjustments, allocations and distributions described in Treasury Regulations Sections 1.704–1(b)(2)(ii)(d)(4), (5) and (6)) that exceeds the amount that such Member would be required to reimburse the Company pursuant to this Agreement or Applicable Law.

(d) In the event any Member unexpectedly receives any adjustments, allocations, or distributions described in Treasury Regulations Sections 1.704–1(b)(2)(ii)(d)(4), (5) and (6), items of the Company's income and gain shall be specially allocated to such Member in an amount and manner sufficient to eliminate as quickly as possible any deficit balance in its Capital Account created by such adjustments, allocations or distributions in excess of that permitted under Section 10.2(c). Any special allocations of items of income or gain pursuant to this Section 10.2(d) shall be taken into account in computing subsequent allocations pursuant to this Section 10.2 so that the net amount of any items so allocated and all other items allocated to each Member pursuant to this Section 10.2 shall, to the extent possible, be equal to the net amount that would have been allocated to each such Member pursuant to the provisions of this Section 10.2 if such unexpected adjustments, allocations or distributions had not occurred.

Article X. Records and Accounting; Reports

Section 10.1 Accounting

(a) The Operating Committee shall maintain a system of accounting which enables the Company to produce accounting records and information substantially consistent with GAAP. The Fiscal Year of the Company shall be the calendar year unless Applicable Law requires a different Fiscal Year.

(b) All matters concerning accounting procedures shall be determined by the Operating Committee.

Section 10.2 Tax Status; Returns

(a) It is the intent of this Company and the Members that this Company shall be treated as a partnership for federal, state and local income tax purposes. Neither the Company nor any Member shall make an election for the Company to be classified as other than a partnership pursuant to Treasury Regulations Section 301.7701–3 or otherwise.

(b) The Company shall cause federal, state, and local income tax returns for the Company to be prepared and timely filed with the appropriate authorities and shall arrange for the timely delivery to the Members of such information as is necessary for such Members to prepare their federal, state and local tax returns. All tax returns shall be prepared in a manner consistent with the Distributions made in accordance with *Exhibit D.*

Section 10.3 Partnership Representative

(a) The Operating Committee shall appoint an entity as the ''Partnership Representative'' of the Company for purposes of Section 6223 of the Code and the Treasury Regulations promulgated thereunder, and all federal, state, and local Tax audits and litigation shall be conducted under the direction of the Partnership Representative.

(b) The Partnership Representative shall use reasonable efforts to inform each Member of all significant matters that may come to its attention by giving notice thereof and to forward to each Member copies of all significant written communications it may receive in such capacity. The Partnership Representative shall consult with the Members before taking any material actions with respect to tax matters, including actions relating to (i) an IRS examination of the Company commenced under Section 6231(a) of the Code, (ii) a request for administrative adjustment filed by the Company under Section 6227 of the Code, (iii) the filing of a petition for readjustment under Section 6234 of the Code with respect to a final notice of partnership adjustment, (iv) the appeal of an adverse judicial decision, and (v) the compromise, settlement, or dismissal of any such proceedings.

(c) The Partnership Representative shall not compromise or settle any tax audit or litigation affecting the Members without the approval of a majority of Members. Any material proposed action, inaction, or election to be taken

by the Partnership Representative, including the election under Section 6226(a)(1) of the Code, shall require the prior approval of a majority of Members.

Article XI. Dissolution and Termination

Section 11.1 Dissolution of Company

The Company shall dissolve, and its assets and business shall be wound up, upon the occurrence of any of the following events:

(a) Unanimous written consent of the Members to dissolve the Company;

(b) The sale or other disposition of all or substantially all the Company's assets outside the ordinary course of business;

(c) An event which makes it unlawful or impossible for the Company business to be continued;

(d) The withdrawal of one or more Members such that there is only one remaining Member; or

(e) The entry of a decree of judicial dissolution under § 18–802 of the Delaware Act.

Section 11.2 Liquidation and Distribution

Following the occurrence of an event described in Section 11.1, the Members shall appoint a liquidating trustee who shall wind up the affairs of the Company by (i) selling its assets in an orderly manner (so as to avoid the loss normally associated with forced sales), and (ii) applying and distributing the proceeds of such sale, together with other funds held by the Company: (a) *First,* to the payment of all debts and liabilities of the Company; (b) *second,* to the establishments of any reserves reasonably necessary to provide for any contingent recourse liabilities and obligations; (c) *third,* to the Members in accordance with *Exhibit D;* and (d) *fourth,* to the Members as determined by a majority of Members.

Section 11.3 Termination

Each of the Members shall be furnished with a statement prepared by the independent accountants retained on behalf of the Company, which shall set forth the assets and liabilities of the Company as of the date of the final distribution of Company's assets under Section 10.2 and the net profit or net loss for the fiscal period ending on such date. Upon compliance with the distribution plan set forth in Section 10.2, the Members shall cease to be such, and the liquidating trustee shall execute, acknowledge, and cause to be filed a certificate of cancellation of the Company. Upon completion of the dissolution, winding up, liquidation, and distribution of the liquidation proceeds, the Company shall terminate.

Article XII. Exculpation and Indemnification

Section 12.1 Exculpation

Each Member, by and for itself, each of its Affiliates and each of its and their respective equity holders, directors, officers, controlling persons, partners, employees, successors and assigns, hereby acknowledges and agrees that it is the intent of the Company and each Member that the liability of each Member and each individual currently or formerly serving as an SRO Voting Representative (each, an ''*Exculpated Party*'') be limited to the maximum extent permitted by Applicable Law or as otherwise expressly provided herein. In accordance with the foregoing, the Members hereby acknowledge and agree that:

(a) To the maximum extent permitted by Applicable Law or as otherwise expressly provided herein, no present or former Exculpated Party or any of such Exculpated Party's Affiliates, heirs, successors, assigns, agents or representatives shall be liable to the Company or any Member for any loss suffered in connection with a breach of any fiduciary duty, errors in judgment or other acts or omissions by such Exculpated Party; *provided, however,* that this provision shall not eliminate or limit the liability of such Exculpated Party for (i) acts or omissions which involve gross negligence, willful misconduct or a knowing violation of law, or (ii) as provided in Section 5.4(d) hereof, losses resulting from such Exculpated Party's Transaction Reports, Quotation Information or other information reported to the Processors by such Exculpated Party (collectively ''*Non-Exculpated Items*''). Any Exculpated Party may consult with counsel and accountants in respect of Company affairs, and provided such Person acts in good faith reliance upon the advice or opinion of such counsel or accountants, such Person shall not be liable for any loss suffered in reliance thereon.

(b) Notwithstanding anything to the contrary contained herein, whenever in this Agreement or any other agreement contemplated herein or otherwise, an Exculpated Party is permitted or required to take any action or to make a decision in its ''sole discretion'' or ''discretion'' or that it deems ''necessary,'' or ''necessary or appropriate'' or under a grant of similar authority or latitude, the Exculpated Party may, insofar as Applicable Law permits, make such decision in its sole discretion (regardless of whether there is a reference to ''sole discretion'' or ''discretion''). The Exculpated Party (i) shall be entitled to consider such interests and factors as it desires (including its own interests), (ii) shall have no duty or obligation (fiduciary or otherwise) to give any consideration to any interest of or factors affecting the Company or the Members, and (iii) shall not be subject to any other or different standards imposed by this Agreement, or any other agreement contemplated hereby, under any Applicable Law or in equity.

Section 12.2 Right to Indemnification

(a) Subject to the limitations and conditions provided in this Article XII and to the fullest extent permitted by Applicable Law, the Company shall indemnify each Company Indemnified Party for Losses as a result of the Company Indemnified Party being a Party to a Proceeding. Notwithstanding the foregoing, no such indemnification shall be available in the event the Company is a claimant against the Company Indemnified Party.

(b) Indemnification under this Article XII shall continue as to a Company Indemnified Party who has ceased to serve in the capacity that initially entitled such Company Indemnified Party to indemnity hereunder; *provided, however,* that the Company shall not be obligated to indemnify a Company Indemnified Party for the Company Indemnified Party's Non-Exculpated Items.

(c) The rights granted pursuant to this Article XII shall be deemed contract rights, and no amendment, modification, or repeal of this Article XII shall have the effect of limiting or denying any such rights with respect to actions taken or Proceedings arising prior to any amendment, modification, or repeal. It is expressly acknowledged that the indemnification provided in this Article XII could involve indemnification for negligence or under theories of strict liability.

(d) The Company shall be the primary obligor in respect of any Company Indemnified Party's claim for indemnification, for advancement of expenses, or for providing insurance, subject to this Article XII. The obligation, if any, of any Member or its Affiliates to indemnify, to advance expenses to, or provide insurance for any Company Indemnified Party shall be secondary to the obligations of the Company under this Article XII (and the Company's insurance providers shall have no right to contribution or subrogation with respect to the insurance plans of such Member or its Affiliates).

Section 12.3 Advance Payment

Reasonable expenses incurred by a Company Indemnified Party who is a named defendant or respondent to a Proceeding shall be paid by the Company in advance of the final disposition of the Proceeding upon receipt of an undertaking by or on behalf of such Company Indemnified Party to repay such amount if it shall ultimately be determined that he or she is not entitled to be indemnified by the Company.

Section 12.4 Appearance as a Witness

Notwithstanding any other provision of this Article XII, the Company shall pay or reimburse reasonable out-of-pocket expenses incurred by a Company Indemnified Party in connection with his appearance as a witness or other participation in a Proceeding at a time when he is not a named defendant or respondent in the Proceeding.

Section 12.5 Nonexclusivity of Rights

The right to indemnification and the advancement and payment of expenses conferred in this Article XII shall not be exclusive of any other right which any Company Indemnified Person may have or hereafter acquire under any law (common or statutory), provision of the Certificate or this Agreement or otherwise.

Article XIII. Miscellaneous

Section 13.1 Expenses

The Company shall pay all current expenses, including any Taxes payable by the Company, whether for its own account or otherwise required by law (including any costs of complying with applicable tax obligations), third-party service provider fees, and all administrative and processing expenses and fees, as well as any other amounts owing to the Processors under the Processor Services Agreements, to the Administrator under the Administrative Services Agreement, or to the Processors, Administrator, or FINRA under *Exhibit D* to this Agreement, before any allocations may be made to the Members. Appropriate reserves, as unanimously determined by the Members, may be charged to the Capital Account of the Members for (i) contingent liabilities, if any, as of the date any such contingent liabilities become known to the Operating Committee, or (ii) amounts needed to pay the Company's operating expenses, including administrative and processing expenses and fees, before any allocations are made to the Member. Each Member shall bear the cost of implementation of any technical enhancements to the System made at its request and solely for its use, subject to reapportionment should any other Member subsequently make use of the enhancement, or the development thereof.

Section 13.2 Entire Agreement

Upon the Operative Date, this Agreement supersedes the CQ Plan, the CTA Plan, and the UTP Plan and all other prior agreements among the Members with respect to the subject matter hereof. This instrument contains the entire agreement with respect to such subject matter.

Section 13.3 Notices and Addresses

Unless otherwise specified herein, all notices, consents, approvals, reports, designations, requests, waivers, elections, and other communications (collectively, ''*Notices*'') authorized or required to be given pursuant to this Agreement shall be in writing and may be delivered by certified or registered mail, postage prepaid, by hand, by any private overnight courier service, or notification through the Company's web portal. Such Notices shall be mailed or delivered to the Members at the addresses set forth on *Exhibit A* or such other address as a Member may notify the other Members of in writing. Any Notices to be sent to the Company shall be delivered to the principal place of business of the Company or at such other address as the Operating Committee may specify in a notice sent to all of the Members. Notices shall be effective (i) if mailed, on the date three days after the date of mailing, (ii) if hand delivered or delivered by private courier, on the date of delivery, or (iii) if sent by through the Company's web portal, on the date sent; *provided, however,* that notices of a change of address shall be effective only upon receipt.

Section 13.4 Governing Law

This Agreement shall be governed by and construed in accordance with the Delaware Act and internal laws and decisions of the State of Delaware, without regard to the conflicts of laws principles thereof; *provided, however,* that the rights and obligations of the Members, the Processors and the Administrator, and of Vendors, Subscribers, and other Persons contracting with the Company in respect of the matters covered by this Agreement, shall at all times also be subject to any applicable provisions of the Exchange Act and any rules and regulations promulgated thereunder. For the avoidance of doubt, nothing in this Agreement waives any protection or limitation of liability afforded any of the Members or any of their Affiliates by common law, including the doctrines of self-regulatory organization immunity and federal preemption.

Section 13.5 Amendments

(a) Except as this Agreement otherwise provides, this Agreement may be modified from time to time when authorized by the Operating Committee pursuant to Section 4.3, subject to the approval of the Commission or when such modification otherwise becomes effective pursuant to Section 11A of the Exchange Act and Rule 608 of Regulation NMS.

(b) Notwithstanding Section 13.5(a), Articles IX, X, XI, and XII may be modified upon approval by a majority of Members; *provided, however,* that Operating Committee approval pursuant to Section 4.3 will be required for modifications to the allocation of all items of income, gain, loss, and deduction in accordance with *Exhibit D.*

(c) In the case of a Ministerial Amendment, the Chair of the Company's Operating Committee may modify this Agreement by submitting to the Commission an appropriate amendment that sets forth the modification; *provided, however,* that 48-hours advance notice of the amendment to the Operating Committee is required. Such an amendment shall become effective upon filing with the Commission in accordance with Section 11A of the Exchange Act and Rule 608 of Regulation NMS.

(d) ''*Ministerial Amendment*'' means an amendment to this Agreement that pertains solely to any one or more of the following:

(i) admitting a new Member to the Company;

(ii) changing the name or address of a Member;

(iii) incorporating a change that the Commission has implemented by rule and that requires no conforming language to the text of this Agreement;

(iv) incorporating a change (A) that the Commission has implemented by rule, (B) that requires conforming language to the text of this Agreement, and (C) whose conforming language to the text of this Agreement has been approved by the affirmative vote of the Operating Committee pursuant to Section 4.3;

(v) incorporating a change (A) that a Governmental Authority requires relating to the governance or operation of an LLC, (B) that requires conforming language to the text of this Agreement, and (C) whose conforming language to the text of this Agreement has been approved by the affirmative vote of the

Operating Committee pursuant to Section 4.3 or upon approval by a majority of Members pursuant to Section 13.5(b), as applicable; or

(vi) incorporating a purely technical change, such as correcting an error or an inaccurate reference to a statutory provision, or removing language that has become obsolete.

Section 13.6 Successors

This Agreement shall be binding upon and inure to the benefit of the Members and their respective legal representatives and successors.

Section 13.7 Limitation on Rights of Others

None of the provisions of this Agreement shall be for the benefit of or enforceable by any creditor of the Company. Furthermore, except as provided in Section 3.7(b), the Members shall not have any duty or obligation to any creditor of the Company to make any contribution to the Company or to issue any call for capital pursuant to this Agreement. Nothing in this Agreement shall be deemed to create any legal or equitable right, remedy or claim in any Person not a party hereto (other than any Person indemnified under Article XII).

Section 13.8 Counterparts

This Agreement may be executed by the Members in any number of counterparts, no one of which need contain the signature of all Members. As many such counterparts as shall together contain all such signatures shall constitute one and the same instrument.

Section 13.9 Headings

The section and other headings contained in this Agreement are for reference purposes only and shall not be deemed to be a part of this Agreement or to affect the meaning or interpretation of any provisions of this Agreement.

Section 13.10 Validity and Severability

If any provision of this Agreement shall be held invalid or unenforceable, that shall not affect the validity or enforceability of any other provisions of this Agreement, all of which shall remain in full force and effect.

Section 13.11 Statutory References

Each reference in this Agreement to a particular statute or regulation, or a provision thereof, shall be deemed to refer to such statute or regulation, or provision thereof, or to any similar or superseding statute or regulation, or provision thereof, as is from time to time in effect.

Section 13.12 Modifications To Be in Writing

This Agreement constitutes the entire understanding of the parties hereto with respect to the subject matter hereof, and no amendment, modification or alteration shall be binding unless the same is in writing and adopted in accordance with the provisions of Section 13.5.

[Signature Pages Follow]

In witness whereof, the undersigned Members have executed this Agreement as of the day and year first above written.

Exhibit A

MEMBERS OF CT PLAN LLC

Member name and address
Cboe BYX Exchange, Inc., 400 South LaSalle Street, Chicago, Illinois 60605.
Cboe BZX Exchange, Inc., 400 South LaSalle Street, Chicago, Illinois 60605.
Cboe EDGA Exchange, Inc., 400 South LaSalle Street, Chicago, Illinois 60605.
Cboe EDGX Exchange, Inc., 400 South LaSalle Street, Chicago, Illinois 60605.
Cboe Exchange, Inc., 400 South LaSalle Street, Chicago, Illinois 60605.
Financial Industry Regulatory Authority, Inc., 1735 K Street NW, Washington, DC 20006.
Investors' Exchange LLC, 3 World Trade Center 58th Floor, New York, New York 10007.
Long-Term Stock Exchange, Inc., 300 Montgomery St., Ste. 790, San Francisco, CA 94104.
MEMX LLC, 111 Town Square Place, Suite 520, Jersey City, New Jersey 07310.
Nasdaq BX, Inc., One Liberty Plaza, 165 Broadway, New York, New York 10006.
Nasdaq ISE, LLC, One Liberty Plaza, 165 Broadway, New York, New York 10006.
Nasdaq PHLX LLC, FMC Tower, Level 8, 2929 Walnut Street, Philadelphia, Pennsylvania 19104.
The Nasdaq Stock Market LLC, One Liberty Plaza, 165 Broadway, New York, NY 10006.
New York Stock Exchange LLC, 11 Wall Street, New York, New York 10005.
NYSE American LLC, 11 Wall Street, New York, New York 10005.
NYSE Arca, Inc., 11 Wall Street, New York, New York 10005.
NYSE Chicago, Inc., 11 Wall Street, New York, New York 10005.
NYSE National, Inc., 11 Wall Street, New York, NY 10005.

Exhibit B

Disclosures

(a) The *Members* must respond to the following questions and instructions:

(i) Is the Member for profit or not-for-profit? If the Member is for profit, is it publicly or privately owned? If privately owned, list any owner with an interest of 5% or more of the Member, where to the Member's knowledge, such owner, or any affiliate controlling, controlled by, or under common control with the owner, subscribes, directly or through a third-party vendor, to CT Feeds and/or Member PDP.

(ii) Does the Member offer PDP? If yes, list each product, describe its content, and provide a link to where fees for each product are disclosed.

(iii) Provide the names of the Voting Representative and any alternate Voting Representatives designated by the Member. Also provide a narrative description of such representatives' roles within the Member organization, including the title of each individual as well as any direct responsibilities related to the development, dissemination, sales, or marketing of the Member's PDP, and the nature of those responsibilities sufficient for the public to identify the nature of any potential conflict of interest that could be perceived by a reasonable objective observer as having an effect on the operation of the Company. If such representatives work in or with the Member's PDP business, describe such representatives' roles and describe how that business and such representatives' Company responsibilities impacts their compensation. In addition, describe how such representatives' responsibilities with the PDP business may present a conflict of interest with their responsibilities to the Company.

(iv) Does the Member, its Voting Representative, or its alternate Voting Representative, or any affiliate have additional relationships or material economic interests that could be perceived by a reasonable objective observer to present a potential conflict of interest with their responsibilities to the Company? If so, provide a detailed narrative discussion of all material facts necessary to identify the potential conflicts of interest and the effects they may have on the Company.

(b) The *Processors* must respond to the following questions and instructions:

(i) Is the Processor an affiliate of or affiliated with any Member? If yes, disclose the Member(s) and describe the nature of the affiliation. Include an entity-level organizational chart depicting the Processor and its affiliates.

(ii) Provide a narrative description of the functions directly performed by senior staff, the manager employed by the Processor to provide Processor services to the Company, and the staff that reports to that manager.

(iii) Does the Processor provide any services for any Member's PDP, other NMS Plans, or creation of consolidated equity data information for its own use? If Yes, disclose the services the Processor performs and identify which NMS Plans. Does the Processor have any profit or loss responsibility for a Member's PDP or any other professional involvement with persons the Processor knows are engaged in a Member's PDP business? If so, describe.

(iv) List the policies and procedures established to safeguard Restricted Information, Highly Confidential Information, and Confidential Information that is applicable to the Processor.

(v) Does the Processor, or its representatives, have additional relationships or material economic interests that could be perceived by a reasonable objective observer to present a potential conflict of interest with the representatives' responsibilities to the Company? If so, provide a detailed narrative discussion of all material facts necessary to identify the potential conflicts of interest and the effects they may have on the Company.

(c) The *Administrator* must respond to the following questions and instructions:

(i) Provide a narrative description of the functions directly performed by senior staff, the administrative services manager, and the staff that reports to that manager.

(ii) Does the Administrator provide any services for any Member's PDP? If yes, what services? Does the Administrator have any profit or loss responsibility, or licensing responsibility, for a Member's PDP or any other professional involvement with persons the Administrator knows are engaged in the Member's PDP business? If so, describe.

(iii) List the policies and procedures established to safeguard Restricted Information, Highly Confidential Information, and Confidential Information that is applicable to the Administrator.

(iv) Does the Administrator, or its representatives, have additional relationships or material economic interests that could be perceived by a reasonable objective observer to present a potential conflict of interest with the representatives' responsibilities to the Company? If so, provide a detailed narrative discussion of all material facts necessary to identify the potential conflicts of interest and the effects they may have on the Company.

(d) The *Non-SRO Voting Representatives* must respond to the following questions and instructions:

(i) Provide the Non-SRO Voting Representative's title and a brief description of the Non-SRO Voting Representative's role within the firm as well as any direct responsibilities related to the procurement of PDP or CT Feeds or the development, dissemination, sales, or marketing of PDP, and the nature of those responsibilities sufficient for the public to identify the nature of any potential conflict of interest that could be perceived by a reasonable objective observer as having an effect on the operation of the Company. If such representatives work in or with their employer's market data business, describe such Non-SRO Voting Representative's roles and describe how that business impacts their compensation. In addition, describe how such representatives' responsibilities with the market data business may present a conflict of interest with their responsibilities to the Company.

(ii) Does the Non-SRO Voting Representative have responsibilities related to the firm's use or procurement of market data?

(iii) Does the Non-SRO Voting Representative have responsibilities related to the firm's trading or brokerage services?

(iv) Does the Non-SRO Voting Representative's firm use the CT Feeds? Does the Non-SRO Voting Representative's firm use a Member's PDP?

(v) Does the Non-SRO Voting Representative's firm offer PDP? If yes, list each product, described its content, and provide information about the fees for each product.

(vi) Does the Non-SRO Voting Representative's firm have an ownership interest of 5% or more in one or more Members? If yes, list the Member(s).

(vii) Does the Non-SRO Voting Representative actively participate in any litigation against the CQ Plan, CTA Plan, UTP Plan, or the Company?

(viii) Does the Non-SRO Voting Representative or the Non-SRO Voting Representative's firm have additional relationships or material economic interests that could be perceived by a reasonable objective observer to present a potential conflict of interest with their responsibilities to the Company. If so, provide a detailed narrative discussion of all material facts necessary to identify the potential conflicts of interest and the effects they may have on the Company.

(e) Each *service provider or subcontractor* that has agreed in writing to provide required disclosures and be treated as a Disclosing Party shall respond to the following questions and instructions:

(i) Is the service provider or subcontractor affiliated with a Member, Processor, Administrator, or employer of a Non-SRO Voting Representative? If yes, disclose with whom the person is affiliated and describe the nature of the affiliation.

(ii) If the service provider's or subcontractor's compensation is on a commission basis or is tied to specific metrics, provide a detailed narrative summary of how compensation is determined for performing work on behalf of the Company.

(iii) Is the service provider or subcontractor subject to policies and procedures (including information barriers) concerning the protection of confidential information that includes affiliates? If so, describe. If not, explain their absence.

(iv) Does the service provider or subcontractor, or its representative, have additional relationships or material economic interests that could be perceived by a reasonable objective observer to present a potential conflict of interest with its responsibilities to the Company? If so, provide a detailed narrative discussion of all material facts necessary to identify the potential conflicts of interest and the effects they may have on the Company.

(f) The responses to these questions will be posted on the Company's website. If a Disclosing Party has any material changes in its responses, the Disclosing Party must promptly update its disclosures. Additionally, the

Disclosing Parties must update the disclosures on an annual basis to reflect any changes. This annual update must be made before the first quarterly session meeting of each calendar year, which is generally held in mid-February.

Exhibit C

Confidentiality Policy

(a) Purpose and Scope.

(i) The purpose of this Confidentiality Policy is to provide guidance to the Operating Committee, and all subcommittees thereof, regarding the confidentiality of any data or information (in physical or electronic form) generated by, accessed by, or transmitted to the Operating Committee or any subcommittee, as well as discussions occurring at a meeting of the Operating Committee or any subcommittee.

(ii) This Policy applies to all Covered Persons. All Covered Persons must adhere to the principles set out in this Policy and all Covered Persons that are natural persons may not receive Company data and information until they affirm in writing that they have read this Policy and undertake to abide by its terms.

(iii) Covered Persons may not disclose Restricted, Highly Confidential, or Confidential information except as consistent with this Policy and directed by the Operating Committee.

(iv) The Administrator and Processors will establish written confidential information policies that provide for the protection of information under their control and the control of their Agents, including policies and procedures that provide systemic controls for classifying, declassifying, redacting, aggregating, anonymizing, and safeguarding information, that is in addition to, and not less than, the protection afforded herein. Such policies will be reviewed and approved by the Operating Committee pursuant to Section 4.3, publicly posted, and made available to the Operating Committee for review and approval every two years thereafter or when changes are made, whichever is sooner.

(v) Information will be classified solely based on its content.

(b) Procedures.

(i) General.

(A) The Administrator and Processors will be the custodians of all documents discussed by the Operating Committee and will be responsible for maintaining the classification of such documents pursuant to this Policy.

(B) The Administrator may, under delegated authority, designate documents as Restricted, Highly Confidential, or Confidential, which will be determinative unless altered by an affirmative vote of the Operating Committee pursuant to Section 4.3.

(C) The Administrator will ensure that all Restricted, Highly Confidential, or Confidential documents are properly labeled and, if applicable, electronically safeguarded.

(D) All contracts between the Company and its Agents shall require Company information to be treated as Confidential Information that may not be disclosed to third parties, except as necessary to effect the terms of the contract or as required by law, and shall incorporate the terms of this Policy, or terms that are substantially equivalent or more restrictive, into the contract.

(ii) Procedures Concerning Restricted Information. Except as provided below, Covered Persons in possession of Restricted Information are prohibited from disclosing it to others, including Agents. This prohibition does not apply to disclosures to the staff of the SEC or as otherwise required by Applicable Law, or to other Covered Persons as expressly provided for by this Policy. Restricted Information will be kept in confidence by the Administrator and Processors and will not be disclosed to the Operating Committee or any subcommittee thereof, or during Executive Session, except as follows:

(A) If the Administrator determines that it is appropriate to share a customer's financial information with the Operating Committee or a subcommittee thereof, the Administrator will first anonymize the information by redacting the customer's name and any other information that may lead to the identification of the customer.

(B) The Administrator may disclose the identity of a customer that is the subject of Restricted Information in Executive Session only if the Administrator determines in good faith that it is necessary to disclose the customer's identity in order to obtain input or feedback from the Operating Committee or a subcommittee thereof about a matter of importance to the Company. In such an event, the Administrator will change the designation of the information at issue from ''Restricted Information'' to ''Highly Confidential Information,'' and its use will be governed by the procedures for Highly Confidential Information in subparagraph (iii) below.

(iii) Procedures Concerning Highly Confidential Information.

(A) Disclosure of Highly Confidential Information:

(1) Highly Confidential Information may be disclosed in Executive Session of the Operating Committee or to the subcommittee established pursuant to Section 4.7(c). Covered Persons in possession of Highly Confidential Information are prohibited from disclosing it to others, including Agents, except to other Covered Persons who need the Highly Confidential Information to fulfill their responsibilities to the Company. This prohibition does not apply to disclosures to the staff of the SEC or as otherwise required by law (such as those required to receive the information to ensure the Member complies with its regulatory obligations), or to other Covered Persons authorized to receive it.

(2) Highly Confidential Information may be disclosed to the staff of the SEC, unless it is protected by the Attorney-Client Privilege or the Work Product Doctrine. Any disclosure of Highly Confidential Information to the staff of the SEC will be accompanied by a FOIA Confidential Treatment request.

(3) Apart from the foregoing, the Operating Committee has no power to authorize any other disclosure of Highly Confidential Information.

(B) In the event that a Covered Person is determined by an affirmative vote of the Operating Committee pursuant to this Policy to have disclosed Highly Confidential Information, the Operating Committee will determine the appropriate remedy for the breach based on the facts and circumstances of the event. For an SRO Voting Representative or Member Observer, remedies include a letter of complaint submitted to the SEC, which may be made public by the Operating Committee. For a Non-SRO Voting Representative, remedies include removal of that Non-SRO Voting Representative.

(iv) Procedures Concerning Confidential Information.

(A) Confidential Information may be disclosed during a meeting of the Operating Committee or any subcommittee thereof. Additionally, a Covered Person may disclose Confidential Information to other persons to allow such other persons to fulfill their responsibilities to the Company. A Covered Person also may disclose Confidential Information to the staff of the SEC, as authorized by the Operating Committee as described below, or as may be otherwise required by law.

(B) The Operating Committee may authorize the disclosure of Confidential Information by an affirmative vote of the Operating Committee pursuant to

Section 4.3. Notwithstanding the foregoing, the Operating Committee will not authorize the disclosure of Confidential Information that is generated by a Member or Non-SRO Voting Representative and designated by such Member or Non-SRO Voting Representative as Confidential, unless such Member or Non-SRO Voting Representative consents to the disclosure.

(C) Non-SRO Voting Representatives may be authorized by the Operating Committee to disclose particular Confidential Information only in furtherance of the interests of the Company, to enable them to consult with industry representatives or technical experts, provided that the Non-SRO Voting Representatives take any steps requested by the Operating Committee to prevent further dissemination of that Confidential Information, including providing the individual(s) consulted with a copy of this Policy and requesting that person to maintain the confidentiality of such information in a manner consistent with this policy.

(D) A Covered Person that is a representative of a Member may be authorized by the Operating Committee to disclose particular Confidential Information to other employees or agents of the Member or its affiliates only in furtherance of the interests of the Company as needed for such Covered Person to perform his or her function on behalf of the Company. A copy of this Policy will be made available to recipients of such information who are employees or agents of a Member or its affiliates that are not Covered Persons, who will be required to abide by this Confidentiality Policy.

(E) A Covered Person may disclose their own individual views and statements that may otherwise be considered Confidential Information without obtaining authorization of the Operating Committee, provided that in so disclosing, the Covered Person is not disclosing the views or statements of any other Covered Person or Member that are considered Confidential Information.

(F) A person that has reason to believe that Confidential Information has been disclosed by another without the authorization of the Operating Committee or otherwise in a manner inconsistent with this Policy may report such potential unauthorized disclosure to the Chair of the Operating Committee. In addition, a Covered Person that discloses Confidential Information without the authorization of the Operating Committee will report such disclosure to the Chair of the Operating Committee. Such self-reported unauthorized disclosure of Confidential Information will be recorded in the minutes of the meeting of the Operating Committee and will contain: (a) The name(s) of the person(s) who disclosed such Confidential Information, and (b) a description of the Confidential Information disclosed. The name(s) of the person(s) who disclosed such Confidential Information will also be recorded in any publicly available summaries of Operating Committee minutes.

Exhibit D

Distributions

Cost Allocation and Revenue Sharing

(a) *Payments.* In accordance with Paragraph (l) of this Exhibit D, each Member will receive an annual payment (if any) for each calendar year that is equal to the sum of the Member's Trading Shares and Quoting Shares (each as defined below), in each Eligible Security for such calendar year. In the event that total Net Distributable Operating Income (as defined below) is negative for a given calendar year, each Member will receive an annual bill for such calendar year to be determined according to the same formula (described in this paragraph) for determining annual payments to the Members. Unless otherwise stated in this agreement, a year shall run from January 1st to December 31st and quarters shall end on March 31st, June 30th, September 30th, and December 31st. The Company shall cause the Administrator to provide the Members with written estimates of each Member's percentage of total volume within five business days of the end of each calendar month.

(b) *Security Income Allocation.* The ''*Security Income Allocation*'' for an Eligible Security shall be determined by multiplying (i) the Net Distributable Operating Income under this Agreement for the calendar year by (ii) the Volume Percentage for such Eligible Security (the ''*Initial Allocation*''), and then adding or subtracting any amounts specified in the reallocation set forth below.

(c) *Volume Percentage.* The ''*Volume Percentage*'' for an Eligible Security shall be determined by dividing (A) the square root of the dollar volume of Transaction Reports disseminated by the Processors in such Eligible Security during the calendar year by (B) the sum of the square roots of the dollar volume of Transaction Reports disseminated by the Processors in each Eligible Security during the calendar year.

(d) *Cap on Net Distributable Operating Income.* If the Initial Allocation of Net Distributable Operating Income in accordance with the Volume Percentage of an Eligible Security equals an amount greater than $4.00 multiplied by the total number of qualified Transaction Reports in such Eligible Security during the calendar year, the excess amount shall be subtracted from the Initial Allocation for such Eligible Security and reallocated among all Eligible Securities in direct proportion to the dollar volume of Transaction Reports disseminated by the Processors in Eligible Securities during the calendar year. A Transaction Report with a dollar volume of $5,000 or more shall constitute one qualified Transaction Report. A Transaction Report with a dollar volume of less than $5,000 shall constitute a fraction of a qualified Transaction Report that equals the dollar volume of the Transaction Report divided by $5,000.

(e) *Trading Share.* The ''*Trading Share*'' of a Member in an Eligible Security shall be determined by multiplying (i) an amount equal to fifty percent of the Security Income Allocation for the Eligible Security by (ii) the Member's Trade Rating in the Eligible Security.

(f) *Trade Rating.* A Member's ''*Trade Rating*'' in an Eligible Security shall be determined by taking the average of (A) the Member's percentage of the total dollar volume of Transaction Reports disseminated by the Processors in the Eligible Security during the calendar year, and (B) the Member's percentage of the total number of qualified Transaction Reports disseminated by the Processors in the Eligible Security during the calendar year.

(g) *Quoting Share.* The ''*Quoting Share*'' of a Member in an Eligible Security shall be determined by multiplying (A) an amount equal to fifty percent of the Security Income Allocation for the Eligible Security by (B) the Member's Quote Rating in the Eligible Security.

(h) *Quote Rating.* A Member's ''*Quote Rating*'' in an Eligible Security shall be determined by dividing (A) the sum of the Quote Credits earned by the Member in such Eligible Security during the calendar year by (B) the sum of the Quote Credits earned by all Members in such Eligible Security during the calendar year.

(i) *Quote Credits.* A Member shall earn one ''*Quote Credit*'' for each second of time (with a minimum of one full second) multiplied by dollar value of size that an automated best bid (offer) transmitted by the Member to the Processors during regular trading hours

is equal to the price of the National Best Bid and Offer in the Eligible Security and does not lock or cross a previously displayed ''automated quotation'' (as defined under Rule 600 of Regulation NMS). The dollar value of size of a quote shall be determined by multiplying the price of a quote by its size.

(j) *Net Distributable Operating Income.* The ''*Net Distributable Operating Income*'' for any particular calendar year shall mean:

(i) All cash revenues, funds and proceeds received by the Company during such calendar year (other than Capital Contributions by the Members or amounts paid pursuant to Section 3.7(b) of this Agreement), including all revenues from (A) the CT Feeds, which includes the dissemination of information with respect to Eligible Securities to foreign marketplaces, and (B) FINRA quotation data and last sale information for securities classified as OTC Equity Securities under FINRA's Rule 6400 Series (the ''*FINRA OTC Data*'') ((A) and (B) collectively, the ''*Data Feeds*''), and (C) any Membership Fees; less

(ii) 6.25% of the revenue received by the Company during such calendar year attributable to the segment of the Data Feeds reflecting the dissemination of information with respect to Network C Securities and FINRA OTC Data (but, for the avoidance of doubt, not including revenue attributable to the segment of the Data Feeds reflecting the dissemination of information with respect to Network A Securities and Network B Securities), which amount shall be paid to FINRA as compensation for the FINRA OTC Data; [1] *less*

(iii) reasonable working capital reserves and reasonable reserves for contingencies for such calendar year, as determined by the Operating Committee, and all costs and expenses of the Company during such calendar year, including:

(A) All amounts payable during such calendar year to the Administrator pursuant to the Administrative Services Agreement or this Agreement;

(B) all amounts payable during such calendar year to the Processors pursuant to the Processor Services Agreements or this Agreement; and

(C) all amounts payable during such calendar year to third-party service providers engaged by or on behalf of the Company.

[1] All costs associated with collecting, consolidating, validating, generating, and disseminating the FINRA OTC Data are borne directly by FINRA and not the Company and the Members.

(k) *Initial Eligibility.* At the time a Member implements a Processor-approved electronic interface with the Processors, the Member will become eligible to receive revenue.

(l) *Quarterly Distributions.* The Company shall cause the Administrator to provide Members with written estimates of each Member's quarterly Net Distributable Operating Income within 45 calendar days of the end of the quarter, and estimated quarterly payments or billings shall be made on the basis of such estimates. All quarterly payments or billings shall be made to each eligible Member within 45 days following the end of each calendar quarter in which the Member is eligible to receive revenue; *provided,* that each quarterly payment or billing shall be reconciled against a Member's cumulative year-to-date payment or billing received to date and adjusted accordingly; *further, provided,* that the total of such estimated payments or billings shall be reconciled at the end of each calendar year and, if necessary, adjusted by March 31st of the following year. Interest shall be included in quarterly payments and in adjusted payments made on March 31st of the following year. Such interest shall accrue monthly during the period in which revenue was earned and not yet paid and will be based on the 90-day Treasury bill rate in effect at the end of the quarter in which the payment is made. Monthly interest shall start accruing 45 days following the month in which it is earned and accrue until the date on which the payment is made.

(m) *Itemized Statements.* In conjunction with calculating estimated quarterly and reconciled annual payments under this Exhibit D, the Company shall cause the Administrator to submit to the Members a quarterly itemized statement setting forth the basis upon which Net Distributable Operating Income was calculated. Such Net Distributable Operating Income shall be adjusted annually based solely on the quarterly itemized statement audited pursuant to the annual audit. The Company shall cause the Administrator to pay or bill Members for the audit adjustments within thirty days of completion of the annual audit. Upon the affirmative vote of Voting Representatives pursuant to Section 4.3, the Company shall cause the Administrator to engage an independent auditor to audit the Administrator's costs or other calculation(s).

Exhibit E

Fees

[To be determined by the Operating Committee under this Agreement]

[FR Doc. 2020–22467 Filed 10–9–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90115; File No. SR–NYSEAMER–2020–71]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt Temporary Commentary .10 Under NYSE American Rule 2.1210

October 7, 2020.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on September 25, 2020, NYSE American LLC (''NYSE American'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes a rule change to adopt temporary Commentary .10 (Temporary Extension of the Limited Period for Registered Persons to Function as Principals) under NYSE American Rule 2.1210 (Registration Requirements) applicable to member organizations, Equity Trading Permit (''ETP'') Holders and American Trading Permit (''ATP'') Holders. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to adopt temporary Commentary .10 (Temporary Extension of the Limited Period for Registered Persons to Function as Principals) under NYSE American Rule 2.1210 (Registration Requirements) applicable to member organizations, ETP Holders and ATP Holders (collectively, ''Members'').[4] The proposed rule change would extend the 120-day period that certain individuals can function as a principal without having successfully passed an appropriate qualification examination through December 31, 2020,[5] and would apply only to those individuals who were designated to function as a principal prior to September 3, 2020. This proposed rule change is based on a filing recently submitted by the Financial Regulatory Authority, Inc. (''FINRA'')[6] and is intended to harmonize the Exchange's registration rules with those of FINRA so as to promote uniform standards across the securities industry.

In response to COVID–19, earlier this year FINRA began providing temporary relief by way of frequently asked questions (''FAQs'')[7] to address disruptions to the administration of FINRA qualification examinations caused by the pandemic that have significantly limited the ability of individuals to sit for examinations due to Prometric test center capacity issues.[8]

FINRA published the first FAQ on March 20, 2020, providing that individuals who were designated to function as principals under FINRA Rule 1210.04[9] prior to February 2, 2020, would be given until May 31, 2020, to pass the appropriate principal qualification examination.[10] On May 19, 2020, FINRA extended the relief to pass the appropriate examination until June 30, 2020. Most recently, on June 29, 2020, FINRA again extended the temporary relief providing that individuals who were designated to function as principals under FINRA Rule 1210.04 prior to May 4, 2020, would be given until August 31, 2020, to pass the appropriate principal qualification examination.

One of the impacts of COVID–19 continues to be serious interruptions in the administration of FINRA qualification examinations at Prometric test centers and the limited ability of individuals to sit for the examinations.[11] Although Prometric has begun reopening test centers, Prometric's safety practices mean that currently not all test centers are open, some of the open test centers are at limited capacity, and some open test centers are delivering only certain examinations that have been deemed essential by the local government.[12] Furthermore, Prometric has had to close some reopened test centers due to incidents of COVID–19 cases. The initial nationwide closure in March along with the inability to fully reopen all Prometric test centers due to COVID–19 have led to a significant backlog of individuals who are waiting to sit for FINRA examinations.[13]

In addition, firms are continuing to experience operational challenges with much of their personnel working from home due to shelter-in-place orders, restrictions on businesses and social activity imposed in various states, and adherence to other social distancing guidelines consistent with the recommendations of public health officials.[14] As a result, firms continue to face potentially significant disruptions to their normal business operations that may include a limitation of in-person activities and staff absenteeism as a result of the health and welfare concerns stemming from COVID–19. Such potential disruptions may be further exacerbated and may even affect client services if firms cannot continue to keep principal positions filled as they may have difficulty finding other qualified individuals to transition into these roles or may need to reallocate employee time and resources away from other critical responsibilities at the firm.

These ongoing, extenuating circumstances make it impracticable for Members to ensure that the individuals

[4] The term ''member organization'' is defined in Rule 24 (Office Rules) as ''a partnership, corporation or such other entity as the Exchange may, by Rule, permit to become a member organization, and which meets the qualifications specified in the Rules.'' The term ''member organization'' is defined in Rule 2(b)(i) (Equities Rules) as a registered broker or dealer (unless exempt pursuant to the Securities Exchange Act of 1934) (the ''Act'') that is a member of the Financial Industry Regulatory Authority, Inc. (''FINRA'') or another registered securities exchange. Member organizations that transact business with public customers or conduct business on the Floor of the Exchange shall at all times be members of FINRA. A registered broker or dealer must also be approved by the Exchange and authorized to designate an associated natural person to effect transactions on the floor of the Exchange or any facility thereof. This term shall include a natural person so registered, approved and licensed who directly effects transactions on the floor of the Exchange or any facility thereof.'' The term ''member organization'' also includes any registered broker or dealer that is a member of FINRA or a registered securities exchange, consistent with the requirements of section 2(b)(i) of this Rule, which does not own a trading license and agrees to be regulated by the Exchange as a member organization and which the Exchange has agreed to regulate.'' *See* Rule 2(a)(ii) (Equities Rules). The term ''ETP Holder'' means a member organization that has been issued an ETP. An ETP Holder will agree to be bound by the Rules of the Exchange, and by all applicable rules and regulations of the Securities and Exchange Commission. *See* Rule 1.1E(n). References to ''member organization'' as used in Exchange rules include ATP Holders, which are registered brokers or dealers approved to effect transactions on the Exchange's options marketplace. Under the Exchange's rules, an ATP Holder has the status as a ''member'' of the Exchange as that term is defined in Section 3 of the Act. *See* Rule 900.2NY(4) & (5).

[5] If NYSE American seeks to provide additional temporary relief from the rule requirements identified in this proposed rule change beyond December 31, 2020, NYSE American will submit a separate rule filing to further extend the temporary extension of time.

[6] *See* Securities Exchange Act Release No. 89732 (September 1, 2020), 85 FR 55535 (September 8, 2020) (SR–FINRA–2020–026) (the ''FINRA Filing''). The Exchange notes that the FINRA Filing also provides temporary relief to individuals registered with FINRA as Operations Professionals under FINRA Rule 1220. The Exchange does not have a registration category for Operations Professionals and therefore, the Exchange is not proposing to adopt that aspect of the FINRA Filing.

[7] *See https://www.finra.org/rules-guidance/key-topics/covid-19/faq#qe.*

[8] At the outset of the COVID–19 pandemic, all FINRA qualification examinations were administered at test centers operated by Prometric. Based on the health and welfare concerns resulting from COVID–19, in March Prometric closed all of its test centers in the United States and Canada and began to slowly reopen some of them at limited capacity in May. At this time, not all of these Prometric test centers have reopened at full capacity.

[9] NYSE American Rule 2.1210.03 is the corresponding rule to FINRA Rule 1210.04.

[10] FINRA Rule 1210.04 (Requirements for Registered Persons Functioning as Principals for a Limited Period) allows a member firm to designate certain individuals to function in a principal capacity for 120 calendar days before having to pass an appropriate principal qualification examination. NYSE American Rule 2.1210.03 provides the same allowance to Members.

[11] Information about the continued impact of COVID–19 on FINRA-administered examinations is available at *https://www.finra.org/rules-guidance/keytopics/covid-19/exams.*

[12] Information from Prometric about its safety practices and the impact of COVID–19 on its operations is available at *https://www.prometric.com/corona-virus-update. See also supra* note 11.

[13] Although an online test delivery service has been launched to help address the backlog, the General Securities Principal Examination (Series 24) is not available online. *See supra* note 11.

[14] *See, e.g.,* Centers for Disease Control and Prevention, How to Protect Yourself & Others, *https://www.cdc.gov/coronavirus/2019-ncov/prevent-gettingsick/prevention.html.*

whom they have designated to function in a principal capacity, as set forth in NYSE American Rule 2.1210.03, are able to successfully sit for and pass an appropriate qualification examination within the 120-calendar day period required under the rule, or to find other qualified staff to fill this position. The ongoing circumstances also require individuals to be exposed to the health risks associated with taking an in-person examination, because the General Securities Principal examination is not available online. Therefore, NYSE American is proposing to continue the temporary relief provided through the FINRA FAQs by adopting Rule 2.1210.10 to extend the 120-day period during which an individual can function as a principal before having to pass an applicable qualification examination until December 31, 2020.[15] The proposed rule change would apply only to those individuals who were designated to function as a principal prior to September 3, 2020. Any individuals designated to function as a principal on or after September 3, 2020, would need to successfully pass an appropriate qualification examination within 120 days.

NYSE American believes that this proposed continued extension of time is tailored to address the needs and constraints on a Member's operations during the COVID–19 pandemic, without significantly compromising critical investor protection. The proposed extension of time will help to minimize the impact of COVID–19 on Members by providing continued flexibility so that Members can ensure that principal positions remain filled. The potential risks from the proposed extension of the 120-day period are mitigated by the Member's continued requirement to supervise the activities of these designated individuals and ensure compliance with federal securities laws and regulations, as well as NYSE American rules.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[16] in general, and furthers the objectives of Section 6(b)(5),[17] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest.

The proposed rule change is intended to minimize the impact of COVID–19 on Member operations by extending the 120-day period certain individuals may function as a principal without having successfully passed an appropriate qualification examination under NYSE American Rule 2.1210.03 until December 31, 2020. The proposed rule change does not relieve Members from maintaining, under the circumstances, a reasonably designed system to supervise the activities of their associated persons to achieve compliance with applicable securities laws and regulations, and with applicable NYSE American rules that directly serve investor protection. In a time when faced with unique challenges resulting from the COVID–19 pandemic, NYSE American believes that the proposed rule change is a sensible accommodation that will continue to afford Members the ability to ensure that critical positions are filled and client services maintained, while continuing to serve and promote the protection of investors and the public interest in this unique environment.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is intended to provide temporary relief given the impacts of the COVID–19 pandemic crisis and to also maintain consistency with the rules of other self-regulatory organizations (''SROs'') with respect to the registration requirements applicable to Members and their registered personnel. In that regard, the Exchange believes that any burden on competition would be clearly outweighed by providing Members with temporary relief in this unique environment while also ensuring clear and consistent requirements applicable across SROs and mitigating any risk of SROs implementing different standards in these important areas. In its filing, FINRA provides an abbreviated economic impact assessment maintaining that the changes are necessary to temporarily rebalance the attendant benefits and costs of the obligations under FINRA Rule 1210 in response to the impacts of the COVID–19 pandemic that is equally applicable to the changes the Exchange proposes.[18] The Exchange accordingly incorporates FINRA's abbreviated economic impact assessment by reference.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[19] and Rule 19b-4(f)(6)[20] thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii), the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. NYSE American has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative immediately upon filing. As noted above, NYSE American stated that the temporary proposed rule change is based on a recent rule change by FINRA and is intended to harmonize NYSE American registration rules with those of FINRA to promote uniform standards across the securities industry.[21] NYSE American states that it will also help minimize the impact of the COVID–19 outbreak on NYSE American Members' operations by allowing them to keep principal positions filled and minimizing disruptions to client services and other critical responsibilities. The ongoing extenuating circumstances of the COVID–19 pandemic make it impractical to ensure that individuals designated to act in principal capacities

[15] *See supra* note 5.

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

[18] FINRA Filing, 85 FR at 55537.

[19] 15 U.S.C. 78s(b)(3)(A).

[20] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. NYSE American has satisfied this requirement.

[21] *See supra* note 6.

are able to take and pass the appropriate qualification examination during the 120-calendar day period required under the rules. Shelter-in-place orders, quarantining, restrictions on business and social activity and adherence to other social distancing guidelines consistent with the recommendation of public officials remain in place in various states.[22] Further, NYSE American states that Prometric test centers have experienced serious interruptions in the administration of FINRA qualification examinations, resulting in a backlog of individuals waiting to take these examinations. Following a nationwide closure of all test centers earlier in the year, some test centers have re-opened, but are operating at limited capacity or are only delivering certain examinations that have been deemed essential by the local government.[23] FINRA has launched an online test delivery service to help address this backlog. However, the General Securities Principal (Series 24) Examination is not available online. NYSE American states that the temporary proposed rule change will provide needed flexibility to ensure that these positions remain filled and is tailored to address the constraints on Members' operations during the COVID–19 pandemic without significantly compromising critical investor protection.[24]

The Commission also notes that the proposal provides only temporary relief from the requirement to pass certain qualification examinations within the 120-day period in the rules. As proposed, this relief would extend the 120-day period that certain individuals can function as principals through December 31, 2020. NYSE American has also stated that if it requires temporary relief from the rule requirements identified in this proposal beyond December 31, 2020, it may submit a separate rule filing to extend the effectiveness of the temporary relief under these rules.[25] For these reasons, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest.[26] Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[27]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEAMER–2020–71 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAMER–2020–71. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, on business days between the hours of 10:00 a.m. and 3:00 p.m., located at 100 F Street NE, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of NYSE American. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAMER–2020–71 and should be submitted on or before November 3, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

J. Matthew DeLesDernier,

Assistant Secretary.

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BILLING CODE 8011–01–P

[22] *See supra* note 14.

[23] *See supra* notes 11 and 12. NYSE American states that Prometric has also had to close some reopened test centers due to incidents of COVID–19 cases.

[24] NYSE American states that Members remain subject to the continued requirement to supervise the activities of these designated individuals and ensure compliance with federal securities laws and regulations, as well as NYSE American rules.

[25] *See supra* note 5.

[26] As noted above by the Exchange, this proposed temporary change is based on a recent filing by FINRA that the Commission approved with a waiver of the 30-day operative delay. *See supra* note 6, 85 FR at 55538.

[27] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[28] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90104; File No. SR–NYSEArca–2020–84]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1, Amending NYSE Arca Rule 8.900–E To Adopt Generic Listing Standards for Managed Portfolio Shares

October 7, 2020.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on September 22, 2020, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. On October 2, 2020, the Exchange filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Arca Rule 8.900–E to adopt generic listing standards for Managed Portfolio Shares. This Amendment No. 1 to SR–NYSEArca–2020–84 replaces SR–NYSEArca–2020–84 as originally filed and supersedes such filing in its entirety. The proposed change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend NYSE Arca Rule 8.900–E to adopt generic listing standards for Managed Portfolio Shares. Under the Exchange's current rules, a proposed rule change must be filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') for the listing and trading of each new series of Managed Portfolio Shares. The Exchange believes that it is appropriate to codify certain rules within Rule 8.900–E that would generally reduce the need for such proposed rule changes, which would create greater efficiency and promote uniform standards in the listing process.

Background

Rule 8.900–E sets forth certain rules related to the listing and trading of Managed Portfolio Shares.[4]

The Commission has previously approved listing and trading of series of Managed Portfolio Shares on the Exchange under NYSE Arca Rule 8.900–E and on other national securities exchanges under substantially equivalent listing rules.[5] Currently, three series of Managed Portfolio Shares are listed and traded on the Cboe BZX Exchange, Inc.[6]

Rule 8.900–E(b)(1) provides that the Exchange will file separate proposals under Section 19(b) of the Act before the listing and trading of a series of Managed Portfolio Shares. The rule further provides that all statements or representations contained in such rule filing regarding (a) the description of the portfolio or reference asset, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange listing rules specified in such rule filing will constitute continued listing requirements. An issuer of such securities must notify the Exchange of any failure to comply with such continued listing requirements.

Key Features of Managed Portfolio Shares

While each series of Managed Portfolio Shares will be actively managed and, to that extent, will be similar, for example, to Managed Fund Shares (as defined in Rule 8.600–E),[7] Managed Portfolio Shares differ from Managed Fund Shares in the following important respects.[8] First, in contrast to Managed Fund Shares, which require a ''Disclosed Portfolio'' to be disseminated at least once daily,[9] the portfolio for a series of Managed Portfolio Shares will be disclosed quarterly in accordance with normal disclosure requirements otherwise applicable to open-end investment companies registered under the Investment Company Act of 1940 (''1940 Act'').[10] The composition of the portfolio of a series of Managed Portfolio Shares would not be available at commencement of Exchange listing and/or trading. Second, in connection with the creation and redemption of shares in ''Creation Unit'' or ''Redemption Unit'' size, the delivery of any portfolio securities in kind will be effected through a ''Confidential Account'' for the benefit of the creating or redeeming Authorized Participant

[4] *See* Securities Exchange Act Release No. 88648 (April 15, 2020), 85 FR 22200 (April 21, 2020) (SR–NYSEArca–2020–32) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Adopt a New NYSE Arca Rule 8.900–E).

[5] *See* Securities Exchange Act Release Nos. 89633 (August 25, 2020), 85 FR 53868 (August 31, 2020) (SR–NYSEArca–2020–48) (Order Approving a Proposed Rule Change, as Modified by Amendment No. 1, to List and Trade Shares of Gabelli ETFs under Rule 8.900–E) (the ''Gabelli Approval Order''); 88247 (February 20, 2020), 85 FR 11137 (February 26, 2020) (SR–CboeBZX–2019–102) (Notice of Filing of Amendment No. 3 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 3 thereto, to List and Trade Shares of the ClearBridge Focus Value ETF under BZX Rule 14.11(k)) (''ClearBridge Approval Order''); 88175 (February 12, 2020), 85 FR 9494 (February 19, 2020) (SR–CboeBZX–2019–057) (Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 2 thereto, to List and Trade Shares of the American Century Focused Dynamic Growth ETF and American Century Focused Large Cap Value ETF under BZX Rule 14.11(k)) (''American Century Approval Order'', together with the Gabelli Approval Order, ClearBridge Approval Order and American Century Approval Order, the ''Approval Orders'').

[6] *See* ClearBridge Approval Order and American Century Approval Order, referenced in note 5, *supra.*

[7] The Commission approved a proposed rule change to adopt rules permitting the listing and trading of Managed Fund Shares. *See* Securities Exchange Act Release No. 57619 (April 4, 2008), 73 FR 19544 (April 10, 2008) (SR–NYSEArca–2008–25) (Order Granting Accelerated Approval of Rules Permitting the Listing and Trading of Managed Fund Shares, Trading Hours and Halts, Listing Fees Applicable To Managed Fund Shares). The Commission has also previously approved listing and trading on the Exchange of a number of issues of Managed Fund Shares under Rule 8.600–E. *See, e.g.,* Securities Exchange Act Release Nos. 57801 (May 8, 2008), 73 FR 27878 (May 14, 2008) (SR–NYSEArca–2008–31) (order approving Exchange listing and trading of twelve actively-managed funds of the WisdomTree Trust; 63802 (January 31, 2011), 76 FR 6503 (February 4, 2011) (SR–NYSEArca–2010–118) (order approving Exchange listing and trading of the SiM Dynamic Allocation Diversified Income ETF and SiM Dynamic Allocation Growth Income ETF).

[8] Rule 8.900–E(c)(1) defines the term ''Managed Portfolio Share'' as a security that (a) represents an interest in an investment company registered under the Investment Company Act of 1940 (''Investment Company'') organized as an open-end management investment company, that invests in a portfolio of securities selected by the Investment Company's investment adviser consistent with the Investment Company's investment objectives and policies; (b) is issued in a Creation Unit, or multiples thereof, in return for a designated portfolio of instruments (and/or an amount of cash) with a value equal to the next determined net asset value and delivered to the Authorized Participant (as defined in the Investment Company's Form N–1A filed with the Commission) through a Confidential Account; (c) when aggregated into a Redemption Unit, or multiples thereof, may be redeemed for a designated portfolio of instruments (and/or an amount of cash) with a value equal to the next determined net asset value delivered to the Confidential Account for the benefit of the Authorized Participant; and (d) the portfolio holdings for which are disclosed within at least 60 days following the end of every fiscal quarter.

[9] NYSE Arca Rule 8.600–E(c)(2) defines the term ''Disclosed Portfolio'' as the identities and quantities of the securities and other assets held by the Investment Company that will form the basis for the Investment Company's calculation of net asset value at the end of the business day. NYSE Arca Rule 8.600–E(d)(2)(B)(i) requires that the Disclosed Portfolio be disseminated at least once daily and be made available to all market participants at the same time.

[10] Form N–PORT requires reporting of a fund's complete portfolio holdings on a position-by-position basis on a quarterly basis within 60 days after fiscal quarter end. Investors can obtain a fund's Statement of Additional Information, its Shareholder Reports, its Form N–CSR, filed twice a year, and its Form N–CEN, filed annually. A fund's SAI and Shareholder Reports are available free upon request from the Investment Company, and those documents and the Form N–PORT, Form N–CSR, and Form N–CEN may be viewed on-screen or downloaded from the Commission's website at *www.sec.gov.*

(''AP'') without disclosing the identity of such securities to the AP.[11]

For each series of Managed Portfolio Shares, an estimated value—the Verified Intraday Indicative Value or ''VIIV''—that reflects an estimated intraday value of a fund's portfolio will be disseminated.[12] Specifically, the VIIV will be based upon all of a series' holdings as of the close of the prior business day and, for corporate actions, based on the applicable holdings as of the opening of business on the current business day. The VIIV will be widely disseminated by the ''Reporting Authority'' and/or one or more major market data vendors in one second intervals during the Exchange's Core Trading Session and will be disseminated to all market participants at the same time. The dissemination of the VIIV will allow investors to determine the estimated intra-day value of the underlying portfolio of a series of Managed Portfolio Shares and will provide a close estimate of that value throughout the trading day.

In addition, Rule 8.900–E currently provides criteria that Managed Portfolio Shares must satisfy for initial and continued listing on the Exchange, including, for example, that a minimum number of Managed Portfolio Shares are required to be outstanding at the time of commencement of trading on the Exchange. However, the current process for listing and trading new series of Managed Portfolio Shares on the Exchange requires that the Exchange submit a proposed rule change with the Commission. In this regard, as noted above, Rule 8.900–E(b)(1) specifies that the Exchange will file separate proposals under Section 19(b) of the Act before listing and trading of shares of a series of Managed Portfolio Shares.

Proposed Changes To Rule 8.900–E

The Exchange proposes to amend Rule 8.900–E(b) to specify that the Exchange may approve Managed Portfolio Shares for listing and/or trading (including pursuant to unlisted trading privileges) pursuant to SEC Rule 19b–4(e) under the Act, which pertains to derivative securities products (''SEC Rule 19b–4(e)'').[13] SEC Rule 19b–4(e)(1) provides that the listing and trading of a new derivative securities product by a self-regulatory organization (''SRO'') is not deemed a proposed rule change, pursuant to paragraph (c)(1) of Rule 19b–4,[14] if the Commission has approved, pursuant to section 19(b) of the Act, the SRO's trading rules, procedures and listing standards for the product class that would include the new derivative securities product and the SRO has a surveillance program for the product class. This is the current method pursuant to which ''passive'' ETFs are listed under NYSE Arca Rule 5.2–E(j)(3), actively-managed ETFs are listed under NYSE Arca Rule 8.600–E, and Exchange-Traded Fund Shares are listed under NYSE Arca Rule 5.2–E(j)(8).

The Exchange would also specify in Rule 8.900–E(b) that components of a series of Managed Portfolio Shares listed pursuant to Rule 19b–4(e) shall satisfy the criteria set forth in Rule 8.900–E and proposed Commentary .01 thereto upon initial listing and on a continual basis. The Exchange will file separate proposals under Section 19(b) of the Act before the listing and trading of a series of Managed Portfolio Shares with components that do not satisfy the criteria set forth in proposed Commentary .01 or components other than those specified in Commentary .01(a). For example, if the components of a series of Managed Portfolio Shares included a security or asset that is not specified in proposed Commentary .01(a), the Exchange would file a separate proposed rule change.

Proposed Commentary .01(a) provides that the portfolio holdings for a series of Managed Portfolio Shares listed pursuant to Rule 19b–4(e) shall include only the following:

(1) U.S. exchange-traded securities that are common stocks; preferred stocks; American Depositary Receipts; and real estate investment trusts;

(2) U.S. exchange-traded funds that are listed under the following rules: Investment Company Units (Rule 5.2–E(j)(3)); Exchange-Traded Fund Shares (Rule 5.2–E(j)(8)); Portfolio Depositary Receipts (Rule 8.100–E); Managed Fund Shares (Rule 8.600–E); Active Proxy Portfolio Shares (Rule 8.601–E); and Managed Portfolio Shares (Rule 8.900–E);

(3) Equity Gold Shares (Rule 5.2–E(j)(5))

(4) Index-Linked Securities (Rule 5.2–E(j)(6));

(5) Commodity-Based Trust Shares (Rule 8.201–E);

(6) Currency Trust Shares (Rule 8.202–E);

(7) the following securities, which are required to be organized as commodity pools: Commodity Index Trust Shares (Rule 8.203–E); Commodity Futures Trust Shares (Rule 8.204–E); Trust Units (Rule 8.500–E); and Managed Trust Securities (Rule 8.700–E);

(8) the following securities if organized as commodity pools: Trust Issued Receipts (Rule 8.200–E) and Partnership Units (Rule 8.300–E);

(9) U.S. exchange-traded futures that trade contemporaneously with shares of a series of Managed Portfolio Shares in the Exchange's Core Trading Session; and

(10) Cash and cash equivalents. Cash equivalents are the following: Short-term U.S. Treasury securities, government money market funds, and repurchase agreements.

Proposed Commentary .01(b) provides that a series of Managed Portfolio Shares listed pursuant to Rule 19b–4(e) will not hold short positions in securities and other financial instruments referenced in proposed Commentary .01(a)(1)–(10).

Proposed Commentary .01(c) provides that the securities referenced above in proposed Commentary .01(a)(2)–(8) shall include securities listed on another national securities exchange pursuant to substantially equivalent listing rules.

The securities and financial instruments enumerated in proposed Commentary .01(a) to Rule 8.900–E are consistent with, and limited to, the ''permissible investments'' for series of Managed Portfolio Shares previously

[11] NYSE Arca Rule 8.900–E(c)(4) defines the term ''Confidential Account'' as ''an account owned by an Authorized Participant and held with an AP Representative on behalf of the Authorized Participant. The account will be established and governed by contractual agreement between the AP Representative and the Authorized Participant solely for the purposes of creation and redemption, while keeping confidential the Creation Basket constituents of each series of Managed Portfolio Shares, including from the Authorized Participant. The books and records of the Confidential Account will be maintained by the AP Representative on behalf of the Authorized Participant.'' NYSE Arca Rule 8.900–E(c)(3) defines the term ''AP Representative'' as ''an unaffiliated broker-dealer, with which an Authorized Participant has signed an agreement to establish a Confidential Account for the benefit of such Authorized Participant, that will deliver or receive, on behalf of the Authorized Participant, all consideration to or from the Investment Company in a creation or redemption. An AP Representative will not be permitted to disclose the Creation Basket to any person, including the Authorized Participants.''

[12] Rule 8.900–E(c)(2) defines the term ''Verified Intraday Indicative Value (''VIIV'') as the indicative value of a Managed Portfolio Share based on all of the holdings of a series of Managed Portfolio Shares as of the close of business on the prior business day and, for corporate actions, based on the applicable holdings as of the opening of business on the current business day, priced and disseminated in one second intervals during the Core Trading Session by the Reporting Authority.

[13] 17 CFR 240.19b–4(e). As provided under SEC Rule 19b–4(e), the term ''new derivative securities product'' means any type of option, warrant, hybrid securities product or any other security, other than a single equity option or a security futures product, whose value is based, in whole or in part, upon the performance of, or interest in, an underlying instrument.

[14] 17 CFR 240.19b–4(c)(1). As provided under SEC Rule 19b–4(c)(1), a stated policy, practice, or interpretation of the SRO shall be deemed to be a proposed rule change unless it is reasonably and fairly implied by an existing rule of the SRO.

approved by the Commission for Exchange listing and trading, as described in the Approval Orders.[15] Each such series has filed an application for an order under Section 6(c) of the 1940 Act for exemptions from various provisions of the 1940 Act and rules thereunder, and the Commission has issued orders under the 1940 Act granting the exemptions requested in such applications.[16] Such applications made substantially identical representations specifying the instruments that a series of Managed Portfolio Shares is permitted to hold, and a series of Managed Portfolio Shares listed generically pursuant to Commentary .01 would be limited to such holdings on an initial and continued listing basis.[17]

The regulatory staff of the Exchange, or the Financial Industry Regulatory Authority, Inc. (''FINRA''), on behalf of the Exchange, will communicate as needed regarding trading in Managed Portfolio Shares, other exchange-traded equity securities and futures contracts with other markets that are members of the Intermarket Surveillance Group (''ISG''), including U.S. exchanges on which the components are traded. In addition, the Exchange may obtain information regarding trading in Managed Portfolio Shares from other markets that are members of the ISG, including all U.S. securities exchanges and futures exchanges on which the equity securities and futures contracts are traded. Pursuant to Rule 8.900–E(b)(3), an Investment Company's investment adviser will upon request by the Exchange or FINRA, on behalf of the Exchange, make available to the Exchange or FINRA the daily portfolio holdings of each series of Managed Portfolio Shares.

With respect to the proposed amendment to Commentary .01(a)(10) relating to cash and cash equivalents, the enumerated cash equivalents—short-term U.S. Treasury securities, government money market funds, and repurchase agreements—also are included as cash equivalents for purposes of the generic listing criteria applicable to Managed Fund Shares in Commentary .01(c) to Rule 8.600–E. Such instruments are short-term, highly liquid, and of high credit quality, making them less susceptible than other asset classes both to price manipulation and volatility.[18]

The Exchange believes that the proposed standards would continue to ensure transparency surrounding the listing process for Managed Portfolio Shares. In addition, the Exchange believes that the proposed portfolio standards for listing and trading Managed Portfolio Shares are reasonably designed to promote a fair and orderly market for such Managed Portfolio Shares. These proposed standards would also work in conjunction with the existing initial and continued listing criteria related to surveillance procedures and trading guidelines.

In support of this proposal, the Exchange represents that:

(1) Managed Portfolio Shares listed generically pursuant to Commentary .01 will conform to the initial and continued listing criteria under Rule 8.900–E as it is proposed to be amended and proposed Commentary .01 thereto;

(2) the Exchange's surveillance procedures are adequate to continue to properly monitor the trading of Managed Portfolio Shares in all trading sessions and to deter and detect violations of Exchange rules. Specifically, the Exchange intends to utilize its existing surveillance procedures applicable to derivative products, which will include Managed Portfolio Shares, to monitor trading in the Managed Portfolio Shares;

(3) the issuer of a series of Managed Portfolio Shares will be required to comply with Rule 10A–3 under the Act for the initial and continued listing of Managed Portfolio Shares, as provided under NYSE Arca Rule 5.3–E.

Prior to listing, pursuant to Rule 8.900–E(b) an issuer would be required to represent to the Exchange that it will notify the Exchange of any failure by a series of Managed Portfolio Shares to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If a series of Managed Portfolio Shares is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Rule 5.5–E(m).

All Managed Portfolio Shares listed and/or traded pursuant to Rule 8.900–E (including pursuant to unlisted trading privileges) are subject to all Exchange rules and procedures that currently govern the trading of equity securities on the Exchange.

The Exchange notes that the proposed change is not otherwise intended to address any other issues and that the Exchange is not aware of any problems that Equity Trading Permit Holders or issuers would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[19] in general, and furthers the objectives of Section 6(b)(5) of the Act,[20] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest because it would facilitate the listing and trading of additional Managed Portfolio Shares, which would enhance competition among market participants, to the benefit of investors and the marketplace. The Exchange believes that, in view of the Commission's approval of Exchange rules for Managed Portfolio Shares and commencement of Exchange trading of shares of series of Managed Portfolio Shares,[21] it is appropriate to codify certain rules within Rule 8.900–E that would generally reduce the need for separate proposed rule changes. The Exchange believes that this would facilitate the listing and trading of additional types of Managed Portfolio Shares that have investment portfolios that are similar to investment portfolios for other exchange-traded funds that have been approved for listing and trading, thereby creating greater efficiencies in the listing process for the Exchange and the Commission.

The securities and financial instruments enumerated in proposed

[15] *See* note 5, *supra.*

[16] *See, e.g.,* Application for exemptive relief (File No. 812–14405) and order granting exemptive relief applicable to the Precidian ETFs Trust under the 1940 Act (Investment Company Act Release No. 33477) (May 20, 2019).

[17] For example, the ClearBridge Approval Order (*see* note 5, *supra*) relating to listing of shares of the ClearBridge Focus Value ETF states: ''Pursuant to the Exemptive Order, the permissible investments include only the following instruments that trade on a U.S. exchange contemporaneously with the Shares: ETFs and exchange-traded notes, common stocks, preferred stocks, American depositary receipts, real estate investment trusts, commodity pools, metals trusts, currency trusts, and futures for which the reference asset the Fund may invest in directly or, in the case of an index future, based on an index of a type of asset that the Fund could invest in directly; as well as cash and cash equivalents (short-term U.S. Treasury securities, government money market funds and repurchase agreements).''

[18] *See* Securities Exchange Act Release No. 78397 (July 22, 2016), 81 FR 49320 (July 27, 2016) (SR–NYSEArca–2015–110) (amending NYSE Arca Equities Rule 8.600 to adopt generic listing standards for Managed Fund Shares).

[19] 15 U.S.C. 78f(b).

[20] 15 U.S.C. 78f(b)(5).

[21] *See* notes 4–6, *supra.*

Commentary .01 (a)(1)–(10) to Rule 8.900–E are consistent with, and limited to, the ''permissible investments'' for series of Managed Portfolio Shares previously approved by the Commission for Exchange listing and trading, as described in the Approval Orders.[22] The Exchange notes that all exchange-traded equity securities held by a series of Managed Portfolio Shares would be listed and traded on a national securities exchange in the United States. Futures contracts held by a series of Managed Portfolio Shares would be traded on a U.S. futures exchange.

With respect to the proposed amendment to Commentary .01(a)(10) relating to cash and cash equivalents, the enumerated cash equivalents—short-term U.S. Treasury securities, government money market funds, and repurchase agreements—also are included as cash equivalents for purposes of the generic listing criteria applicable to Managed Fund Shares in Commentary .01(c) to Rule 8.600–E. Such instruments are short-term, highly liquid, and of high credit quality, making them less susceptible than other asset classes both to price manipulation and volatility.[23]

Quotation and last sale information for Managed Portfolio Shares and exchange-traded equities will be available via the Consolidated Tape Association high-speed line or from the exchange on which such securities trade. Price information for futures contracts is available from the exchange on which such futures trade and from major market data vendors. Intraday pricing information for cash equivalents will be available through subscription services and/or pricing services.

The proposed rule change is also designed to protect investors and the public interest because Managed Portfolio Shares listed and traded pursuant to Rule 8.601–E, including pursuant to the proposed portfolio standards, would continue to be subject to the full panoply of Exchange rules and procedures that currently govern the trading of equity securities on the Exchange.

The Exchange believes that the proposed standards would continue to ensure transparency surrounding the listing process for Managed Portfolio Shares. In addition, the Exchange believes that the proposed portfolio standards for listing and trading Managed Portfolio Shares are reasonably designed to promote a fair and orderly market for such Managed Portfolio Shares. These proposed standards would also work in conjunction with the existing initial and continued listing criteria related to surveillance procedures and trading halts.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices because the Managed Portfolio Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in Rule 8.900–E. The Exchange has in place surveillance procedures that are adequate to properly monitor trading in Managed Portfolio Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. FINRA, on behalf of the Exchange, or the regulatory staff of the Exchange, will communicate as needed regarding trading in Managed Portfolio Shares, other exchange-traded equity securities, and futures contracts with other markets that are members of the ISG. In addition, the Exchange may obtain information regarding trading in Managed Portfolio Shares from other markets that are members of the ISG, including all U.S. securities exchanges and futures exchanges on which the equity securities and futures contracts are traded.

The Exchange also believes that the proposed rule change would fulfill the intended objective of Rule 19b–4(e) under the Act by allowing Managed Portfolio Shares that satisfy the proposed listing standards to be listed and traded without separate Commission approval. However, as proposed, the Exchange would continue to file separate proposed rule changes before the listing and trading of Managed Portfolio Shares that do not satisfy the additional criteria described above.

Prior to listing pursuant to proposed amended Rule 8.900–E and Commentary .01 thereto, an issuer would be required to represent to the Exchange that it will advise the Exchange of any failure by a series of Managed Portfolio Shares to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If a series of Managed Portfolio Shares is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Rule 5.5–E(m).

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[24] the Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, the Exchange believes that the proposed rule change would facilitate the listing and trading of additional types of Managed Portfolio Shares and result in a significantly more efficient process surrounding the listing and trading of Managed Portfolio Shares, which will enhance competition among market participants, to the benefit of investors and the marketplace. The Exchange believes that this would reduce the time frame for bringing Managed Portfolio Shares to market, thereby reducing the burdens on issuers and other market participants and promoting competition. In turn, the Exchange believes that the proposed change would make the process for listing Managed Portfolio Shares more competitive by applying uniform listing standards with respect to Managed Portfolio Shares.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as modified by Amendment No. 1, is consistent with the Act. Comments may be submitted by any of the following methods:

[22] *See* notes 5 and 17, *supra.*

[23] *See* note 18, *supra.*

[24] 15 U.S.C. 78f(b)(8).

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2020–84 on the subject line.

Paper Comments

- Send paper comments in triplicate to: Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2020–84. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2020–84 and should be submitted on or before November 3, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–22630 Filed 10–9–20; 8:45 am]

BILLING CODE 8011–01–P

[25] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90100; File No. SR–OCC–2020–010]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving Proposed Rule Change Concerning the Commingling of Certain Non-Customer Margin Assets With Clearing Fund Contributions in the Options Clearing Corporation's Account at the Federal Reserve Bank of Chicago

October 6, 2020.

I. Introduction

On August 7, 2020, the Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change SR–OCC–2020–010 (''Proposed Rule Change'') pursuant to Section 19(b) of the Securities Exchange Act of 1934 (''Exchange Act'')[1] and Rule 19b–4[2] thereunder to provide OCC with express authority to hold cash Clearing Fund contributions and certain non-customer cash margin assets in its account at the Federal Reserve Bank of Chicago at the same time.[3] The Proposed Rule Change was published for public comment in the **Federal Register** on August 24, 2020.[4] The Commission has received no comments regarding the Proposed Rule Change. This order approves the Proposed Rule Change.

II. Background

Since March 15, 2016, OCC has maintained an account at the Federal Reserve Bank of Chicago to hold cash deposits from its Clearing Members to satisfy margin and Clearing Fund requirements.[5] OCC's current rules restrict the manner in which OCC may hold Clearing Fund contributions and margin assets.[6] As a result, OCC holds cash Clearing Fund contributions in its Federal Reserve Bank Account, but separately holds Clearing Members' cash margin assets in accounts with commercial banks. To authorize OCC to comingle certain cash margin and cash Clearing Fund contributions, OCC proposes to amend its Rules 604 and 1002 as described below.

Current rules. OCC Rule 604(d) requires that certain cash margin assets of Clearing Members (''Specified Cash Margin Assets'') must be deposited to the credit of OCC in an account or accounts,[7] designated as Clearing Member margin accounts, with such banks, trust companies or other depositories as the Board of Directors may select. Rule 604(d) further prohibits OCC from commingling Specified Cash Margin Assets with OCC's funds of OCC or using such assets as working capital.

OCC Rule 1002(c) requires, among other things, that cash Clearing Fund contributions not otherwise invested shall be deposited by OCC in accounts with approved custodians, which include the Federal Reserve Bank of Chicago. Rule 1002(c) permits the comingling of Clearing Fund contributions from different Clearing Members.[8] OCC currently holds cash Clearing Fund contributions in its Federal Reserve Bank Account.

Proposed Rule Change to OCC. OCC proposes to add language to Rule 604 to allow OCC to deposit Specified Cash Margin Assets in a Federal Reserve Bank Account not designated as a Clearing Member margin account. The proposed change would apply only to non-customer margin assets.[9] OCC proposes further to add language to its Rules 604 and 1002 to allow OCC to commingle such assets and cash Clearing Fund contributions deposited in a Federal Reserve Bank Account.

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Exchange Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Notice of Filing *infra* note 4, 85 FR at 52176.

[4] Securities Exchange Act Release No. 89590 (Aug. 18, 2020), 85 FR 52176 (Aug. 24, 2020) (File No. SR–OCC–2020–010) (''Notice of Filing'').

[5] *See* Federal Reserve Bank of Chicago authorization to provide accounts and services to Options Clearing Corporation and Chicago Mercantile Exchange, Inc., in accordance with the Dodd-Frank Act and Regulation HH, approved March 15, 2016 (*https://www.federalreserve.gov/releases/h2/20160319/h2.pdf*).

[6] *See* OCC Rules at *https://www.theocc.com/getmedia/9d3854cd-b782-450f-bcf7-33169b0576ce/occ_rules.pdf.*

[7] OCC Rule 604(d) expressly excludes from these Specified Cash Margin Assets those funds that are: (i) Deposited in respect of a segregated futures account (which must be held in accordance with the provisions of Section 4d of the Commodity Exchange Act and regulations thereunder); (ii) invested by OCC pursuant to Rule 604(a); or (iii) credited by OCC to a liquidating settlement account pursuant to Chapter XI of OCC's Rules.

[8] *See* OCC Rule 1002(c) available at *https://www.theocc.com/getmedia/9d3854cd-b782-450f-bcf7-33169b0576ce/occ_rules.pdf.*

[9] *See* Notice of Filing, 85 FR at 52177 (stating that OCC proposes to add Interpretation and Policy .18 to Rule 604 to provide that, notwithstanding anything else in Rule 604, Specified Cash Margin Assets held by OCC as *non-customer margin assets* and deposited to the credit of OCC in its Federal Reserve Bank Account may be deposited in accounts that are not designated as Clearing Member margin accounts and may be commingled with cash Clearing Fund contributions.)

such proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to such organization.[10] After carefully considering the Proposed Rule Change, the Commission finds that the proposal is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to OCC. More specifically, the Commission finds that the proposal is consistent with Section 17A(b)(3)(F) of the Exchange Act,[11] Rule 17Ad–22(e)(7)(iii) and Rule 17Ad–22(e)(16) thereunder.[12]

A. Consistency With Section 17A(b)(3)(F) of the Exchange Act

Section 17A(b)(3)(F) of the Exchange Act requires, among other things, that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.[13] Based on its review of the record, and for the reasons described below, the Commission believes that allowing OCC to deposit non-customer margin in its Federal Reserve Bank Account commingled with cash Clearing Fund contributions as described above is consistent with the safeguarding of securities and funds for which it has custody or control over.

The Proposed Rule Change would allow OCC to deposit non-customer cash margin at a Federal Reserve Bank Account. The Commission continues to believe that access to a Federal Reserve Account is a valuable tool,[14] and that the use of such a tool would reduce custody risk in a clearing agency.[15] Further, the Proposed Rule Change would not limit OCC's access to commercial banks, and would, therefore, provide OCC with an additional custodian at which to deposit non-customer cash margin. The Commission believes, therefore, that adopting rules allowing OCC to deposit non-customer cash margin in a Federal Reserve Bank Account is consistent with the requirements of Section 17A(b)(3)(F) of the Exchange Act.[16]

B. Consistency With Rule 17Ad–22(e)(7)(iii) Under the Exchange Act

Rule 17Ad–22(e)(7)(iii) under the Exchange Act requires that a covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to effectively measure, monitor, and manage the liquidity risk that arises in or is borne by the covered clearing agency, including measuring, monitoring, and managing its settlement and funding flows on an ongoing and timely basis, and its use of intraday liquidity by, *inter alia,* using access to accounts and services at a Federal Reserve Bank, or other relevant central bank, when available and where determined to be practical by the board of directors to enhance its management of liquidity risk.[17] In recognizing that there may be a number of ways to address compliance with Rule 17Ad–22(e)(7), the Commission has stated that a covered clearing agency generally should consider, when establishing and maintaining policies and procedures that address liquidity risk, including if the covered clearing agency has access to central bank accounts, payment services, or securities services, whether it uses these services, where practical, to enhance its management of liquidity risk.[18]

OCC may use cash margin deposits, including non-customer cash margin deposits, to manage liquidity risk. OCC recently adopted a the Liquidity Risk Management Framework document (''LRMF'') that sets forth a comprehensive overview of OCC's liquidity risk management practices and governs OCC's policies and procedures as they relate to liquidity risk management.[19] The LRMF describes the primary liquidity risks OCC faces when managing a Clearing Member default, and describes the maintenance of liquidity resources designed to address a variety of stress scenarios through the sizing of such resources.[20] The LRMF defines such liquidity resources to include cash margin deposits where such deposits are required under OCC's Contingency Funding Plan.[21] The Proposed Rule Change would permit, but not require, OCC to use its access to a central bank account as a depository for non-customer cash margin. The Commission believes, therefore, that allowing OCC to deposit non-customer cash margin in a Federal Reserve Bank Account is consistent with the requirements of Rule 17Ad–22(e)(7)(iii) under the Exchange Act.

C. Consistency With Rule 17Ad–22(e)(16) Under the Exchange Act

Rule 17Ad–22(e)(16) requires a clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to safeguard its own and its Clearing Members' assets, minimize the risk of loss and delay in access to these assets, and invest such assets in instruments with minimal credit, market, and liquidity risks.[22] The Proposed Rule Change would expand OCC's ability to use its Federal Reserve Bank Account by allowing it to deposit non-customer cash margin provided by Clearing Members in the same account used to custody cash Clearing Fund contributions. As stated above, the Commission believes that access to a Federal Reserve Account is a valuable tool,[23] and that the use of such a tool would reduce custody risk in a clearing agency.[24] OCC deposits cash Clearing Fund contributions in its Federal Reserve Bank Account, but is precluded from depositing margin in the same account under its current rules. The Commission believes, therefore, that expanding the Clearing Member funds that OCC may custody in its Federal Reserve Bank Account to include non-customer cash margin is consistent with the requirements of Rule 17Ad–22(e)(16) under the Exchange Act.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the Proposed Rule Change is consistent with the requirements of the Exchange Act, and in particular, the requirements of Section 17A of the Exchange Act[25] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,[26] that the Proposed Rule Change (SR–OCC–2020–010) be, and hereby is, approved.

[10] 15 U.S.C. 78s(b)(2)(C).

[11] 15 U.S.C. 78q–1(b)(3)(F).

[12] 17 CFR 240.17Ad–22(e)(7)(iii) and 17 CFR 240.17Ad–22(e)(16).

[13] 15 U.S.C. 78q–1(b)(3)(F).

[14] *See* Securities Exchange Act Release 71699, 79 FR 29508, 29533 (May 22, 2014) (File No. S7–03–14).

[15] *See* Securities Exchange Act Release 68080, 77 FR 66220, 66268 (Nov. 2, 2012) (File No. S7–08–11).

[16] 15 U.S.C. 78q–1(b)(3)(F).

[17] 17 CFR 240.17Ad–22(e)(7)(iii).

[18] *See* Securities Exchange Act Release 78961, 81 FR 70786, 70823–24 (Oct. 13, 2016) (File No. S7–03–14).

[19] *See* Securities Exchange Act Release 89014 (Jun. 4, 2020), 85 FR 35446 (Jun. 10, 2020) (File No. SR–OCC–2020–003) (''LRMF Approval Order'').

[20] *See* LRMF Approval Order, 85 FR at 35447.

[21] *See id.*

[22] 17 CFR 240.17Ad–22(e)(16).

[23] *See* Securities Exchange Act Release 71699, 79 FR 29508, 29533 (May 22, 2014) (File No. S7–03–14).

[24] *See* Securities Exchange Act Release 68080, 77 FR 66220, 66268 (Nov. 2, 2012) (File No. S7–08–11).

[25] In approving this Proposed Rule Change, the Commission has considered the proposed rules' impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[26] 15 U.S.C. 78s(b)(2).

[27] 17 CFR 200.30–3(a)(12).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–22475 Filed 10–9–20; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #16601 and #16602; Iowa Disaster Number IA–00092]

Presidential Declaration Amendment of a Major Disaster for the State of Iowa

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Iowa (FEMA–4557–DR), dated 08/20/2020.

Incident: Severe Storms.

Incident Period: 08/10/2020.

DATES: Issued on 10/05/2020.

Physical Loan Application Deadline Date: 10/19/2020.

Economic Injury (EIDL) Loan Application Deadline Date: 05/20/2021.

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 IOWA, dated 08/20/2020, is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans): Clinton

Contiguous Counties (Economic Injury Loans Only): Iowa: Jackson.

Illinois: Carroll, Whiteside.

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. 2020–22569 Filed 10–9–20; 8:45 am]

BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #16643 and #16644; Louisiana Disaster Number LA–00104]

Presidential Declaration Amendment of a Major Disaster for Public Assistance Only for the State of Louisiana

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 Louisiana (FEMA–4559–DR), dated 09/05/2020.

Incident: Hurricane Laura.

Incident Period: 08/22/2020 through 08/27/2020.

DATES: Issued on 10/05/2020.

Physical Loan Application Deadline Date: 11/04/2020.

Economic Injury (EIDL) Loan Application Deadline Date: 06/07/2021.

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 Louisiana, dated 09/05/2020, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Parishes:

Grant, Jackson, Lincoln, Ouachita, Rapides, Winn.

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. 2020–22570 Filed 10–9–20; 8:45 am]

BILLING CODE 8026–03–P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2020–0014]

Privacy Act of 1974; Matching Program

AGENCY: Social Security Administration (SSA).

ACTION: Notice of a new matching program.

SUMMARY: In accordance with the provisions of the Privacy Act, as amended, this notice announces a new matching program with the United States Department of the Treasury, Internal Revenue Service (IRS). Under this matching program, the IRS will disclose IRS return information to SSA to administer benefits to qualified aged, blind and disabled individuals.

DATES: The deadline to submit comments on the proposed matching program is 30 days from the date of publication of this notice in the **Federal Register**. The matching program will be applicable on January 1, 2021, or once a minimum of 30 days after publication of this notice has elapsed, whichever is later. The matching program will be in effect for a period of 18 months.

ADDRESSES: Interested parties may comment on this notice by either telefaxing to (410) 966–0869, writing to Matthew Ramsey, Executive Director, Office of Privacy and Disclosure, Office of the General Counsel, Social Security Administration, G–401 WHR, 6401 Security Boulevard, Baltimore, MD 21235–6401, or emailing *Matthew.Ramsey@ssa.gov.* All comments received will be available for public inspection by contacting Mr. Ramsey at this street address.

FOR FURTHER INFORMATION CONTACT: Interested parties may submit general questions about the matching program to Andrea Huseth, Director, Office of Privacy and Disclosure, Office of the General Counsel, Social Security Administration, G–401 WHR, 6401 Security Boulevard, Baltimore, MD 21235–6401, at Telephone: (410) 966–5855, or send an email to *Andrea.Huseth@ssa.gov.*

SUPPLEMENTARY INFORMATION: None.

Matthew Ramsey,

Executive Director, Office of Privacy and Disclosure, Office of the General Counsel.

PARTICIPATING AGENCIES:

SSA and IRS.

AUTHORITY FOR CONDUCTING THE MATCHING PROGRAM

This matching agreement between IRS and SSA is executed pursuant to the Privacy Act of 1974, (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988, and otherwise; and the Office of Management and Budget Final Guidance interpreting those Acts.

Public Law (Pub. L.) 98–369, Deficit Reduction Act of 1984, requires agencies administering certain federally-assisted benefit programs to use certain information to ensure proper distribution of benefit payments (98 Stat. 494).

Section 6103(l)(7) of the Internal Revenue Code (IRC) (26 U.S.C. 6103(l)(7)) authorizes IRS to disclose return information with respect to unearned income to Federal, State and local agencies administering certain federally-assisted benefit programs under the Act.

Section 1631(e)(1)(B) of the Act (42 U.S.C. 1383(e)(1)(B)) requires verification of Supplemental Security Income eligibility and benefit amounts with independent or collateral sources. This section of the Act provides that the ''Commissioner of Social Security shall, as may be necessary, request and utilize information available pursuant to section 6103(l)(7) of the Internal Revenue Code of 1986'' for purposes of federally-administered supplementary payments of the type described in section 1616(a) of the Act (including payments pursuant to an agreement entered into under section 212(a) of Pub. L. 93–66).

The legal authority for the disclosure of SSA data under this agreement is section 1106 of the Act (42 U.S.C. 1306), section (b)(3) of the Privacy Act (5 U.S.C. 552a(b)(3)), and the regulations and guidance promulgated under these provisions.

PURPOSE(S)

This agreement sets forth the terms and conditions under which the IRS agrees under the authority of 26 U.S.C 6103(1)(7) to disclose to SSA certain return information for use in verifying eligibility for, and the correct amount of, benefits provided under Title XVI of the Act to qualified aged, blind, and disabled individuals; and federally-administered supplementary payments as described in section 1616(a) of the Act (including payments pursuant to an agreement entered into under section 212(a) of Pub. L. 93–66 (87 Stat. 152)). 42 U.S.C. 1382 note.

CATEGORIES OF INDIVIDUALS

The individuals whose information is involved in this matching program are aged, blind, or disabled individuals who are applicants or recipients (and their deemors) of Title XVI benefits.

CATEGORIES OF RECORDS

SSA will provide electronically to IRS the following data elements in the finder file:

- Social Security number
- Name control

IRS will disclose to SSA the following:

- Payee Account Number,
- Payee Name and Mailing Address,
- Payee Taxpayer Identification Number (TIN),
- Payer Name and Address,
- Payer TIN, and
- Income Type and Amount.

SYSTEM(S) OF RECORDS:

SSA's SOR is the Supplemental Security Income Record and Special Veterans Benefit (SSR), 60–0103, last fully published at 71 **Federal Register** (FR) 1830 (January 11, 2006), and amended at 72 FR 69723 (December 10, 2007), 83 FR 31250–51 (July 3, 2018), and at 83 FR 54969 (November 1, 2018).

IRS will match SSA's information with its Information Return Master File (IRMF) and disclose to SSA return information with respect to unearned income from the IRMF [Treasury/IRS 22.061], as published at 80 FR 54081–082 (September 8, 2015), through the *Disclosure of Information to Federal, State and Local Agencies* program.

[FR Doc. 2020–22577 Filed 10–9–20; 8:45 am]

BILLING CODE 4191–02–P

TRADE AND DEVELOPMENT AGENCY

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: United States Trade and Development Agency.

ACTION: Request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the U.S. Trade and Development Agency (USTDA) has submitted a request to the Office of Management and Budget (OMB) to review and approve an extension for a currently approved information collection for Evaluation of USTDA Performance. USTDA published its first **Federal Register** Notice on this information request extension on August 14, 2020, at which time a 60-day comment period was announced. No comments were received in response to this notice at the end of the comment period.

DATES: Send comments on or before November 12, 2020 to be assured of consideration.

ADDRESSES: Copies of the subject form and the request for extension prepared for submission to OMB may be obtained from the Agency Submitting Officer. Comments should be addressed as follows: Desk Officer for USTDA, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington DC 20503.

FOR FURTHER INFORMATION CONTACT: Lisa Lawn, Administrative Officer, Attn: PRA, U.S. Trade and Development Agency, 1101 Wilson Blvd., Suite 1100, Arlington, VA 22209–3901; Tel: (703) 875–4357, Fax: (703) 775–4037; Email: *llawn@ustda.gov.*

SUPPLEMENTARY INFORMATION: Comments are again being solicited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of them methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden to the collection of information on those who are to respond including the use of appropriate automated, electronic, mechanical or other technological collection techniques or other forms of information technology.

Summary Collection Under Review

Type of Request: Extension of a currently approved information collection.

Expiration Date of Previous Approval: 12/31/2020

Title: Evaluation of USTDA Performance.

Form Number: USTDA 1000E–2014a.

Frequency of Use: annually for duration of project.

Type of Respondents: Business or other for profit; Not for profit institutions; Farms; Federal Government.

Estimated Number of Responses: 1,440 to 1,800 per year.

Estimated Total Annual Burden on Respondents: 480 to 600 hours per year.

Federal Cost: $335,709.

Authority for Information Collection: Government Performance and Results Act of 1993, Pub. L. 103–62, 107 Stat. 285.

Abstract: USTDA and contractors will collect information from various stakeholders on USTDA-funded activities regarding development impact and/or commercial objectives as well as evaluate success regarding GPRA objectives. This information collection enables USTDA to assess the impacts that its program investments have on U.S. commercial interests and economic development abroad. The goal of this information collection is to gather evidence and stakeholder feedback in order to continually improve program performance and deliver better results to U.S. taxpayers. As a matter of good management practice, such information is necessary to responsibly carry out the Agency's mission of monitoring current and recently completed activities.

Dated: October 7, 2020.

Lisa J. Lawn,

Administrative Officer.

[FR Doc. 2020–22583 Filed 10–9–20; 8:45 am]

BILLING CODE 8040–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration Aviation Rulemaking Advisory Committee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Aviation Rulemaking Advisory Committee (ARAC) meeting.

SUMMARY: This notice announces a meeting of the ARAC.

DATES: The meeting will be held on Thursday, December 10, 2020, from 1:00 p.m. to 4:00 p.m. Eastern Standard Time.

Requests to attend the meeting must be received by Monday, November 23, 2020.

Requests for accommodations to a disability must be received by Monday, November 30, 2020.

Requests to submit written materials to be reviewed during the meeting must be received no later than Monday, November 23, 2020.

ADDRESSES: The meeting will be held virtually. Members of the public who wish to observe the meeting must RSVP by emailing *9-awa-arac@faa.gov.* General committee information including copies of the meeting minutes will be available on the FAA Committee website at *https://www.faa.gov/regulations_policies/rulemaking/committees/documents/.*

FOR FURTHER INFORMATION CONTACT: Lakisha Pearson, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591, telephone (202) 267–4191; email *9-awa-arac@faa.gov.* Any committee-related request should be sent to the person listed in this section.

SUPPLEMENTARY INFORMATION:

I. Background

The ARAC was created under the Federal Advisory Committee Act (FACA), in accordance with Title 5 of the United States Code (5 U.S.C. App. 2) to provide advice and recommendations to the FAA concerning rulemaking activities, such as aircraft operations, airman and air agency certification, airworthiness standards and certification, airports, maintenance, noise, and training.

II. Agenda

At the meeting, the agenda will cover the following topics:

- Status Report from the FAA
- Status Updates:
  - Active Working Groups
  - Transport Airplane and Engine (TAE) Subcommittee
- Recommendation Reports
- Any Other Business

Detailed agenda information will be posted on the FAA Committee website address listed in the **ADDRESSES** section at least one week in advance of the meeting.

III. Public Participation

The meeting will be open to the public on a first-come, first-served basis, as space is limited. Please confirm your attendance with the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Please provide the following information: Full legal name, country of citizenship, and name of your industry association, or applicable affiliation. If you are attending as a public citizen, please indicate so.

For persons participating by telephone, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section by email or phone for the teleconference call-in number and passcode. Callers are responsible for paying long-distance charges.

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.

The FAA is not accepting oral presentations at this meeting due to time constraints. Any member of the public may present a written statement to the committee at any time. The public may present written statements to the Aviation Rulemaking Advisory Committee by providing a copy to the Designated Federal Officer via the email listed in the **FOR FURTHER INFORMATION CONTACT** section.

Issued in Washington, DC, on October 2, 2020.

Brandon Roberts,

Executive Director Office of Rulemaking.

[FR Doc. 2020–22514 Filed 10–9–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. 2020–56]

Petition for Exemption; Summary of Petition Received; Cowboy State Volunteers

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

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before November 2, 2020.

ADDRESSES: Send comments identified by docket number FAA–2020–0560 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at (202) 493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for

accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Megan Blatchford, *Megan.B.Blatchford@faa.gov,* Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on October 2, 2020.

Brandon Roberts,

Executive Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2020–0560.

Petitioner: Cowboy State Volunteers.

Sections of 14 CFR Affected: §§ 61.113, 119.1, and part 120.

Description of Relief Sought: Cowboy State Volunteers (CSV) seeks relief from § 61.113 of Title 14, Code of Federal Regulations (14 CFR) to allow CSV pilots, holding a minimum of a private pilot certificate, to receive fuel compensation for relief/support missions at the request of Wyoming's federal, state, and local agencies. Additionally, CSV requests relief from § 119.1 and part 120 to allow CSV and its pilots to operate the relief/support missions without an Operating Certificate nor the required drug/alcohol testing.

[FR Doc. 2020–22513 Filed 10–9–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. 2020–70]

Petition for Exemption; Summary of Petition Received; Premier Air Charters, Inc.

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

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before November 2, 2020.

ADDRESSES: Send comments identified by docket number FAA–2020–0771 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at (202) 493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Michelle Ross, (202) 267–9836, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on October 2, 2020.

Brandon Roberts,

Executive Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2020–0771.

Petitioner: Premier Air Charters, Inc.

Sections of 14 CFR Affected: § 135.339(a)(2).

Description of Relief Sought: Due to the COVID–19 national health emergency, the petitioner requests a one-time exemption to allow an FAA-approved Designee Pilot Examiner who is employed by the company and meets all other requirements to serve as a part 135 check airman without conducting a proficiency or competency check under the observation of an FAA inspector.

[FR Doc. 2020–22520 Filed 10–9–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

FAA Advisory Circular 187, Flight Standards Service Schedule of Charges Outside the United States

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

ACTION: Notice of availability of agency guidance.

SUMMARY: This notice announces the availability of FAA Advisory Circular (AC) 187, Flight Standards Service Schedule of Charges Outside the United States. The FAA has revised AC 187 to reflect updated schedule of charges for services of Federal Aviation Administration (FAA) Flight Standards Service (AFS) aviation safety inspectors (ASI) outside the United States.

DATES: The guidance in AC 187–1P became effective October 1, 2020.

FOR FURTHER INFORMATION CONTACT: Tish Thompkins, International Programs and Policy and Division, Federal Aviation Administration, 600 Independence Avenue SW, Washington, DC 20591; 202–267–0996, *tish.thompkins@faa.gov.*

SUPPLEMENTARY INFORMATION: On April 19, 1995, the FAA amended Title 14 of the Code of Federal Regulations (14 CFR) part 187, Fees for Certification Services and Approvals Performed Outside the United States (60 FR 19628, April 19, 1995), which established the methodology for determining these charges. In this rule, the FAA stated it would publish these fees in an AC. Refer to part 187 appendix A(l).

The FAA reviews the actual costs incurred in the services listed in Appendix 1 at the beginning of each fiscal year. The FAA will do this using the same fee methodology described in part 187 appendix A. The FAA will amend the schedule of charges on an annual basis to either increase or decrease fees, as needed. The FAA will publish each amended schedule in the **Federal Register** and as a revision to this AC. AC 187 may be found at

https://www.faa.gov/regulations_policies/advisory_circulars/index.cfm/go/document.information/documentID/1038213.

Issued in Washington, DC.

Robert C. Carty,

Deputy Executive Director, Flight Standards Service, AFX–2.

[FR Doc. 2020–22519 Filed 10–9–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. 2020–66]

Petition for Exemption; Summary of Petition Received; Pyka Inc.

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

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before November 2, 2020.

ADDRESSES: Send comments identified by docket number FAA–2019–0948 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at (202) 493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jake Troutman, (202) 683–7788, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on October 2, 2020.

Brandon Roberts,

Executive Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2019–0948.

Petitioner: Pyka Inc.

Section(s) of 14 CFR Affected: §§ 61.3(a)(1)(i); 91.7(a); 91.119(c); 91.121; 91.151(b); 91.405(a); 91.407(a)(1); 91.409(a)(1) and (2); 91.417(a) and (b); 137.19(c), (d), (e)(2)(ii), (e)(2)(iii), and (e)(2)(v); 137.31; 137.33; 137.41(c); and 137.42.

Description of Relief Sought: Pyka Inc. (Pyka) seeks relief from 14 CFR 61.3(a)(1)(i); 91.7(a); 91.119(c); 91.121; 91.151(b); 91.405(a); 91.407(a)(1); 91.409(a)(1) and (2); 91.417(a) and (b); 137.19(c), (d), (e)(2)(ii), (e)(2)(iii), and (e)(2)(v); 137.31; 137.33; 137.41(c); and 137.42 and has amended their petition for exemption. By letter dated November 15, 2019, Pyka submitted a petition for exemption to request relief for operations under § 44807 of the FAA Reauthorization Act of 2018 (P.L. 115–254) to operate its proprietary Pyka P–400b fixed-wing unmanned aircraft system (UAS), with a maximum takeoff weight of 600 pounds (lbs.), for aerial agricultural spraying operations in remote rural operating environments in the United States. By letter dated July 17, 2020, Pyka submitted an amendment to their original petition to replace the P–400b UAS with the proprietary Pyka Pelican UAS. The Pelican is derived from the Pyka P–400b and has a gross weight of 1,124 lbs. The Pelican is equipped with the same fuselage and flight control software as the P–400b. It improves on the safety of the design with sealed enclosures for various subsystems, improved stability and ground handling, a Light Detection and Ranging (LIDAR) obstacle avoidance system, and improved power density for better performance. In addition, the increased payload capacity of the Pelican UAS will allow for more efficient spraying operations. For these reasons, Pyka seeks to replace the P–400b UAS with the Pelican UAS in its pending petition for exemption. The only change requested in this amendment is the aircraft to be operated. The original relief requested and the concept of operations remains the same.

[FR Doc. 2020–22512 Filed 10–9–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. 2020–69]

Petition for Exemption; Summary of Petition Received; University of North Dakota University and University of North Dakota Aerospace Foundation

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

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before November 2, 2020.

ADDRESSES: Send comments identified by docket number FAA–2020–0782 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in

Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

• *Fax:* Fax comments to Docket Operations at (202) 493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Linda Lane (202) 267–7280, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on October 2, 2020.

Brandon Roberts,

Executive Director, Office of Rulemaking.

Petition For Exemption

Docket No.: FAA–2020–0782.

Petitioner: University of North Dakota (UND) and University of North Dakota Aerospace Foundation (UNDAF).

Sections of 14 CFR Affected: §§ 141.11(b) and 141.63(a)(2) and (3).

Description of Relief Sought: The University of North Dakota and the University of North Dakota Aerospace Foundation are petitioning for exemption from 14 CFR part 141, §§ 141.11(b) and 141.63(a)(2) and (3), to the extent necessary to permit UND and UNDAF to conduct flight training utilizing one syllabus for both an instrument rating airplane and commercial pilot certificate and maintain part 141 examining authority. This syllabus will meet all appropriate training content and aeronautical experience requirements provided in part 141, Appendices C and D, and will not have reduced training times.

[FR Doc. 2020–22517 Filed 10–9–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. 2020–67]

Petition for Exemption; Summary of Petition Received; Victory Air, LLC

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

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before November 2, 2020.

ADDRESSES: Send comments identified by docket number FAA–2020–0180 using any of the following methods:

• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.

• *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.

• *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

• *Fax:* Fax comments to Docket Operations at (202) 493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Nia Daniels, (202) 267–7626, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on October 2, 2020.

Brandon Roberts,

Executive Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2020–0180.

Petitioner: Victory Air, LLC.

Sections of 14 CFR Affected: 61.3(a) and (c) and 125.261(a)(2).

Description of Relief Sought: Victory Air, LLC (Victory Air), a part 125 air operator, seeks an exemption from Title 14, Code of Federal Regulations §§ 61.3(a) and (c) and 125.261(a)(2) to allow Victory Air to issue a written confirmation of an FAA-issued crewmember certificate to a Victory Air flight crewmember, based on information in Victory Air's approved certificate verification plan, when such crewmember loses the original FAA-issued crewmember certificate.

[FR Doc. 2020–22516 Filed 10–9–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. 2020–71]

Petition for Exemption; Summary of Petition Received; Daniel Bauer

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

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before November 2, 2020.

ADDRESSES: Send comments identified by docket number FAA–2020–0802 using any of the following methods:

• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.

• *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.

• *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

• *Fax:* Fax comments to Docket Operations at (202) 493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Linda Lane (202) 267–7280, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on October 2, 2020.

Brandon Roberts,

Executive Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2020–0802.

Petitioner: Daniel Bauer.

Section(s) of 14 CFR Affected: § 61.39(a)(1)(i).

Description of Relief Sought: The petitioner is seeking a three month extension of the relief provided by the COVID–19 Special Federal Aviation Regulations (SFAR) as it relates to the Pilot Knowledge Test qualification requirement. This grant of exemption would permit the petitioner to use his knowledge test results for up to six calendar months after the date of expiration to otherwise qualify for a practical test as specified in § 61.39. The current SFAR only provides relief for up to three calendar months. The petitioner contends there are continuing difficulties obtaining aircraft maintenance, instruction and examinations due to COVID–19 related health and social distancing concerns.

[FR Doc. 2020–22515 Filed 10–9–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA 2020–0752]

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: 49 U.S.C. 44701/Service Difficulty Report

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval for a renew information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on August 7, 2020. The collection involves operators or repair stations report any malfunctions and defects to the Administrator. The information collected allows the FAA to evaluate its certification standards, maintenance programs, and regulatory requirements. It is also the basis for issuance of Airworthiness Directives designed to prevent unsafe conditions and accidents

DATES: Written comments should be submitted by November 7, 2020.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Graciela S. Robino by email at: *Graciela.s.robino@faa.gov;* phone: (336) 369–3915.

SUPPLEMENTARY INFORMATION:

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information.

OMB Control Number: 2120–0663.

Title: Service Difficulty Report.

Form Numbers: FAA Form 8070–1; FAA Form 8010–4.

Type of Review: Renewal of an information collection.

Background: The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on August 7, 2020, (85 FR 48057). This collection affects certificate holders operating under 14 CFR part 121, 125, 135, and 145 who are required to report service difficulties and malfunction or defect reports. The data collected identifies mechanical failures, malfunctions, and defects that may be a hazard to the operation of an aircraft. The FAA uses this data to identify trends that may facilitate the early detection of airworthiness problems. When defects are reported which are likely to exist on other products of the same or similar design, the FAA may disseminate safety information to a particular section of the aviation community.

Respondents: Approximately 60,000 respondents.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 15 minutes.

Estimated Total Annual Burden: 15,000.

Issued in Oklahoma City, OK, on October 7, 2020.

Graciela S. Robino,

SDR Program Manager, Regulatory Support Division, Flight Standards Service, Office of Aviation Safety, AFS–620.

[FR Doc. 2020–22532 Filed 10–9–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2019–0240]

Hours of Service of Drivers: DPN USA, LLC dba Matrix Medical Network; Application for Exemption

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

ACTION: Notice of final disposition; denial of application.

SUMMARY: FMCSA announces its decision to deny an application for an exemption from the hours-of-service (HOS) provisions submitted by DPN USA, LLC, doing business as Matrix Medical Network (Matrix). Matrix requested an exemption to allow its employee-drivers known as ''Mobile Team Leads'' to have a 16-hour window within which to operate CMVs during their work shift and to return to work with less than the mandatory 10 hours off duty. The Agency has concluded that the terms and conditions of the exemption would not achieve a level of safety equivalent to or greater than would be achieved by compliance with the HOS rules.

DATES: FMCSA denies this application for exemption effective October 13, 2020.

ADDRESSES: *Docket:* For access to the docket to read background documents or comments, go to *www.regulations.gov* at any time or visit Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The on-line FDMS is available 24 hours each day, 365 days each year.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

FOR FURTHER INFORMATION CONTACT: Ms. Pearlie Robinson, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: 202–366–4325. Email: *MCPSD@dot.gov.* If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *www.regulations.gov* and insert the docket number, ''FMCSA–2019–0240'' in the ''Keyword'' box and click ''Search.'' Next, click the ''Open Docket Folder'' button and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., EST., Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Docket Operations.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The Agency's decision must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period (up to 5 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. Request for Exemption

Under 49 CFR 395.3(a)(1), a driver is prohibited from operating a commercial motor vehicle (CMV) without first taking 10 consecutive hours off duty. Section 395.3(a)(2) prohibits a driver from operating a CMV after the end of the 14th hour after coming on duty.

Matrix requests a limited exemption for its mobile clinic drivers, known as ''Mobile Team Leads,'' from the 10-hour off-duty rule and the 14-hour driving window. Matrix requests that these employee-drivers be permitted to rest for 8 instead of 10 hours, and to operate CMVs during a window of 16, instead of 14, hours.

Matrix reports that it operates a fleet of mobile medical clinics used to assist Medicare Advantage organizations. These services include, but are not limited to, providing patients with comprehensive health assessments and evaluations, and ongoing management of complex chronic conditions.

Matrix explained that it generally hosts patients during ''events,'' which are usually held two to three times per week. Patients are seen at a mobile clinic throughout an event day, usually between 7:00 a.m. and 6:00 p.m., but the events do not always end on time. Each mobile clinic operates with a minimal crew consisting of (1) a Mobile Team Lead, (2) a registered nurse or nurse practitioner, (3) a mammography technician, and (4) a medical technician or cardiovascular technician. The Mobile Team Lead is an integral part of the healthcare service delivery team and has duties akin to those of an office manager. In addition, he or she is responsible for driving the mobile clinic to and from an event location and the hotel used by the team. The proposed exemption would cover approximately 50 Mobile Team Leads for the 40 mobile clinics in the applicant's fleet. The exemption, if granted, would be used on event days only.

Matrix explains that patients may cancel or arrive late or that an appointment may require additional time with the team, causing an event to go beyond 6:00 p.m. Matrix argues that compliance with sections 395.3(a)(1) and (2) would sometimes require Matrix to cancel patient appointments to have enough time to reach the next event location. According to the applicant, the need to maximize patient engagement is the underlying reason for this exemption request. It would allow an event to continue past its scheduled end time and allow the Mobile Team Lead to drive the mobile clinic to a hotel that would allow the next day's event to begin at 7:00 a.m.

IV. Method To Ensure an Equivalent or Greater Level of Safety

Matrix argues that an equivalent level of safety would be maintained through short driving duration and distances, and driving at off-peak commuting times. Matrix believes that an equivalent level of safety will be sustained as Mobile Team Leads are trained on fatigue awareness and HOS compliance

expectations, and have completed training programs from both the North American Fatigue Management Program and the Commercial Vehicle Training Alliance. Matrix states that Mobile Team Leads drive less than one-sixth of their work day. The rest of their day is spent performing non-clinical, management, and administrative services. A copy of Matrix's application is available for review in the docket for this notice.

V. Public Comments

On October 31, 2019, FMCSA published notice of this application and requested public comment (84 FR 58447). Two comments were submitted. Mr. Michael Millard wrote, ''I appreciate the issues that DPN USA, LLC faces, however, poor prior planning and neglecting to develop an adequate business plan to fulfill its mission is not an excuse to ask for leniency in complying with the HOS after the fact. DPN USA, LLC's request presents multiple hazards to the public and should be denied.'' The Commercial Vehicle Safety Alliance (CVSA) stated:

> If this exemption is granted, CVSA recommends that, as a condition of the exemption, all drivers, managers, dispatchers and relevant staff be required to complete the North American Fatigue Management Program training developed in partnership by FMCSA, Transport Canada and industry stakeholders as a comprehensive approach for managing fatigue. Required participation in the program by all relevant staff will help mitigate the impact on safety the additional exposure to fatigue causes.

VI. FMCSA Decision

The HOS regulations limit when and how long an individual may drive to ensure that drivers stay awake and alert and to help reduce the possibility of driver fatigue. The Agency reaffirmed the ''core'' HOS provisions in the HOS final rule published on June 1, 2020 [85 FR 33396] increasing flexibility without changing the 10-hour off-duty rule or the 14-hour driving window (except during ''adverse driving conditions''). FMCSA has reviewed the application and the public comments and determined that it would be inappropriate to grant the exemption. Matrix did not demonstrate how its CMV operations under such an exemption would achieve a level of safety equivalent to, or greater than, the level of safety obtained in the absence of the exemption [49 CFR 381.305(a)]. The applicant did not provide data to support that 8 hours off duty following a 16-hour driving window would give a driver enough time to avoid cumulative fatigue. The exemption application is denied.

James W. Deck,

Deputy Administrator.

[FR Doc. 2020–22560 Filed 10–9–20; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2020–0190]

Property Carrier Broker Listening Session; Public Meeting

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

ACTION: Notice of public listening session.

SUMMARY: FMCSA announces that it will host a listening session pertaining to property carrier brokers. FMCSA would like to hear from members of the public on their views on the regulation of property carrier brokers in general, and on three pending petitions concerning specific property carrier broker regulation issues. This meeting does not pertain to broker or freight forwarder minimum financial responsibility matters. The session will be held via videoconference and will be accessible to the public for its entirety. Individuals with diverse experience and perspectives are encouraged to attend.

DATES: The session will be held on Wednesday, October 28, 2020, from 1:00 p.m. to 2:30 p.m., Eastern Time (ET). The session will be held via videoconference only, with registration required at *www.fmcsa.dot.gov* in advance of the meeting. FMCSA encourages early registration.

Public Comment: The virtual session will allow members of the public to make brief statements to the panel. If all interested participants have had an opportunity to comment, the session may conclude early.

FOR FURTHER INFORMATION CONTACT: Ms. Janettarose L. Greene, (202) 366–5694, *FMCSA-PIO@dot.gov,* Federal Motor Carrier Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.

Services for Individuals with Disabilities. FMCSA is committed to providing equal access to the listening session. For accommodations for persons with disabilities, please email *FMCSA-PIO@dot.gov* at least 1 week in advance of the meeting to allow time to make appropriate arrangements. FMCSA will provide closed captioning of the session.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

FMCSA encourages participation in the session and the submission of comments and related materials. Members of the public may submit written comments to the public docket referenced at the beginning of this notice. Please submit documents recommended for discussion to the docket at least 7 business days in advance of the session using any of the following methods:

A. Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA–2020–0190). You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these methods. FMCSA recommends that you include your name, email address, or a phone number in the body of your document.

To submit your comment online, go to *http://www.regulations.gov,* enter the docket number, ''FMCSA–2020–0190'' in the ''Keyword'' box, and click ''Search.'' When the new screen appears, click on the ''Comment Now!''' button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party, then submit.

B. Viewing Comments and Documents

To view comments, go to *http://www.regulations.gov* and insert the docket number, ''FMCSA–2020–0190'' in the ''Keyword'' box and click ''Search.'' Next, click the ''Open Docket Folder'' button and choose the document listed to review. If you have questions on viewing or submitting materials to the docket, contact Docket Operations at (202) 366–9826. Business hours are from 8:00 a.m. to 4:30 p.m. ET, Monday through Friday, except Federal holidays. For hand delivery of materials, please call (202) 366–9317 or (202) 366–9826 before visiting Docket Operations.

II. Background

FMCSA has received petitions for rulemaking from the Owner-Operator Independent Drivers Association (OOIDA) and the Small Business in Transportation Coalition (SBTC) to amend certain requirements for property carrier brokers. FMCSA published a notice in the **Federal Register** on August

19, 2020 (85 FR 51145), requesting public comment on the petitions.

OOIDA requests that FMCSA require property carrier brokers to provide an electronic copy of each transaction record automatically within 48 hours after the contractual service has been completed, and explicitly prohibit brokers from including any provision in their contracts that requires a motor carrier to waive its rights to access the transaction records. SBTC requests that FMCSA prohibit brokers from coercing or otherwise requiring parties to brokers' transactions to waive their right to review the record of the transaction as a condition for doing business. SBTC also requests that FMCSA adopt regulatory language indicating that brokers' contracts may not include a stipulation or clause exempting the broker from having to comply with the transparency requirement. The comment period for the notice is open through October 19, 2020.

On August 5, 2020, FMCSA received a petition for rulemaking from the Transportation Intermediaries Association (TIA), asking FMCSA to eliminate the requirements of 49 CFR 371.3(c) and to develop guidance on what legally constitutes a ''dispatch service.'' TIA's petition asserts that its proposed modifications and clarifications would eliminate an outdated regulation that no longer applies to the current marketplace. TIA's request includes the promulgation of guidance to the public on what constitutes a legitimate ''dispatch service'' to remove, in its words, ''unethical and unscrupulous actors from the marketplace'' and eliminate an administrative burden on FMCSA to enforce outdated and unnecessary regulations. FMCSA is currently reviewing the petition before determining an appropriate course of action. A copy of the TIA petition has been placed in the docket referenced at the beginning of this notice.

Given that the TIA petition expresses a different perspective than those expressed in the OOIDA and SBTC petitions, FMCSA would like to hear from members of the public on their views on the regulation of property carrier brokers in general, and on the three petitions, specifically.

James W. Deck,

Deputy Administrator.

[FR Doc. 2020–22482 Filed 10–9–20; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

[Docket No. DOT–OST–2020–0084]

Information Collection; Improving Customer Experience (OMB Circular A–11, Section 280 Implementation)

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Notice; request for comment.

SUMMARY: The Department of Transportation (DOT) has under OMB review the following proposed Information Collection Request ''Improving Customer Experience (OMB Circular A–11, Section 280 Implementation)'' for approval under the Paperwork Reduction Act (PRA).

DATES: Submit comments on or before: November 12, 2020.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Please provide a copy of your comments to Claire Barrett, Departmental Chief Privacy and Information Governance Officer, 1200 New Jersey Ave. SE, Washington, DC 20590; or by email to *PRA@dot.gov.* Please reference OMB Control Number 2105–NEW, Improving Customer Experience (OMB Circular A–11, Section 280 Implementation) in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Amira Boland, Office of Management and Budget, 725 17th St. NW, Washington, DC 20006, (202) 881–9453, or via email to *amira.c.boland@omb.eop.gov.*

SUPPLEMENTARY INFORMATION:

Title: Improving Customer Experience (OMB Circular A–11, Section 280 Implementation).

Abstract: A modern, streamlined and responsive customer experience means: Raising government-wide customer experience to the average of the private sector service industry; developing indicators for high-impact Federal programs to monitor progress towards excellent customer experience and mature digital services; and providing the structure (including increasing transparency) and resources to ensure customer experience is a focal point for agency leadership.

This proposed information collection activity provides a means to garner customer and stakeholder feedback in an efficient, timely manner in accordance with the Administration's commitment to improving customer service delivery as discussed in Section 280 of OMB Circular A–11 at *https://www.performance.gov/cx/a11-280.pdf.*

As discussed in OMB guidance, agencies should identify their highest-impact customer journeys (using customer volume, annual program cost, and/or knowledge of customer priority as weighting factors) and select touchpoints/transactions within those journeys to collect feedback.

These results will be used to improve the delivery of Federal services and programs. It will also provide government-wide data on customer experience that can be displayed on *www.performance.gov* to help build transparency and accountability of Federal programs to the customers they serve.

As a general matter, these information collections will not result in any new system of records containing privacy information and will not ask questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. DOT will only submit collections if they meet the following criteria.

- The collections are voluntary;
- The collections are low-burden for respondents (based on considerations of total burden hours or burden-hours per respondent) and are low-cost for both the respondents and the Federal Government;
- The collections are non-controversial and do not raise issues of concern to other Federal agencies;
- Any collection is targeted to the solicitation of opinions from respondents who have experience with the program or may have experience with the program in the near future;
- Personally identifiable information (PII) is collected only to the extent necessary and is not retained;
- Information gathered is intended to be used for general service improvement and program management purposes
- Upon agreement between OMB and the agency all or a subset of information may be released as part of A–11, Section 280 requirements only on *performance.gov.* Summaries of customer research and user testing activities may be included in public-facing customer journey maps or summaries.
- Additional release of data must be done coordinated with OMB.

These collections will allow for ongoing, collaborative and actionable communications between the Agency, its customers and stakeholders, and

OMB as it monitors agency compliance on Section 280. These responses will inform efforts to improve or maintain the quality of service offered to the public. If this information is not collected, vital feedback from customers and stakeholders on services will be unavailable.

Current Action: New Collection of Information.

Type of Review: New.

Affected Public: Individuals and Households, Businesses and Organizations, State, Local or Tribal Government.

Estimated Number of Respondents: Below is a preliminary estimate of the aggregate burden hours for this new collection. DOT will provide refined estimates of burden in subsequent notices.

Average Expected Annual Number of Activities: Approximately five types of customer experience activities such as feedback surveys, focus groups, user testing, and interviews.

Average Number of Respondents per Activity: 1 response per respondent per activity.

Annual Responses: 2,001,550.

Average Minutes per Response: 2 minutes–60 minutes, dependent upon activity.

Burden Hours: DOT requests approximately 101,125 burden hours.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

All written comments will be available for public inspection *Regulations.gov.*

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 Office of Management and Budget control number.

Claire W. Barrett,

Departmental Chief Privacy and Information Governance Officer.

[FR Doc. 2020–21135 Filed 10–9–20; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF THE TREASURY

Office of The Secretary

List of Countries Requiring Cooperation With an International Boycott

In accordance with section 999(a)(3) of the Internal Revenue Code of 1986, the Department of the Treasury is publishing a current list of countries which require or may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986).

On the basis of the best information currently available to the Department of the Treasury, the following countries require or may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986).

Iraq
Kuwait
Lebanon
Libya
Qatar
Saudi Arabia
Syria
United Arab Emirates
Yemen

Treasury is monitoring the situation of the United Arab Emirates, which has announced the issuance of a decree repealing its boycott law.

Kevin Nichols,

Deputy International Tax Counsel, (Tax Policy).

[FR Doc. 2020–22606 Filed 10–9–20; 8:45 am]

BILLING CODE 4810–25–P

UNIFIED CARRIER REGISTRATION PLAN

Sunshine Act Meeting Notice; Unified Carrier Registration Plan Board Subcommittee Meeting

TIME AND DATE: October 14, 2020, from Noon to 2 p.m., Eastern time.

PLACE: This meeting will be accessible via conference call and via Zoom Meeting and Screenshare. Any interested person may call (i) 1–929–205–6099 (U.S. Toll) or 1–669–900–6833 (U.S. Toll) or (ii) 1–877–853–5247 (U.S. Toll Free) or 1–888–788–0099 (U.S. Toll Free), Meeting ID: 988 769 77934, to listen and participate in this meeting. The website to participate via Zoom Meeting and Screenshare is *https://kellen.zoom.us/j/98876977934.*

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED: The Unified Carrier Registration Plan Audit Subcommittee (the ''Subcommittee'') will continue its work in developing and implementing the Unified Carrier Registration Plan and Agreement. The subject matter of this meeting will include:

Proposed Agenda

I. Call To Order—Subcommittee Chair

The Subcommittee Chair will welcome attendees, call the meeting to order, call roll for the Subcommittee, confirm whether a quorum is present, and facilitate self-introductions.

II. Verification of Publication of Meeting Notice—UCR Executive Director

The UCR Executive Director will verify the publication of the meeting notice on the UCR website and distribution to the UCR contact list via email followed by the subsequent publication of the notice in the **Federal Register**.

III. Review and Approval of Subcommittee Agenda and Setting of Ground Rules—Subcommittee Chair

For Discussion and Possible Subcommittee Action

The Subcommittee Agenda will be reviewed, and the Subcommittee will consider adoption.

Ground Rules

➢ Subcommittee action only to be taken in designated areas on agenda

IV. Review and Approval of Subcommittee Minutes From the January 27, 2020 Meeting—Subcommittee Chair

For Discussion and Possible Subcommittee Action

Draft minutes from the January 27, 2020 Subcommittee meeting will be reviewed. The Subcommittee will consider action to approve.

V. Update From Williams Benator and Libby (Independent Auditors)—UCR Depository Manager

The Independent Auditors will address the Subcommittee and answer questions, with an emphasis on the financial statement audits of the UCR Depository for the 2017–2019 fiscal years and issues regarding internal controls over financial reporting.

VI. State Compliance Reviews—UCR Depository Manager

For Discussion and Possible Subcommittee Action

The UCR Depository Manager will discuss plans for completing state compliance reviews for 2020 and make recommendations for the eight state compliance reviews planned for 2021.

VII. Unregistered Brokers—Subcommittee Chair

The Subcommittee Chair will discuss the challenges that unregistered brokers present to UCR enforcement. The discussion will highlight jurisdiction and other challenges, and may also include dialogue regarding successes and ideas for addressing broker registration enforcement.

VIII. Tracking of Audit Data in the National Registration System (NRS)—Subcommittee Chair

For Discussion and Possible Subcommittee Action

The Subcommittee Chair will discuss the merits of the Subcommittee having an oversight role in the audit notes on closed audits regarding the FARs and MCS–150 databases when there is an indication of an error or insufficient documentation to close the audit. The Subcommittee may take action to recommend to the Board adoption of an oversight role regarding audit notes.

IX. Discuss the Effectiveness of Solicitation Programs at Both the State Level and in the NRS—Subcommittee Chair

For Discussion and Possible Subcommittee Action

The Subcommittee Chair will lead a discussion regarding the various solicitation programs/policies deployed by the participating states and the NRS. The Subcommittee may take action to recommend to the Board adoption of a model solicitation program/policy.

X. Search and Recommendation of a Vice-Chair for the Audit Subcommittee—Subcommittee Chair

For Discussion and Possible Subcommittee Action

The Subcommittee Chair will seek nominations for a Vice-Chair of the Audit Subcommittee. Action may be taken to nominate and recommend to the Chair of the UCR Board a candidate for Vice-Chair of the Audit Subcommittee.

XI. Other Items—Subcommittee Chair

The Subcommittee Chair will call for any other items the committee members would like to discuss.

XII. Adjournment—Subcommittee Chair

The Subcommittee Chair will adjourn the meeting.

The agenda will be available no later than 5:00 p.m. Eastern time, October 7, 2020 at: *https://plan.ucr.gov.*

CONTACT PERSON FOR MORE INFORMATION: Elizabeth Leaman, Chair, Unified Carrier Registration Plan Board of Directors, (617) 305–3783, *eleaman@board.ucr.gov.*

Alex B. Leath,

Chief Legal Officer, Unified Carrier Registration Plan.

[FR Doc. 2020–22678 Filed 10–8–20; 4:15 pm]

BILLING CODE 4910–YL–P

DEPARTMENT OF VETERANS AFFAIRS

Notice of Rescission of Record of Decision (ROD)

AGENCY: Department of Veterans Affairs (VA).

ACTION: Notice.

SUMMARY: VA is issuing this notice to advise the public that the January 3, 2017, ROD for the proposed Reconfiguration of VA Black Hills Health Care System (BHHCS) Environmental Impact Statement (EIS) and Integrated Section 106 Consultation is rescinded.

DATES: This rescission is effective October 13, 2020.

FOR FURTHER INFORMATION CONTACT: Ms. Teresa Forbes, Public Affairs Officer, VA Black Hills Heath Care System, 113 Comanche Road, Fort Meade, South Dakota 57741, (605) 720–7170 or by email *vablackhills@va.gov.*

SUPPLEMENTARY INFORMATION: VA BHHCS provides health care to approximately 19,000 Veterans over 100,000 square miles in western South Dakota (SD), northeastern Nebraska (NE), northwestern Nebraska (NW) and eastern Wyoming (WY). VA BHHCS consists of two medical centers at Fort Meade and Hot Springs, SD and nine points of care as well as Compensated Work Therapy locations.

The existing Hot Springs campus includes buildings constructed in 1907 as part of the Battle Mountain branch of the National Home for Disabled Volunteer Soldiers. The Battle Mountain Sanitarium was recognized as a National Historic Landmark in 2011.

The identified preferred Alternative, referred to as A–2 plus G in the Final EIS, is a hybrid of Alternatives A and C plus Supplemental Alternative G evaluated in the Draft EIS. It includes renovating Building 12 on the existing Hot Springs campus to operate as a Community Based Outpatient Clinic (CBOC), a new multi-specialty outpatient clinic (replacing the existing leased CBOC) and a 100-bed residential rehabilitation treatment program in Rapid City, SD.

Any future Federal action within VA's BHHCS System must comply with environmental review requirements of the National Environmental Policy Act (NEPA) (42 U.S.C. 4321), VA NEPA regulations (38 CFR 26), the National Historic Preservation Act (54 U.S.C. 300101 *et seq.*) and related authorities, as appropriate.

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 October 7, 2020, for publication.

Jeffrey M. Martin,

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

[FR Doc. 2020–22543 Filed 10–9–20; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 85 Tuesday,

No. 198 October 13, 2020

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Withdrawal of the Proposed Rule for the North American Wolverine; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R6–ES–2016–0106; FF09E21000 FXES11110900000 201]

RIN 1018–BB78

Endangered and Threatened Wildlife and Plants; Withdrawal of the Proposed Rule for the North American Wolverine

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule, withdrawal.

SUMMARY: We, the U.S. Fish and Wildlife Service, withdraw the proposed rule to list the distinct population segment (DPS) of the North American wolverine (*Gulo gulo luscus*) occurring in the contiguous United States as a threatened species under the Endangered Species Act of 1973, as amended (Act). This withdrawal is based on our conclusion that the factors affecting the species as identified in the proposed rule are not as significant as believed at the time of the proposed rule. We base this conclusion on our analysis of current and future threat factors. We also find that North American wolverines occurring in the contiguous United States do not qualify as a DPS. Therefore, we are withdrawing our proposal to list the wolverine within the contiguous United States as a threatened species.

DATES: The proposed rule that published February 4, 2013 (78 FR 7864), to list the distinct population segment of the North American wolverine occurring in the contiguous United States as a threatened species is withdrawn on October 13, 2020.

ADDRESSES: The withdrawal of our proposed rule, comments, and supplementary documents are available on the internet at *http://www.regulations.gov* at Docket Nos. FWS–R6–ES–2012–0107 and FWS–R6–ES–2016–0106.

FOR FURTHER INFORMATION CONTACT: Jodi Bush, Field Supervisor, U.S. Fish and Wildlife Service, Montana Ecological Services Office, (see **ADDRESSES**). Persons who use a telecommunications device for the deaf may call the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Under the Act, if we determine that a species may be an endangered or threatened species throughout all or a significant portion of its range, we are required to promptly publish a proposal in the **Federal Register** and make a determination on our proposal within 1 year. To the maximum extent prudent and determinable, we must designate critical habitat for any species that we determine to be an endangered or threatened species under the Act. Listing a species as an endangered or threatened species and designation of critical habitat can only be completed by issuing a rule.

What this document does. We withdraw the proposed rule to list the DPS of the North American wolverine occurring in the contiguous United States as a threatened species under the Act.

The basis for our action. Under the Act, we may determine that a species is an endangered or threatened species because of any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. We have determined that the factors affecting the species as identified in the proposed rule (loss of habitat due to climate change) are not as significant as believed at the time of the proposed rule. We also find that North American wolverines occurring in the contiguous United States do not qualify as a DPS.

Peer review. In accordance with our July 1, 1994, peer review policy (59 FR 34270; July 1, 1994), the Service's August 22, 2016, Director's Memo on the Peer Review Process, and the Office of Management and Budget's December 16, 2004, Final Information Quality Bulletin for Peer Review (revised June 2012), we sought the expert opinions of four appropriate specialists regarding the species status assessment report. We received responses from four specialists, which informed this proposed rule. The purpose of peer review is to ensure that our listing determinations are based on scientifically sound data, assumptions, and analyses. The peer reviewers have expertise in the biology, habitat, and threats to the species. Results of this structured peer review process can be found at *https://www.fws.gov/mountain-prairie/science/peerReview.php.* A draft analysis was also submitted to our Federal, State, and Tribal partners for scientific review. In preparing this withdrawal, we incorporated the results of these reviews in the final SSA report, as appropriate.

During the reopening of the public comment periods for the proposed listing rule, we requested any new information and announced that we initiated a new and comprehensive status review of the North American wolverine to determine whether the species meets the definition of an endangered or threatened species under the Act, or whether the species is not warranted for listing. The wolverine SSA report provides the scientific basis for the decision to withdraw the proposed listing rule for the DPS of wolverine occurring in the contiguous United States. Both new and updated information and analyses presented in the wolverine SSA report, summarized below in support of our listing determination, along with public comment, have also prompted us to reevaluate our previous assessment of the DPS with respect to wolverine in the contiguous United States.

Supporting Documents

A team prepared a Species Status Assessment (SSA) for the North American Wolverine (*Gulo gulo luscus*) (Service, 2018) (hereafter referred to as the wolverine SSA report). The SSA team was composed of U.S. Fish and Wildlife Service biologists, who consulted with other species experts. The wolverine SSA report represents a compilation of the best scientific and commercial data available concerning the status of the species, including the impacts of past, present, and future factors (both negative and beneficial) affecting the wolverine. The wolverine SSA report underwent independent peer review by scientists with experience with mesocarnivores and their conservation and management, genetics, population modeling, and climate change. The wolverine SSA report and other materials relating to this proposal can be found on the Mountain-Prairie Region website at *https://www.fws.gov/mountain-prairie/ and at http://www.regulations.gov* under Docket No. FWS–R6–ES–2016–0106.

Previous Federal Actions

Please refer to the proposed listing rule for the wolverine (78 FR 7864; February 4, 2013) for a detailed description of previous Federal actions concerning the wolverine prior to 2013. On February 4, 2013, we published a proposed rule to list the DPS of wolverine occurring in the contiguous United States as threatened, under the Act, with a proposed rule under section 4(d) of the Act that outlines the prohibitions necessary and advisable for the conservation of the wolverine (78 FR

7864). We also published a proposed rule on February 4, 2013, to establish a nonessential experimental population (NEP) area for the North American wolverine in the Southern Rocky Mountains of Colorado, northern New Mexico, and southern Wyoming (78 FR 7890). On October 31, 2013, we reopened the comment period on the proposed listing rule for an additional 30 days (78 FR 65248).

Following publication of the 2013 proposed rules, there was scientific disagreement and debate about the interpretation of the habitat requirements for wolverines and the available climate change information used to determine the extent of threats to the DPS. Based on this substantial disagreement regarding the sufficiency or accuracy of the available data relevant to the proposed listing, on February 5, 2014 (79 FR 6874), we announced a 6-month extension of the final determination of whether to list the wolverine DPS as a threatened species. We also reopened the comment period on the proposed rule to list the contiguous United States DPS of the North American wolverine for 90 days.

On August 13, 2014, we withdrew the proposed rule to list the DPS of the North American wolverine as a threatened species under the Act (79 FR 47522). This withdrawal was based on our conclusion that the factors affecting the DPS as identified in the proposed rule were not as significant as believed at the time of the proposed rule's publication in 2013. As a result, we also withdrew our associated proposed rule under section 4(d) of the Act contained in the proposed listing rule and withdrew the proposed NEP designation under section 10(j) of the Act for the southern Rocky Mountains.

In October 2014, three complaints were filed in the District Court for the District of Montana by Defenders of Wildlife, WildEarth Guardians, Center for Biological Diversity, and other organizations challenging the withdrawal of the proposal to list the North American wolverine DPS. Numerous parties intervened in the litigation. These three cases were consolidated, and on April 4, 2016, the court issued a decision. The court granted plaintiff's motion for summary judgment with respect to the Service's determination regarding (1) the threat posed to the wolverine by the effects of climate change at the reproductive denning scale, (2) the threat posed to the wolverine by small population size and lack of genetic diversity, and (3) the application of the significant portion of its range policy to the wolverine. As a result of the court order, the August 13, 2014, withdrawal (79 FR 47522) was vacated and remanded to the Service for further consideration consistent with the order. As documented in the SSA report, the Service conducted additional analyses and reviewed new literature regarding climate change effects at the denning scale (see pages 73–99 of the SSA report) and included additional life-history information relevant to this potential stressor (see pages 25–39). With regard to population size, we also provide in the SSA report an analysis of information on wolverine population abundance and distribution (to date) and have included a discussion of population structure (genetics, effective population size) in the context of the species' known genetic variability (see pages 44–50). Finally, in this withdrawal, we have provided an updated significant portion of its range analysis (see discussion below).

In effect, the court's action returned the process to the proposed rule stage, and the status of the wolverine under the Act reverted to that of a proposed species for the purposes of consultation under section 7 of the Act. On October 18, 2016, we published a notice (81 FR 71670) reopening the comment period on the February 4, 2013, proposed rule (78 FR 7864) to list the DPS of wolverine occurring in the contiguous United States as threatened, under the Act. We also requested new information and announced that we initiated a new and comprehensive status review of the North American wolverine, to determine whether the species meets the definition of an endangered or threatened species under the Act, or whether the species is not warranted for listing. The wolverine SSA report provides the scientific basis for the decision to withdraw the proposed listing rule for the DPS of wolverine occurring in the contiguous United States. Both new and updated information and analyses presented in the wolverine SSA report, summarized below in support of our listing determination, along with public comment, have prompted us to reevaluate our previous assessment of the DPS (presented in our 2013 proposed listing rule, which in turn relied on the DPS analysis completed in our 2010 12-month finding) with respect to wolverine in the contiguous United States.

Summary of Comments and Recommendations

As stated above in the Previous Federal Actions section, on October 18, 2016 (81 FR 71670), we opened a public comment period on our February 4, 2013, proposed rule (78 FR 7864) to list the DPS of wolverine occurring in the contiguous United States as threatened. We also contacted appropriate Federal and State agencies, scientific experts and organizations, Tribes, and other interested parties and invited them to comment on the proposed rule. Many of the comments we received from State agencies during our notice for reopening the comment period (81 FR 71670) were similar to those received for the previously proposed rule (78 FR 7864). All substantive information provided during comment periods has either been incorporated directly into this final determination or is addressed below.

Public Comments

(1) Comment: We received several public comments claiming that the North American wolverine faces increasing threats from the effects of climate change, particularly habitat loss due to declining snow pack.

Our Response: As discussed in the wolverine SSA report, we recognize that current climate trends and future (2055 and later) climate model projections indicate warming temperatures for much of western North America and changes to snow pack conditions. Our review of the literature found that, overall, higher elevation areas (*e.g.,* Rocky Mountains, Sierra Nevada Mountains) are more resilient to projected changes in temperature and precipitation as compared to lower elevations (Wobus *et al.* 2017, p. 12). In general, models indicate higher elevations, where documented historical wolverine denning has occurred, will retain more snow cover than lower elevations, particularly in early spring (April 30/May 1). We present in the wolverine SSA report a summary of new, fine-scale analysis of future snow persistence in two regions of the western United States, Glacier National Park and Rocky Mountain National Park. The two regions studied include a high-latitude area near tree line within Glacier National Park, where tree line occurs at (~1,800 to 2,100 meters (m) (5,906 to 6,890 feet (ft))) that is currently occupied by wolverines; and a lower latitude area within Rocky Mountain National Park (occupied by a single male wolverine from 2009 to at least 2012, but not known to be currently occupied), where tree line occurs at higher elevation (~3,500 m (11,483 ft)) (Ray *et al.* 2017, p. 2). These sites were chosen to bracket the range of latitude and elevation wolverines currently occupy in the contiguous United States (Ray *et al.* 2017, p. 2). This effort built upon previous model projections presented in McKelvey *et al.* (2011), but with significant differences such as finer

spatial resolution, incorporation of slope and aspect, snow depth estimates, additional years of historical data, and wider temporal analyses of snow persistence (April–June). Details of this modeling exercise are presented in Ray *et al.* (2017), and summarized in the SSA report. That analysis indicates significant areas (several hundred square kilometers (km^2)/square miles (mi^2) for each study area) of future snow (greater than 0.5 m (20 inches (in) in depth) will persist on May 1 at elevations currently used by wolverines for denning. This is true, on average, across the range of climate models used out to approximately year 2055.

(2) Comment: We received several public comments during our request for information claiming that low population size (and small effective population size) warrant listing of the North American wolverine as threatened or endangered.

Our Response: Small populations in and of themselves do not constitute a threat such that a species would be endangered or threatened. When evaluating species status, we take into consideration the species' life history, population dynamics, and other impacts to populations and species to determine if small population dynamics increases the species' vulnerability to extinction such that listing as threatened or endangered is warranted. Wolverines are difficult animals to survey, and populations occur in naturally low densities across their North American range due, in large part, to their need for large, exclusive territories. At the present time, there is no reliable estimate of the number of wolverines that currently occupy or previously occupied the contiguous United States, nor are there reliable quantitative estimates of wolverine population trends in the contiguous United States. The often-cited population estimate of 318 wolverines (range: 249–626) in the contiguous United States is derived from a habitat modeling exercise presented in Inman *et al.* (2013). That publication also provided a model estimate of potential wolverine capacity of 644 (range: 249–626). However, both of these estimates did not consider important spatial considerations related to wolverine behavior, such as territoriality, relative to wolverine populations. Despite the paucity of information regarding wolverine populations, the SSA analysis is a thorough examination of all of the available population information.

As discussed in the wolverine SSA report, preliminary field results from a recent (2016–2017) occupancy study in four western States (Idaho, Montana, Washington, and Wyoming) and from a pilot occupancy study in Wyoming (2015–2016) indicate detections of wolverines in areas where they would be expected to be found, but also no detections in areas where they are known to occur (*e.g.,* areas within Glacier National Park) (see Service 2018, Appendix B for a descriptive map). To date, this study reports a total of 86 photographic detections through camera-trapping and 157 wolverine hair samples collected for genetic analysis. It has not yet been determined from the camera-trap images or hair samples how many of the detections are unique individuals. Preliminary analysis of the study results indicates an average estimated probability of occupancy of 0.42 suggesting that wolverines used nearly half of all sites during the study period (Montana FWP, pers. comm., 2017); however, the study did not encompass all potential wolverine habitat in the western United States (Service 2018, Appendix B). For example, wolverines have also been recently detected in northeastern Oregon (as of 2017) and in parts of Grand Teton National Park (two records during the winter of 2017), which were not included in the surveyed study cells. Our SSA report presents a visual summary of these recent detections (Service 2018, Figure 3). Although the sum of these reports cannot confirm previous estimates of population size or verify population trends, they offer recent evidence that wolverines continue to be observed across a large area of the western United States.

The 2013 proposed rule presented an effective population size estimate from a publication by Schwartz *et al.* (2009), which estimated a summed effective population size of 35, with credible limits from 28 to 52 (Schwartz *et al.* 2009, p. 3,226). As described in the SSA report, the study used wolverine samples from the main part of the Rocky Mountain wolverine populations and did not include subpopulations from two other mountain regions in Montana, and samples were missing from other parts of the wolverine range in Idaho and other areas of Montana. Thus, the analysis missed both wolverine subpopulations and individuals, which would underestimate the results for this type of analysis.

In the wolverine SSA report, we provide a contextual discussion of the effective population size concept, particularly in the context of genetic studies related to the phylogeographic history of the North American wolverine that were not well described in the 2013 proposed rule. In sum, the spatial distribution of genetic variability currently observed in wolverines in North America appears to be a reflection of a complex history in which population abundance has fluctuated since the time of the last glaciation with insufficient time passing since human persecution since at least the 1700s to allow for full recovery of wolverine densities (Cardinal 2004, pp. 23–24; Zigouris *et al.* 2012, p. 1,554). This history and the fact that wolverines in the contiguous United States occupy the southern periphery of the species' entire North American range are important considerations in estimating and interpreting current wolverine distribution and abundance. The wolverine SSA report also presents information from genetic and observational studies that provide support for wolverine movement across the international border of the contiguous United States and Canada. In the 2013 proposed rule, we stated there is an apparent lack of connectivity between wolverine populations in Canada and the United States based on genetic data (78 FR 7864; February 4, 2013). We now consider wolverines that occupy the contiguous United States to be genetically continuous with wolverines in adjacent Canadian provinces. A small effective population size would be more of a concern if the population was in isolation; however, wolverines in the contiguous United States are not genetically isolated from wolverines in Canada. For more information, see the *Small Total Population Size* and *Effective Population Size* sections under Distinct Population Segment below.

(3) Comment: We received several public comments during our request for information claiming that North American wolverine face threats from indiscriminant trapping in the contiguous United States, or are threatened by incidental trapping.

Our Response: At the present time, trapping or hunting of wolverine is not allowed in any State within the range of the wolverine (with the exception of Alaska). Legal protections for wolverines are codified in western State laws and regulations and include: Endangered in Colorado, threatened in California and Oregon, candidate species in Washington, non-game species protections in Idaho and Wyoming, a species of concern and a furbearer with a closed season in Montana, and protection from collection, importation, and possession in Utah. Since 2013, there has been a zero quota for trapping or harvest of wolverine in Montana.

Incidental trapping of wolverines has been documented in the contiguous

United States (as recently as December 2017), though not all events have resulted in mortality. In the wolverine SSA report, we provide a summary of the number of wolverines that have been incidentally trapped in Idaho (18 since 1965, including 6 known to be released alive and 7 known mortalities), Montana (4 since 2013, 3 mortalities and 1 released unharmed), and Wyoming (2 since 1996, 1 mortality and 1 released unharmed) (Service 2018, p. 66). Both Idaho and Montana are implementing trapper education programs to minimize nontarget wolverine captures.

As discussed in the SSA report, regulated trapping and hunting of wolverines occurs in parts of Alaska and Canada, and appears to be sustainable based on population and density estimates.

(4) Comment: We received several public comments identifying potential threats to wolverines from winter recreation activities, such as snowmobiling and back-country skiing.

Our Response: In the SSA report, we present a summary of winter recreation studies (Heinemeyer *et al.* 2015; Heinemeyer *et al.* 2017), future projections of winter recreation activity in the contiguous United States (White *et al.* 2014), and projections of snowpack relative to changes in the length of the winter recreation season (Wobus *et al.* 2017). We reported results from Heinemeyer (2016, pers. comm.) indicating a behavioral response to recreation activities, but also maintenance of home ranges within some areas of relatively high recreation activity over several years. The study has not yet been able to determine whether resident wolverines are reproductively successful due to the limited monitoring information available for reproducing female wolverines. Nor was the study able to determine if recreational activities had a negative impact on wolverine reproductive success.

We also note here that we received the final report of this multiyear study (Heinemeyer *et al.* 2017) in mid-December 2017 (results of this study were recently published (Heinemeyer *et al.* 2019)), which was after we submitted the draft SSA report for review to four peer reviewers and to our State, Federal, and Tribal partners. Much of the report presents a modeling exercise to evaluate wolverine behavior patterns with winter recreation activities. The study found that wolverines maintained multiyear home ranges, and the authors suggest that wolverines are able to tolerate winter recreation at some scales (Heinemeyer *et al.* 2017, p. iv; Heinemeyer *et al.* 2019, p. 16). The study described habitat selection as complex for female wolverines and was likely driven by a combination of abiotic (snow, cold) and biotic (predator avoidance, food availability) factors (Heinemeyer *et al.,* 2017, p. 36; Heinemeyer *et al.* 2019, p. 16). This study did not assess demographic effects, fitness effects, or population level effects of winter recreation on wolverines (Heinemeyer *et al.* 2019, p. 17 and 19). As discussed in the wolverine SSA report, management measures being implemented in areas within the wolverine's current extent of occurrence include road closures to minimize disturbance to wildlife on lands managed by the U.S. Forest Service and National Park Service (Service 2018, p. 61 and Appendix F). In addition, management strategies are identified in State Wildlife Action Plans (*e.g.,* Oregon, Montana, Idaho) to address potential impacts from recreation to the wolverine. Although we did not rely on these conservation measures to support our decision, they do provide some level of protection to address potential impacts from disturbance from winter recreation activity and mortality from roads.

(5) Comment: We received public comments claiming that wolverines are dependent on deep snow for survival and expressing concern for future changes in snow pack due to the effects of climate change.

Our Response: After reviewing studies not previously considered and the results of new studies/publications made available after the 2013 and 2014 proposed rules (*e.g.,* Aronsson 2017, Aronsson and Persson 2016, Aronsson *et al.* 2017, Magoun *et al.* 2017, Persson *et al.* 2017, Stewart *et al.* 2016, Webb *et al.* 2016, see complete list of citations in the wolverine SSA report), we present in the SSA report a detailed discussion of the North American wolverine's physiology and other life-history characteristics (*e.g.,* reproductive behavior). This summary speaks to several presumed aspects of the relationship of denning behavior and other needs of this species regarding the presence of persistent spring snow. As summarized below, we now know that wolverines can and have denned outside of heavy snowpack, multiple factors play a role in den site selection, females will move dens as young become mobile, and areas of significant snowpack will likely persist in the future in areas where wolverines are known to den at levels that will continue to support wolverines.

Denning habitat for the wolverine varies over its range and is dependent on local and regional environmental conditions (*e.g.,* topographic and other structural features) and biotic (*e.g.,* availability of prey; protection from predators) factors. Reproductive (natal) dens are not always excavated in deep snow, particularly in boreal forest habitats (Dawson *et al.* 2010; Novikov 1962; Webb *et al.* 2016; Jokinen 2019.), and have been observed in spruce tree root balls, logging slash piles, and beaver dens/dams. In the contiguous United States, dens are found at high elevations, often in talus slopes, which provides conditions for protection and food caching (*e.g.,* restricted access and cold temperatures). Our review of studies of wolverine denning activity found no quantitative data reporting snow depth at the den site when wolverines abandon the den. More importantly, wolverine reproductive success has not been studied relative to a number of abiotic and biotic conditions, including depth and temporal aspect of spring snow cover.

Wolverines begin shifting den locations in late April, when young become more mobile and reliant on solid food brought to them by the mother (Aronsson 2017, p. 46; Aubry *et al.* 2016, p. 24). The bioclimatic model presented in Copeland *et al.* (2010) was used to test wolverine distribution at a broad scale based on climate variables, including spring snow cover, using May 15 conditions. They then tested their hypothesis by comparing and correlating the location of wolverine dens across their circumboreal range, and telemetry locations from wolverine studies in North America and Scandinavia (Copeland *et al.* 2010, p. 234). Since that publication, wolverines and wolverine dens have been observed outside the boundaries defined by the model presented in Copeland *et al.* (2010) (*e.g.,* Webb *et al.* 2016, Webb 2017 pers. comm., Persson 2017, pers. comm.). While these observations are found at higher latitudes in the circumboreal region, they also indicate wolverines and wolverine dens are observed in environments that are not characterized by several feet of spring snow on May 15. In sum, Copeland *et al.* (2010) provided a fairly accurate assessment of where wolverine populations are expected to occur, but it did not evaluate (model) snow persistence at the den site scale based on location and denning period.

In the SSA report, we present an analysis of 34 wolverine den locations (years 2002–2015) from studies in the western contiguous United States relative to ''melt out'' dates, which represents the first day of an 8-day satellite (Moderate Resolution Imaging

Spectroradiometer (MODIS)) composite of when the den switches from ''snow'' to ''no snow'' at a 500-by-500-m (1,640-by-1,640-ft) spatial resolution. For natal den locations, the range of the melt-out dates was from May 25 to June 12, which is considerably later than the May 15 date used in the Copeland *et al.* (2010) analysis. The estimated melt-out dates indicate that snow is persistent at these locations past the time when young wolverines are generally moving out of natal dens (*i.e.,* late April).

The Copeland *et al.* (2010) snow model was then used by McKelvey *et al.* (2011) to model effects of climate change to wolverine habitat in the western United States to develop projections of habitat loss. This modeling exercise used May 1 snow presence as a proxy for May 15 snow disappearance and a spatial resolution of 36.3 km^2 (14 mi^2)), which is not relevant at the at the den site scale. As described in our Response to Comment #1, in the SSA report, we presented a finer scale analysis (0.0625 km^2 (0.24 mi^2)) for two study areas (Glacier National Park and Rocky Mountain National Park) that focused directly on May 15, in addition to the presence or absence of snow on May 1 and April 15 in our evaluation of the effects of climate change to snowpack. These dates are more relevant to wolverine life-history needs. We also modeled the depth of ''significant'' snow (0.5 m (1.64 ft)) on these dates. We found that large areas (several hundred km^2/mi^2 for each study area) of future snow (greater than 0.5 m (20 in) in depth) are projected to persist on May 1 at elevations currently used by wolverines for denning. This is true, on average, across the range of climate models used out to approximately year 2055. We recognize that wolverines are difficult to study and evaluation of denning habitat and behavior is challenging. Additional research is needed to evaluate other potential physical and biotic variables that could be important in defining wolverine distribution and den locations. These additional variables include: prey availability, risk of predation, den-site scale factors such as structure/snow conditions, and temporal use of dens.

(6) Comment: We received public comments identifying the need for additional research and recommendations for conservation measures for the North American wolverine, including estimates of population size and further evaluation of life-history characteristics, and recommendations for conservation measures.

Our Response: We appreciate the comments acknowledging the need for additional studies as well as the difficulties in studying wolverines given its occupation of remote habitats in the contiguous United States. In the wolverine SSA report, we provide a summary of the preliminary field and genetic results from the recent Western States Wolverine Conservation Project (WSWCP)–Coordinated Occupancy Study in four western (contiguous United) States, as well as results from several new studies presented in peer-reviewed publications and in other reports from Canada and Scandinavia. As discussed in the SSA report, the Western States Wolverine Working Group is continuing to develop studies to evaluate wolverine population distribution and occupancy, and connectivity across four western States.

(7) Comment: We received additional comments from the public including the need for collaboration with local government and community stakeholders and use of best available science in developing the proposed rule.

Our Response: During our preparation of the wolverine SSA report, we coordinated extensively with many wolverine researchers in the United States (including Alaska), Canada, and Scandinavia. Those communications are identified in our References Cited section of the wolverine SSA report. Their expertise, insights, and published or soon-to-be published research papers were invaluable in ensuring that we used the best available science in preparing the new status review. We also communicated with biologists at several State and Federal agencies to ensure that we had incorporated the most recent wolverine detections in the western United States. The wolverine SSA report was sent to four independent peer reviewers, selected by an outside contractor, and those non-attributable comments were incorporated, to the extent possible, in the final document. We also reviewed comments received from the public and previous peer reviewers during our request for comments for our previous proposed rule and considered the information provided (78 FR 7864; February 4, 2013) during the preparation of the wolverine SSA report. As a result, this determination is based upon the best scientific and commercial data available to us, as required by the Act.

(8) Comment: We also received public comments recommending that the North American wolverine not be listed as threatened or endangered under the Act. One commenter stated that State wildlife agencies are capable of managing the species and are able to provide protections that ensure continued population growth towards population objectives established by these agencies and that mandates of various Federal resource management agencies provide a commitment to managing wildlife habitat in a way that benefits all wildlife species, including wolverines and other forest carnivores.

Our Response: We acknowledge that some members of the public support our decision to withdraw our proposed rule to list the North American wolverine as threatened under the Act. In the wolverine SSA report (Service 2018, Appendix G), we provide a summary of the regulatory protections provided by western States and Federal agencies as well as management measures being implemented to conserve the wolverine and its habitat. Legal protections in the contiguous United States include State listing in California and Oregon (threatened), endangered in Colorado, a candidate species in Washington, non-game species protections in Idaho and Wyoming, a species of concern and furbearer with a closed season in Montana, and protection from collection, importation, and possession in Utah. Trapping or hunting of wolverines is currently prohibited in the contiguous United States.

(9) Comment: In response to our request for information in our public notice, several members of the public provided specific information related to personal wolverine sightings of the North American wolverine in the contiguous United States (*e.g.,* New Mexico, Wyoming), and information regarding past and ongoing research studies of the species in the western United States and in Canada.

Our Response: We appreciate the personal observations provided and encourage members of the public to document sightings of the North American wolverine with photographs and provide additional details to State wildlife agencies. Information we received regarding results from research studies has been incorporated, as appropriate, in the final wolverine SSA report.

(10) Comment: We received comments from several organizations that support the listing of the North American wolverine and designation of critical habitat. Threats cited include concerns related to migration, habitat loss and connectivity related to threats from effects of climate change, nontarget trapping pressures, road mortality and other effects of roads (*e.g.,* noise, pollution, fragmentation of habitat), motorized recreation and traffic in wildlife corridors, timber sales and

associated roads, and effects of snowmobile traffic (habitat fragmentation and pollution, and change in behavior).

Our Response: As discussed in the *Risk Factors for the North American Wolverine* section below, we identified several potential stressors that may be affecting the species and its habitat currently or in the future, including impacts associated with climate change effects. We recognize there is limited information available for the wolverine, including population estimates and abundance trends. Based on the best available information, demographic risks to the species from either known or most likely potential stressors (*i.e.,* disturbance due to winter recreational activities, other human disturbances, effects of wildland fire, disease, predation, overutilization, genetic diversity, small population effects, climate change, and cumulative effects) are low based on our evaluation of the best available information as it applies to current and potential future conditions for the wolverine and in the context of the attributes that affect the needs of the species (Service 2018, p. 103). Thus, we determined that, based on the best available information, the North American wolverine in the contiguous United States does not meet the definition of a threatened species or an endangered species under the Act.

(11) Comment: We received public comments stating that protection of North American wolverines in the contiguous United States is needed under the Act in order to provide resources and attention needed for research and monitoring, to better understand threats, and sustain wolverines into the future. The commenter also stated that federally sponsored wolverine reintroduction in Colorado will help increase chances of long-term species survival.

Our Response: We appreciate the recognition of the need for continued resources for research and monitoring. However, we base our listing decisions on a determination of whether the species meets the Act's definitions of a threatened species or an endangered species. Regardless, as summarized in the SSA report, in 2015, State wildlife agencies in Idaho, Montana, Washington, and Wyoming, along with Federal, tribal, and nongovernmental organization partners, developed a collaborative and coordinated monitoring program to be implemented in a coordinated fashion across the species' range in the western United States. In 2015, the State of Wyoming contracted with the Wolverine Initiative to conduct the Wyoming Wolverine Occupancy Pilot Study to address questions pertaining to the status and distribution of wolverines throughout the Greater Yellowstone Ecosystem and the Bighorn Mountains in the winter of 2015–2016. Expanding on this study, the Western States Wolverine Working Group designed and implemented the WSWCP–Coordinated Occupancy Survey in the winter of 2016–2017, and preliminary results are presented in the SSA report. The Western Association of Fish and Wildlife Agencies (WAFWA) Wildlife Chiefs Wolverine Subcommittee (formally endorsed in 2014) currently provides a forum for western States to work collaboratively with each other and with the Service, Tribes, and other partners, for conserving wolverines across the western United States. To date, approximately $1.5 million of that funding has been applied towards conservation and management actions, including the WSWCP (McDonald 2017, pers. comm.). This group is also developing a connectivity study project to support conservation planning efforts for the Rocky Mountains and North Cascades regions.

In addition, multiple western States have identified the North American wolverine as a Species of Greatest Conservation Need in their State Wildlife Action Plans, and the North American wolverine is a focal species of conservation strategies for conservation targets in a number of ecoregions (*e.g.,* Cascades, Sierra Nevada) that support forested lowlands, subalpine-high montane conifer forest where wolverines occur. These State designations provide information to assist resource managers with proactive decision making regarding species conservation and data collection priorities. Finally, the Nez Perce Tribe is currently preparing an Integrated Resource Management Plan, a Plant and Wildlife Conservation Strategy, and a Forest Management plan with the wolverine defined as a species of conservation concern in all three draft plans (Miles 2017, pers. comm.).

In total, these funded and volunteer collaborative, landscape-level conservation efforts ensure continued support for the conservation of the North American wolverine. Although we did not rely on these plans to support our decision, we recognize that these plans, when implemented, will likely benefit wolverines and their habitat.

(12) Comment: We received comments from several industry groups supporting our August 13, 2014, withdrawal (79 FR 47522) of our February 4, 2013, proposed rule (78 FR 7864) to list the North American wolverine as threatened. In general, their support rests on the following: (1) The DPS determination presented in our previous proposed rules (both 2010 and 2013) was flawed; (2) the North American wolverine does not meet the definition of a threatened species; (3) the obligate relationship with denning and need for snow has not been adequately addressed (and may be a habitat preference); and (4) climate model projections do not support complete loss of snow. They also urged us to reaffirm prior findings that winter recreation (motorized and nonmotorized) is not a threat to wolverines.

Our Response: Given that our updated analysis and new information included in the wolverine SSA report directly relates to our previous DPS determination in the 2013 proposed rule, we reevaluated wolverines in the contiguous United States under our DPS Policy. See the Distinct Population Segment section below for more information. We provide our analysis of the status of wolverines in the contiguous United States below in the Determination of Species Status. The topic of denning behavior is discussed in the wolverine SSA report (see Use of Dens and Denning Behavior discussion in the *Reproduction and Growth* section in the wolverine SSA report (Service 2018, pp. 23–28)). For our analysis of the effects of climate change to wolverines and denning habitat, see *Climate Change and Potential for Cumulative Effects* below.

(13) Comment: We received a comment from an industry group stating that our decision to prepare the February 4, 2013, proposed rule (78 FR 7864) to list the North American wolverine as threatened was due to a ''misreading'' of the Service's obligation under our 2011 Settlement Agreement, and therefore the proposed rule was not developed from ''an open-ended scientific inquiry.'' We received a comment from an industry group stating that the Service should not ''revert back to the 2013 proposed rule'' and should conduct a new analysis of potential impacts to the species, revise the proposed listing using newly available information, and reevaluate our previous DPS determination.

Our Response: The Service properly prepared its 2013 proposed rule. On October 18, 2016, we published a document in the **Federal Register** (81 FR 71670) announcing that we would initiate a new status review of the North American wolverine, to determine whether this DPS meets the definition of an endangered or threatened species

under the Act, or whether the species is not warranted for listing. The Service has prepared the wolverine SSA report that includes discussion and analyses of the best available scientific information regarding life history, biology, and consideration of current and future vulnerabilities. This information was used to evaluate the current and future conditions of the species, and to inform our current determination.

Comments From Tribes

(14) Comment: We received comments from one consortium of Tribal nations stating that, based on the weight of evidence provided in our previous rules, the North American wolverine meets the definition of endangered or threatened and is therefore warranted for listing. Specific threats mentioned in the comment letter included current population status, winter recreation activities, and effects of climate change. The Tribes also included comments documenting the cultural value of the wolverine and connection to cultural practices and concern for the loss of wolverine populations in the contiguous United States. The Tribes encouraged the Service to use sound and solid science in the listing determination, and noted that additional population monitoring and Tribal climate change modeling efforts are under way to evaluate the status of the wolverine.

Our Response: We appreciate the unique perspective provided by the Tribal nations regarding the contribution of the North American wolverine to the Tribes' culture and spirituality. We also appreciate the commitment of the Tribal nations to continue ongoing studies of wolverines.

As described in the wolverine SSA report, we evaluated new information, as well as information not previously considered, and contacted several wolverine researchers (both within and outside the United States) to provide a more detailed description of the wolverine's life history and ecology, including a detailed discussion of wolverine denning habitat and behavior. We conducted new analyses to develop a current potential extent of occupancy using the most recent verified observations. Current potential extent is the perimeter of the outermost geographic limits based on all (available) occurrence records (that is, the maximum extent of occurrences) of a species minus those areas where we believe the species has been extirpated (Service 2017). Conservation measures and regulatory mechanisms relative to the wolverine were also provided in the wolverine SSA report. This information was used to evaluate the current (potential stressors) and future conditions of the species, and inform our current determination. We evaluated results from a fine-scale analysis of the potential effects of climate change to future snowpack conditions in two regions of the Rocky Mountains. This analysis found that significant areas (several hundred km^2/mi^2) will persist on May 1 at elevations used by wolverines for denning. We determined that, based on the best available information, the North American wolverine in the contiguous United States does not warrant listing as threatened or endangered under the Act.

(15) Comment: We received comments from one Tribe whose aboriginal territory is occupied by the North American wolverine. The Tribe submitted a comment letter in 2013 supporting our proposed listing. The Tribe stated that the conservation and restoration of the wolverine and other species within this homeland is of great importance to the Tribe's subsistence, culture, religion, and economy. The letter also identified conservation and management plans currently under development and highlighted that the wolverine is designated as a species of concern in these current draft plans. Specific comments were provided relative to threats from climate change (including relative to demographic stochasticity), recreation and urban development, and incidental take. Included in those comments were references to other studies under way (*e.g.,* Adaptation Partners and climate change vulnerability assessments; winter recreation study) to evaluate these potential stressors.

Our Response: We appreciate the perspective provided regarding the importance of the wolverine and other species to the Tribe and its commitment to current and future conservation and management actions. We also appreciate and evaluated the information presented in the citations that were provided in the comment letter. As described in the wolverine SSA report, we evaluated several new scientific publications and information not previously considered in preparing a new status review. This information was used to evaluate the current conditions (*i.e.,* potential stressors, including winter recreation) and future conditions (*e.g.,* effects of climate change) of the species. Based on the best available information, we determined that the North American wolverine in the contiguous United States does not warrant listing as threatened or endangered under the Act.

State Agency Comments

We received extensive comments from several western States, requesting that we consider previously submitted comments in response to our previously proposed listing rule (78 FR 7864; February 4, 2013) as well as additional comments submitted in response to our 2016 notice reopening public comment (81 FR 71670; October 18, 2016). These comments were grouped together and summarized as described below:

(16) Comment: We received detailed comments critical of our reliance on ''unverified'' climate model projections in our 2013 proposed rule, the lack of discussion of assumptions in adopting the model findings, the lack of evaluating alternative hypotheses, and the need to evaluate these effects at the den-site scale. One State agency recommended that, given the disagreements in the scientific community on the interpretation of these results, the Service solicit an independent, scientific review of the proposed rule.

Our Response: This withdrawal was based on the scientific analysis using the structure of the Service's Species Status Assessment (SSA) Framework (*https://www.fws.gov/endangered/improving_ESA/ssa.html*). An SSA is a focused and rigorous assessment of a species' ability to maintain self-sustaining populations over time. This assessment is based on the best available scientific and commercial information regarding life history, biology, and consideration of current and future vulnerabilities. The result is a single document (SSA report) that delivers foundational science for informing decisions under the Act, including listing determinations, consultations, grant allocations, permitting, and recovery planning.

In preparing the final SSA report for the North American wolverine (available at *www.regulations.gov,* at Docket No. FWS–R6–ES–2016–0106), we reviewed available reports and peer-reviewed literature, incorporated survey information for the purpose of preparing updated maps of the known species' current and historical occurrences, and contacted species experts to collect additional unpublished information. We evaluated the appropriate analytical tools to address data gaps and uncertainties. In some instances, we used publications and other reports of the Eurasian subspecies (*Gulo gulo gulo*) to fully inform our knowledge of the North American wolverine (*Gulo gulo luscus*).

Before finalizing the SSA report, the draft wolverine SSA report was

submitted for peer review to four independent peer reviewers in accordance with our July 1, 1994, peer review policy (59 FR 34270), the Service's August 22, 2016, Director's Memo on the Peer Review Process, and the Office of Management and Budget's December 16, 2004, Final Information Quality Bulletin for Peer Review (revised June 2012). Results of this structured peer review process can be found at *https://www.fws.gov/mountain-prairie/science/peerReview.php.* This draft was also submitted to our Federal, State, and Tribal partners for scientific review. In preparing this determination to withdraw the proposed rule, we incorporated the results of these reviews in the final wolverine SSA report, as appropriate.

As noted in our previous responses to public comments (see response to *Comments 1* and *5* above), in our wolverine SSA report, we recognize that current climate trends and future (2055 and later) climate model projections indicate warming temperatures for much of western North America, and changes to snow pack conditions. Our review of the literature found that, overall, higher elevation areas (*e.g.,* Rocky Mountains, Sierra Nevada Mountains) are more resilient to projected changes in temperature and precipitation as compared to lower elevations (Wobus *et al.* 2017, p. 12). In general, models indicate higher elevations will retain more snow cover than lower elevations, particularly in early spring (April 30/May 1). We present in the wolverine SSA report a summary of new, fine-scale analysis of future snow persistence in two regions of the western United States, Glacier National Park and Rocky Mountain National Park. Glacier National Park represents a high-latitude and relatively low-elevation area currently occupied by North American wolverines. Rocky Mountain National Park is a lower latitude and high-elevation area within the North American wolverine's historical range, which was occupied by a male wolverine from 2009 to at least 2012.

As described above in *Comment 5,* this new analysis built upon previous model projections presented in McKelvey *et al.* (2011), but with significant differences such as finer spatial resolution, incorporation of slope and aspect, snow depth estimates, additional years of historical data, and wider temporal analyses of snow persistence (April–June). Details of this modeling exercise are presented in Ray *et al.* (2017), and summarized in the wolverine SSA report. That analysis indicates large areas (several hundred km^2/mi^2 for each study area) of future snow (greater than 0.5 m (20 in) in depth) will persist on May 1 at elevations currently used by wolverines for denning. This is true, on average, across the range of climate models used out to approximately year 2055.

After reviewing studies not previously considered and new studies/publications made available after the 2013 and 2014 proposed rules, we present in the wolverine SSA report, a detailed discussion of the North American wolverine's physiology and other life-history characteristics (*e.g.,* reproductive behavior). The analysis speaks to several presumed aspects of the relationship of denning behavior and other needs of this species regarding the presence of persistent spring snow.

Also, see our response to *Comment 5* above for a short summary and our SSA report for more details regarding our analysis of the effects of climate change to denning habitat.

(17) Comment: We received comments critical of our previous support for findings by Schwartz *et al.* 2009 regarding effective population size. Relatedly, several States commented on recent dispersal/movements of wolverines into California, Colorado, and Utah as evidence of population expansion.

Our Response: See our response to *Comment 2* above for a discussion of effective population size. Regarding recent occurrences of wolverines in the contiguous United States, wolverines have recently been found in areas where they were once extirpated in the contiguous United States. See the Population Abundance and Density section below for more information.

(18) Comment: We received comments from several western States presenting clarifications or updates to incidental trapping events and trapping regulations.

Our Response: In the wolverine SSA report, we include a summary of trapping or hunting of wolverines in the contiguous United States. At the present time, trapping or hunting of wolverines is not allowed in any western State (with the exception of Alaska, which was not included in the DPS in our proposed rule). Legal protections for wolverines are codified in western State laws and regulations concerning hunting and trapping. These protections include: Endangered in Colorado, threatened in California and Oregon, candidate species in Washington, non-game species protections in Idaho and Wyoming, a species of concern and furbearer with a closed season in Montana, and protection from collection, importation, and possession in Utah. Since 2013, there has been a zero quota for trapping or harvest of wolverine in Montana.

Incidental trapping of wolverines has been documented in the contiguous United States (as recently as December 2017), though not all events have resulted in mortality (see response to *Comment* 3 above). Both Idaho and Montana are implementing trapper education programs to minimize nontarget wolverine captures.

(19) Comment: Several States provided comments in response to our 2013 proposed rule and to our 2016 reopening of the public comment period indicating their disagreement with our determination of a DPS for the contiguous United States. Specifically, some commenters stated that the criteria of significance should be reevaluated, noting that the proposed rule did not provide any substantive information to support our conclusion that the loss of the wolverine in the contiguous United States would result in a significant gap in the range of the species; that is, our previous use of the loss of latitudinal range does not provide a rational basis for concluding that the loss of the wolverine in the contiguous United States would be significant in relation to the taxon. Another commenter stated that the wolverine population in the contiguous United States is connected geographically and genetically to the Canada/Alaska populations and these northern populations were likely the source of recolonization during the 20th century. Further, this commenter stated there is not a difference in control of exploitation and conservation status between the United States and Canada.

Another commenter noted that, throughout the 2013 proposed rule, the Service acknowledged that, historically, the wolverine population in the contiguous United States was markedly reduced by systematic predator control programs and unregulated trapping. Yet, as the commenter pointed out, areas of suitable habitat in the North Cascades, where trapping has been minimal or nonexistent for decades, and northern Rockies, were recolonized by animals from Canada, where relatively liberal trapping is still allowed. Thus, our characterization in the 2013 proposed rule of ''liberal'' Canadian regulations as sufficient to ''maintain the robust conservation status of the Canadian population,'' does not comport with our characterization that the very limited trapping in the contiguous United States (Montana only) is insufficient to maintain the rebounding population designated as a DPS.

Our Response: In light of the updated analysis and new information included in the wolverine SSA report, we reevaluated wolverines in the contiguous United States under our DPS Policy. We conclude that the population of wolverines in the contiguous United States is not discrete in relation to the remainder of the species in North America. As a result, the population of wolverines in the contiguous United States is not a listable entity under section 3(16) of the Act. See the Distinct Population Segment section below for more information.

(20) Comment: State agencies provided citations or copies of publications and reports relevant to wolverine ecology that were published after the 2013 proposed rule.

Our Response: We appreciate the comprehensive lists of published literature and survey reports provided by the State agencies. We evaluated this information during the preparation of the wolverine SSA report, and have incorporated this information, as appropriate, to ensure that the wolverine SSA report presents the best available information regarding the status of the North American wolverine.

(21) Comment: We received information providing background information and preliminary results of ongoing collaborative conservation efforts being implemented through the WSWCP–Coordinated Occupancy Survey.

Our Response: We appreciate the additional information provided by the State agencies participating in the WSWCP–Coordinated Occupancy Study. In the wolverine SSA report, we provide a summary of the preliminary field and genetic results from the recent WSWCP–Coordinated Occupancy Study in four western (contiguous United) States (see wolverine SSA report for additional details). We also incorporated technical comments received from several State agencies during the review of the draft wolverine SSA report into the final report. As discussed in the wolverine SSA report, the Western States Wolverine Working Group is continuing to develop studies to evaluate wolverine population distribution and occupancy, and connectivity across four western States.

(22) Comment: Information was provided by State agencies describing the legal protections of wolverines in individual States and conservation measures being implemented.

Our Response: In the wolverine SSA report (Service 2018, Appendix G), we provide a detailed discussion of current State (and Federal) regulatory mechanisms and other conservation measures that offer protections for the North American wolverine. In addition to the WSWCP–Coordinated Occupancy Study (Service 2018, Appendix B), several western States have identified the North American wolverine as a Species of Greatest Conservation Need in their State Wildlife Action Plans, and the North American wolverine is a focal species of conservation strategies for conservation targets in a number of ecoregions (*e.g.,* Cascades, Sierra Nevada) that support forested lowlands, subalpine–high-montane conifer forest where wolverines occur. These State designations provide information to assist resource managers with proactive decision-making regarding species conservation and data collection priorities, and support the conservation of the North American wolverine and its habitat.

(23) Comment: We received a comment from one State agency noting that the State does not recognize the North American wolverine as a native species due to lack of evidence that a population ever existed within New Mexico (*i.e.,* unverified species); thus, the State does not recognize the species in any of its wildlife statutes or regulations.

Our Response: We appreciate the clarification and information provided by the State agency and have considered this in our analysis to define the current potential extent of occurrence for the North American wolverine in the contiguous United States (see Figures 1 and 2 below) and in our assessment of population status in the wolverine SSA report. In their analysis of wolverine distribution records in the contiguous United States, Aubry *et al.* (2001, p. 2,150) identified 1860 as the most recent verifiable documentation of wolverine in northern New Mexico. We received two unverified accounts of wolverine sightings in New Mexico from the general public during the most recent public comment period. We are unaware of any recent verifiable individuals or populations of wolverines in New Mexico.

(24) Comment: In response to our request for information in our October 18, 2016, **Federal Register** document (81 FR 71670), we received comments from the U.S. Forest Service submitting verifiable and new records of wolverines from 2000 to 2016. These records include observations from camera surveys by both governmental and nongovernmental organizations, photos from private citizens, and locations from a regional study.

Our Response: We appreciate the information provided and incorporated these observations and detections in our analysis to define the current potential extent of occurrence for the North American wolverine in the contiguous United States (see Figures 1 and 2 below) and in our assessment of population status in the wolverine SSA report.

Background

A comprehensive review of the life history, population trends, and ecology of the North American wolverine is presented in the wolverine SSA report (Service 2018, pp. 3–44). The Service recognizes the North American wolverine as the subspecies *Gulo gulo luscus* (Service 2018, p. 8). Wolverines are a medium-sized (about 1 m (3.3 ft) in length) carnivore, with a large head, broad forehead, and short neck (Service 2018, p. 4). Wolverines have heavy musculature and relatively short legs, and large feet with strong, curved claws for digging and climbing (Service 2018, p. 4). Their feet are adapted for travel through deep snow and, during the winter, dense, stiff, bristle-type hairs are found between the toes and around the foot pad; this characteristic becomes diminished in the summer (Service 2018, p. 4). The wolverine is the largest terrestrial member of the Mustelidae family (weasels, fisher, mink, marten, and others) and resembles a small bear with a bushy tail (Service 2018, p. 1). Wolverines possess a number of morphological and physiological adaptations that allow them to travel long distances and they maintain large territories in remote areas (Service 2018, p. 1). They have been described as curious, intelligent, and playful, but cautious animals, though their social behavior and social organization has not been well-studied (Service 2018, p. 1). Wolverines have a distribution that includes the northern portions of Europe, Asia, and North America. In North America, they are found in Alaska, much of Canada, and the western-northwestern United States.

During the late 1800s and early 1900s, the wolverine population declined or was extirpated in much of the contiguous United States (lower 48 States), which has been largely attributed to unregulated trapping (Hash 1987, p. 583). Wolverine numbers have recovered to some extent from this decline and, in the United States, wolverines are currently found in parts of Washington, Oregon, Idaho, Montana, Wyoming, California (single male), and Alaska, and as recently as 2010 in Michigan, 2012 in Colorado, and 2016 in Utah. Known reproducing wolverine populations are found in Washington, Idaho, Montana, and Wyoming (Service 2018, p. 1).

Regulatory and Analytical Framework

Regulatory Framework

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species is an ''endangered species'' or a ''threatened species.'' The Act defines an endangered species as a species that is ''in danger of extinction throughout all or a significant portion of its range,'' and a threatened species as a species that is ''likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' The Act requires that we determine whether any species is an ''endangered species'' or a ''threatened species'' because of any of the following factors:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

These factors represent broad categories of natural or human-caused actions or conditions that could have an effect on a species' continued existence. In evaluating these actions and conditions, we look for those that may have a negative effect on individuals of the species, as well as other actions or conditions that may ameliorate any negative effects or may have positive effects.

We use the term ''threat'' to refer in general to actions or conditions that are known to or are reasonably likely to negatively affect individuals of a species. The term ''threat'' includes actions or conditions that have a direct impact on individuals (direct impacts), as well as those that affect individuals through alteration of their habitat or required resources (stressors). The term ''threat'' may encompass—either together or separately—the source of the action or condition or the action or condition itself.

However, the mere identification of any threat(s) does not necessarily mean that the species meets the statutory definition of an ''endangered species'' or a ''threatened species.'' In determining whether a species meets either definition, we must evaluate all identified threats by considering the expected response by the species, and the effects of the threats—in light of those actions and conditions that will ameliorate the threats—on an individual, population, and species level. We evaluate each threat and its expected effects on the species, then analyze the cumulative effect of all of the threats on the species as a whole. We also consider the cumulative effect of the threats in light of those actions and conditions that will have positive effects on the species, such as any existing regulatory mechanisms or conservation efforts. The Secretary determines whether the species meets the definition of an ''endangered species'' or a ''threatened species'' only after conducting this cumulative analysis and describing the expected effect on the species now and in the foreseeable future.

The Act does not define the term ''foreseeable future,'' which appears in the statutory definition of ''threatened species.'' Our implementing regulations at 50 CFR 424.11(d) set forth a framework for evaluating the foreseeable future on a case-by-case basis. The term ''foreseeable future'' extends only so far into the future as the Services can reasonably determine that both the future threats and the species' responses to those threats are likely. In other words, the foreseeable future is the period of time in which we can make reliable predictions. ''Reliable'' does not mean ''certain''; it means sufficient to provide a reasonable degree of confidence in the prediction. Thus, a prediction is reliable if it is reasonable to depend on it when making decisions.

It is not always possible or necessary to define foreseeable future as a particular number of years. Analysis of the foreseeable future uses the best scientific and commercial data available and should consider the timeframes applicable to the relevant threats and to the species' likely responses to those threats in view of its life-history characteristics. Data that are typically relevant to assessing the species' biological response include species-specific factors such as lifespan, reproductive rates or productivity, certain behaviors, and other demographic factors.

Analytical Framework

The SSA report documents the results of our comprehensive biological status review for the species, including an assessment of the potential threats to the species. The SSA report does not represent a decision by the Service on whether the species should be proposed for listing as an endangered or threatened species under the Act. It does, however, provide the scientific basis that informs our regulatory decisions, which involve the further application of standards within the Act and its implementing regulations and policies. The following sections provide summaries of the key results and conclusions from the SSA report; the full SSA report can be found on the Mountain-Prairie Region website at *https://www.fws.gov/mountain-prairie/* and at *http://www.regulations.gov* under Docket No. FWS–R6–ES–2016–0106.

To assess wolverine viability, we used the three conservation biology principles of resiliency, redundancy, and representation (Shaffer and Stein 2000, pp. 306–310). Briefly, resiliency supports the ability of the species to withstand environmental and demographic stochasticity (for example, wet or dry, warm or cold years), redundancy supports the ability of the species to withstand catastrophic events (for example, droughts, large pollution events), and representation supports the ability of the species to adapt over time to long-term changes in the environment (for example, climate changes). In general, the more resilient and redundant a species is and the more representation it has, the more likely it is to sustain populations over time, even under changing environmental conditions. Using these principles, we identified the species' ecological requirements for survival and reproduction at the individual, population, and species levels, and described the beneficial and risk factors influencing the species' viability.

The SSA process can be categorized into three sequential stages. During the first stage, we evaluated the individual species' life-history needs. The next stage involved an assessment of the historical and current condition of the species' demographics and habitat characteristics, including an explanation of how the species arrived at its current condition. The final stage of the SSA involved making predictions about the species' responses to positive and negative environmental and anthropogenic influences. This process used the best available information to characterize viability as the ability of a species to sustain populations in the wild over time. We use this information to inform our regulatory decision.

Distinct Population Segment

Pursuant to the Act, we must consider for listing any species, subspecies, or, for vertebrates, any distinct population segment (DPS) of these taxa, if there is sufficient information to indicate that such action may be warranted. To interpret and implement the DPS provision of the Act and Congressional guidance, the Service and the National Marine Fisheries Service published, on February 7, 1996, an interagency Policy

Regarding the Recognition of Distinct Vertebrate Population Segments under the Act (61 FR 4722; February 7, 1996). This policy addresses the recognition of DPSs for potential listing actions. The policy allows for more refined application of the Act that better reflects the biological needs of the taxon being considered, and avoids the inclusion of entities that do not require its protective measures.

Under our DPS policy, three elements are considered in a decision regarding the status of a possible DPS as endangered or threatened under the Act. These are applied similarly for additions to the list of endangered and threatened species, reclassification, and removal from the list. They are: (1) Discreteness of the population segment in relation to the remainder of the taxon; (2) the biological or ecological significance of the population segment to the taxon to which it belongs; and (3) the population segment's conservation status in relation to the Act's standards for listing (*i.e.,* whether the population segment is, when treated as if it were a species or subspecies, an endangered or threatened species). Discreteness refers to the degree of isolation of a population from other members of the species, and we evaluate this factor based on specific criteria. If a population segment is considered discrete, we must consider whether the discrete segment is ''significant'' to the taxon to which it belongs by using the best available scientific and commercial information. When determining if a potential DPS is significant, our policy directs us to sparingly list DPSs while encouraging the conservation of genetic diversity. If we determine that a population segment is both discrete and significant, we then evaluate it for endangered or threatened species status based on the Act's standards.

Both new and updated information and analyses presented in the wolverine SSA report, summarized below in support of our listing determination, along with public comment, have prompted us to reevaluate our previous assessment of the DPS (presented in our 2013 proposed listing rule, which in turn relied on the DPS analysis completed in our 2010 12-month finding) with respect to wolverine in the contiguous United States. Below we provide our revised evaluation of discreteness under the DPS policy of the segment of the North American wolverine occurring in the contiguous United States.

Distinct Population Segment Analysis for Wolverine in the Contiguous United States

Analysis of Discreteness

Under our DPS Policy, a population segment of a vertebrate species may be considered discrete if it satisfies either one of the following conditions: (1) It is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors (quantitative measures of genetic or morphological discontinuity may provide evidence of this separation); or (2) it is delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D) of the Act (inadequacy of existing regulatory mechanisms).

Discreteness Based on Marked Separation

In our February 4, 2013, proposed listing rule (78 FR 7864), we did not rely on marked separation from other populations to support discreteness of the contiguous United States wolverine population. As supported by information in the SSA report, we maintain that there are no physical, physiological, ecological, or behavioral factors separating wolverines in the contiguous United States from wolverines in Canada. We do not consider wolverines in the contiguous United States to be genetically isolated from wolverines in Canada (McKelvey *et al.* 2014; Pilgrim and Schwartz 2018). Therefore, wolverines in the contiguous United States are not discrete based on marked separation from other populations of the same taxon.

Discreteness Based on the International Border—Legal Status Conveyed by National, State, and Provincial Governments; Differences in Control of Exploitation

Our 2013 proposed rule (78 FR 7864), which incorporated by reference our DPS analysis from our 2010 12-month finding, found there was no significant difference between the legal status of wolverines between Canada and the United States (75 FR 78030; December 14, 2010). In the wolverine SSA report, we provide an updated assessment of legal protections and regulatory mechanisms for wolverine in North America (Service 2018, pp. 70–71, Appendix G). Legal protections in the contiguous United States include State listing in California and Oregon (threatened), endangered in Colorado, a candidate species in Washington, non-game species protections in Idaho and Wyoming, a species of concern and furbearer with a closed season in Montana, and protected from collection, importation, and possession in Utah. In Canada, provincial designations range from endangered to threatened in eastern provinces, and sensitive/special concern to no ranking in other provinces (definitions provided by the Committee on the Status of Endangered Wildlife in Canada, 2014). As was determined in our 2013 proposed listing rule (78 FR 7864), we again find no significant differences in legal status.

In the 2010 12-month finding (75 FR 78030) and reiterated in our 2013 proposed listing rule (78 FR 7864), we stated that differences in control of exploitation exist, but favor the contiguous United States population. Trapping or hunting of wolverines is currently prohibited in the contiguous United States and regulated as appropriate in Canada (Service 2018, pp. 68–69). In the wolverine SSA report, we included a new analysis of trapping in southern Canada and trapping effort along the U.S.–Canada border, which we found to be limited. Thus, we conclude that the differences in exploitation are not significant in light of section 4(a)(1)(D) of the Act (inadequacy of existing regulatory mechanisms).

Discreteness Based on the International Border—Differences in Management of Habitat

As we outlined in the proposed 4(d) rule (78 FR 7888) management activities (*e.g.,* timber harvest, wildland firefighting, prescribed fire, and silviculture) can modify wolverine habitat, but this generalist species appears to be little affected by changes to the vegetative characteristics of its habitat. In addition, most wolverine habitat occurs at high elevations in rugged terrain that is not conducive to intensive forms of silviculture and timber harvest. Habitat management is not a conservation need for wolverine. Therefore, differences in management of habitat between the United States and Canada are not significant in light of section 4(a)(1)(D) of the Act.

Discreteness Based on the International Border—Differences in Conservation Status

In the December 14, 2010, 12-month finding (75 FR 78030), which is incorporated and discussed in the February 4, 2013, proposed listing rule (78 FR 7864), we found that the wolverine population in the contiguous United States met the second DPS discreteness condition because of

differences in conservation status as delimited by the U.S.–Canada international governmental boundary. We found that those differences were substantial and significant in light of section 4(a)(1)(D) of the Act. We stated that in the remaining current range in Canada and Alaska, wolverines exist in well-distributed, interconnected, large populations. We added that, conversely, wolverine populations in the remaining United States range appear to be at numbers so low that their continued existence could be at risk, especially in light of the threats to the species. In the 2010 finding, we stated that risks come from three main factors: (1) Small total population size; (2) effective population size below that needed to maintain genetic diversity and demographic stability; and (3) the fragmented nature of wolverine habitat in the contiguous United States that results in smaller, isolated sky island patches separated by unsuitable habitat. We stated it was apparent that maintaining wolverines within their native range in the contiguous United States into the future is likely to require regulatory mechanisms that are not currently in place. As a result, we concluded that the contiguous United States population of the wolverine meets the discreteness criterion in our DPS Policy (61 FR 4722, February 7, 1996). Consequently, we used the international border between the United States and Canada to define the northern boundary of the contiguous United States wolverine DPS in our December 14, 2010, 12-month finding (75 FR 78030) and our February 4, 2013, proposed listing rule (78 FR 7864). Below we provide a reevaluation of that determination supported by information presented in the wolverine SSA report.

Small Total Population Size—Wolverine densities vary across North America and have been described as naturally low (van Zyll de Jong 1975, p. 434); wolverine populations are naturally uncommon given the species' large home range, wide-ranging movements, and solitary characteristics (Service 2018, p. 56). There are many fewer wolverines in the contiguous United States than there are in Canada and Alaska (Committee on the Status of Endangered Wildlife in Canada (COSEWIC) 2014, p. 36; Inman *et al.* 2013, p. 282; Service 2018, p. 71), but this is more a reflection of the amount of suitable habitat available within the contiguous United States (both currently and historically) for a species that needs large exclusive territories, than it is a reflection of poor conservation status. Wolverines in Canada are considered to occur as a single large group as they are easily able to move between areas of suitable habitat and because wolverine habitat is relatively contiguous (Harrower 2017, pers. comm.). However, wolverines in the contiguous United States are considered to be a metapopulation connected with wolverine populations in Canada (Inman *et al.* 2013, p. 277). Wolverines currently occupy areas in the contiguous United States where they were once extirpated and continue to repopulate the contiguous United States after decades of unregulated trapping, hunting, and poisoning (Service 2018, p. iv). The same holds true for Canada, where wolverines are being detected in areas once extirpated (COSEWIC 2014, p. v).

These movement patterns are supported by recent genetic information that indicates wolverines from Canada have slowly repopulated the contiguous United States over the past century since the era of unregulated persecution (Service 2018, pp. 45–50). This point is discussed in detail below in the *Genetic Diversity* section of this withdrawal. We stated in the December 14, 2010, finding that differences in population sizes between the contiguous United States and Canada were reflective of a difference in conservation status (75 FR 78030). However, based on new information, we now conclude that the contiguous United States wolverines represent a peripheral population at the southern extent of the North American wolverine range. Thus, we now consider the small population size of wolverines in the United States to be a natural result of habitat fragmentation and not reflective of a difference in conservation status (see *Habitat Fragmentation* below for more detail). Therefore, any difference in population size on the contiguous United States side of the international border is not a significant difference in conservation status in light of section 4(a)(1)(D) of the Act as it applies to discreteness.

Effective Population Size—Effective population size (N_e) is defined as ''the size of an idealized population that would experience the same amount of genetic drift and inbreeding as the population of interest (Service 2018, Box 2). In popular terms, N_e is the number of individuals in a population that contribute offspring to the next generation'' (Hoffman *et al.* 2017, p. 507). Effective population size can be interpreted differently depending on how it's defined and used, and the concept of effective population size (N_e) (see review by Wang *et al.* 2016) and, relatedly, minimum viable population, has been a topic of debate, particularly the 50/500 rule (population size of 50 for short-term, and 500 for long-term genetic health). Importantly, the concept and guidelines for genetically effective population size were developed for a single, isolated population (Laikre *et al.* 2016, p. 280). The term ''effective population size'' is not a meaningful term unless additional context is provided relative to which concept of population size is being evaluated (Ewens 1990, p. 309). Demographic factors are needed when interpreting actual population size from an effective population size; thus, there is no justification for a fixed, genetically derived minimum viable population size value of '500' as each case is unique and is dependent on such factors as sex ratio, subpopulations, dispersal, and immigration (Ewens 1990, pp. 311–313).

As noted above, we do not consider the wolverine population in the contiguous United States to be genetically isolated from wolverines on the other side of the international border in Canada. In the wolverine SSA report, we provide a contextual discussion of the effective population size concept, particularly in the context of genetic studies related to the phylogeographic history of the North American wolverine (Service 2018, pp. 45–50), which was not well described in the 2013 proposed rule. In sum, the spatial distribution of genetic variability currently observed in wolverines in North America appears to be a reflection of a complex history in which population abundance has fluctuated since the time of the last glaciation with insufficient time passing since human persecution, since at least the 1700s, to allow for full recovery of wolverine densities (Cardinal 2004, pp. 23–24; Zigouris *et al.* 2012, p. 1,554). This history and the fact that wolverines in the contiguous United States occupy the southern periphery of its entire North American range are important considerations. The wolverine SSA report also presents information from genetic and observational studies that provide support for wolverine movement across the international border of the contiguous United States and Canada (Aubry *et al.* 2016, pp. 16, 20; Lucid *et al.* 2016, p. 184; Service 2018, pp. 9–23). Thus, we consider wolverines that occupy the contiguous United States to be genetically continuous with wolverines in adjacent Canadian provinces.

Wolverines travel (disperse) through areas outside high-elevation, forested habitats. For example, tracked movements of a male wolverine, M56, from Wyoming into Colorado and its subsequent discovery in North Dakota, indicate extensive travel outside of

modeled primary wolverine habitat (*i.e.,* Inman *et al.* 2013), including through arid grasslands and shrubland habitats of the Wyoming Basin ecoregion (Packila *et al.* 2017, entire). This animal's movement also supports some level of connectivity (and potential gene flow) between currently occupied habitat (Wyoming) and unoccupied habitat within the wolverine's historical range (Colorado) (Packila *et al.* 2017, p. 404). Similarly wolverines in the North Cascades region have moved from Washington and Idaho into British Columbia, and from Montana to British Columbia and Alberta (Service 2018, p. 45). Based on genetic analyses, the male wolverine currently occupying an area within the Sierra Nevada Mountains of California also represents evidence of connectivity between wolverine populations of the Rocky and Sierra Nevada Mountain Ranges (Moriarty *et al.* 2009, p. 154). Within the Southwestern Crown of the Continent (SWCC) in northwestern Montana, cross-valley movements of wolverines have been detected, which researchers believe is an indication of good connectivity in this region (SWCC Working Group 2016, pers. comm.).

A preliminary mitochondrial DNA analysis was prepared for wolverine samples collected during the winters of 2015–2016 and 2016–2017 as part of the Western States Wolverine Conservation Project—Coordinated Occupancy Survey (Pilgrim and Schwartz 2018, entire). All 45 wolverines identified from samples collected in Idaho, Montana, and Wyoming match haplotype Wilson-A, which is common throughout the Rocky Mountains, Alaska, and Canada, while all 5 wolverines identified from samples collected in Washington match haplotype Wilson-C (Pilgrim and Schwartz 2018, p. 3). Previous analyses of recent or modern (1989–2012) samples from the Cascades Range in northern Washington and southern British Columbia, as presented in McKelvey *et al.* (2014, p. 328), were characterized as haplotype C, and one historical (defined in this study as pre-1930) sample as haplotype A (McKelvey *et al.* 2014, p. 327). Outside of this region, haplotype C has been found only in Alberta, Saskatchewan, and Nunavut provinces (McKelvey *et al.* 2014, p. 330). Based on mitochondrial DNA, McKelvey *et al.* (2014, p. 330) concluded that modern (defined in their study as 1989–2012) wolverine populations in the contiguous United States are the result of recolonization (following persecution during a period of unregulated hunting or trapping and poisoning) from the north. The additional mitochondrial analysis from samples collected in 2015, 2016, and 2017 provides further support that all contiguous United States historical (pre-1900) and recent wolverine populations are likely descendants of immigrants from Canada.

The 2013 proposed rule presented an effective population size estimate for wolverines in the contiguous United States from a publication by Schwartz *et al.* (2009), which estimated a summed effective population size of 35, with credible limits from 28 to 52 (Schwartz *et al.* 2009, p. 3,226). As described in the wolverine SSA report, the study used wolverine samples from the main part of the Rocky Mountain wolverine populations and did not include subpopulations from two other mountain regions in Montana, and samples were missing from other parts of the wolverine range in Idaho and other areas of Montana. Thus, the analysis missed wolverine subpopulations and individuals, which would underestimate the results for this type of analysis. Furthermore, a small effective population size would be more of a concern if the population was in isolation; however, wolverines in the contiguous United States are not genetically or physically isolated from wolverines in Canada.

To summarize, the currently known spatial distribution of genetic variability in wolverines in North America appears to be a reflection of a complex history where population abundance has fluctuated since the time of the last glaciation and insufficient time has passed since human persecution for a full recovery of wolverine densities (Cardinal 2004, pp. 23–24; Zigouris *et al.* 2012, p. 1,554). Zigouris *et al.* (2012, p. 1,545) noted that the genetic diversity reported in Cegelski *et al.* (2006) and Kyle and Strobeck (2001, 2002) for the southwestern edge of the North American range represented only part of the diversity in the northern populations of wolverines. Zigouris *et al.* (2012, p. 1,545) posit that the irregular distribution of wolverines in the southwestern periphery and the genetic diversity observed in those analyses is a result of population bottlenecks that were caused by range contractions from a panmictic (random mating) northern core population approximately 150 years ago coinciding with human persecution. Recent dispersals of wolverines into Colorado (2009), California (2008), and Utah (2014) provide evidence for connectivity and the potential for gene flow between Northern Rocky Mountain populations and areas where wolverines were extirpated. As noted above, there is also recent evidence of wolverine movement across the international border. Furthermore, our analysis of trapping levels in the wolverine SSA report does not support previous assumptions that trapping in Canada near the border acts as a barrier to wolverine movement into the contiguous United States (Service 2018, pp. 68–69). Finally, very few successful migrants are needed per generation to maintain at least 95 percent of the genetic variation in the next 100 generations (approximately 750 years) in the contiguous United States (Cegelski *et al.* 2006, p. 209).

We conclude that this level of migration from the north has already been occurring following the end of intense persecution of this species; wolverines are currently observed in previously occupied areas within the contiguous United States. Given the recent observations of wolverines moving vast distances over varied terrain and across the U.S.–Canada border, our recent assessment of the low levels of trapping mortality in Canada near the border, and further confirmation of Canada as the source of wolverine genetics present in contiguous United States wolverines, we believe that wolverines in the contiguous United States are not separated genetically from the larger population in Canada. Wolverines in the contiguous United States exhibit genetic and phenotypic similarities with wolverines in Canada that implies connectivity with Canada. As such, we conclude that it is not biologically appropriate to consider the low effective population size of wolverines on the contiguous United States side of the border as a difference in conservation status that is significant in light of section 4(a)(1)(D) of the Act as it applies to discreteness. For additional information related to wolverine genetic diversity and effective population size, see *Genetic Diversity* below and the wolverine SSA report (Service 2018, pp. 45–50).

Habitat Fragmentation—In our 2010 12-month finding (incorporated into the 2013 proposed listing rule), we stated that wolverine habitat in the contiguous United States consists of small, isolated islands of high-elevation habitat separated from each other by low valleys of unsuitable habitat. We also described that these 'habitat islands' are represented by areas containing spring snow, citing Copeland *et al.* (2010). We concluded that the fragmented nature and distribution of wolverine habitat in the contiguous United States results in a population that is highly vulnerable to extirpation because of lack of

connectivity between subpopulations, and this also makes them more vulnerable to external threats (75 FR 78030; December 14, 2010).

Our previous analysis of wolverine habitat fragmentation relied upon the assumption that wolverines are constricted to habitats that contain deep, persistent spring snow cover and, therefore, are more or less confined to areas that were defined by the Copeland *et al.* (2010) spring snow cover model. However, wolverines are observed in and move through areas without snow cover (*e.g.,* male wolverines dispersing to California and Colorado), and female wolverines have successfully denned in areas outside previously modeled projections of deep, persistent spring snow cover (*e.g.,* Webb *et al.* 2016; Persson 2017, pers. comm.; Jokinen 2018, pers. comm.).

We now conclude that it is not accurate to categorize the occupied habitat of wolverines in the contiguous United States as 'habitat islands.' As discussed above, wolverine populations in the contiguous United States represent the southern periphery of a much larger range of the North American wolverine due to naturally occurring landscape features such as high elevation and topographic roughness of mountain regions. Thus, the distribution of persistent spring snow cover in mountainous regions does not represent the only determining habitat feature for wolverines. The availability of prey and avoidance of predators are also important elements of wolverine habitat (Inman *et al.* 2012, p. 785; Scrafford *et al.* 2017, p. 34)). As described in the SSA report, wolverines use a unique and productive ecological niche that allows them to occupy high-elevation regions across the northwestern portion of the contiguous United States (Service 2018, pp. 27, 38). Finally, as noted above, wolverine movement in the contiguous United States is not constrained by high-elevation habitat or snow cover, and wolverines can easily move and disperse long distances in the western United States (*e.g.,* SWCC Working Group 2016, pers. comm.; Packila *et al.* 2017, entire). Therefore, habitat fragmentation in the context of availability of persistent spring snow cover or loss of connectivity in the contiguous United States is not an appropriate difference in conservation status in light of section 4(a)(1)(D) of the Act as it applies to discreteness.

Discreteness Based on the International Border—Differences in Regulatory Mechanisms

Because there aren't significant differences in control of exploitation, legal conservation status, and management of habitat, nor other threats to the wolverine requiring regulatory mechanisms to address them, we conclude that there are not differences in regulatory mechanisms between the United States and Canada that are significant in light of section 4(a)(1)(D).

Conclusion on Discreteness

Based on our updated analysis described above and supported by information in the wolverine SSA report, the contiguous United States population of wolverine does not meet the discreteness criterion in our DPS Policy (61 FR 4722; February 7, 1996). As a result, the contiguous United States population of wolverines does not qualify as a DPS and is not a listable entity under section 3(16) of the Act. After determining that a vertebrate population is not discrete, we are not required to complete an analysis to determine if the population in question is significant according to our DPS Policy.

DPS Conclusion

Based on the best available information, we conclude that the population of wolverines in the contiguous United States is not discrete in relation to the remainder of the species in North America. As a result, the population of wolverines in the contiguous United States is not a listable entity under section 3(16) of the Act.

The DPS Policy sets forth a three-step process for determining whether a vertebrate population as a separate entity warrants listing: (1) Determine whether the population is discrete; (2) if the population is discrete, determine whether the population is significant to the taxon as a whole; and (3) if the population is both discrete and significant, then evaluate the conservation status of the population to determine whether it is endangered or threatened. Although we have determined that wolverines in the contiguous United States do not qualify as a DPS and, therefore, are not a listable entity, we provide below a status determination of the wolverine population in the contiguous United States. The DPS Policy neither requires nor prohibits completion of a status determination once we have determined that a population does not qualify as a DPS. Nevertheless, in this instance, we concluded that completing an assessment—and detailing the nature, scope, and likely effect of the threats to the population and the species—would provide us and the public with useful information regarding wolverines occupying the contiguous United States.

Summary of Biological Status and Threats

In preparing the SSA report for the wolverine, we reviewed available reports and peer-reviewed literature, incorporated survey information, and contacted species experts to collect additional unpublished information for the North American subspecies (*Gulo gulo luscus),* including Canada and Alaska. We identified uncertainties and data gaps in our assessment of the current and future status of the species. We also evaluated the appropriate analytical tools to address these gaps and conducted discussions with species experts and prepared updated maps of the known species' range in North America. In some instances, we used publications and other reports (primarily from Fenno-Scandinavia) of the Eurasian subspecies (*G. g. gulo*) in completing this assessment.

Since the publication of the February 4, 2013, proposed listing rule (78 FR 7864), several new wolverine studies have been published (*e.g.,* Aronsson 2017, Aronsson and Persson 2016, Aronsson *et al.* 2017, Heinemeyer *et al.* 2019, Jokinen et al, 2019, Magoun *et al.* 2017, Persson *et al.* 2017, Stewart *et al.* 2016, Webb *et al.* 2016, see additional list of citations in the wolverine SSA report), which have added to our understanding of wolverine biology while also highlighting new insights into identifying key species' needs and their interactions with both abiotic and biotic factors. This new information is particularly relevant for a difficult-to-study animal like the wolverine.

Using the species, individual, and population needs identified for the wolverine and location results from surveys and studies, we conducted a geospatial analysis to estimate the current potential extent of occurrence for the North American wolverine in North America including the contiguous United States (Figure 1; Service 2018). ''Current potential extent'' represents the perimeter of the outermost geographic limits based on all (available) occurrence records (that is, the maximum extent of occurrences) of a species minus those areas where we believe the species has been extirpated (Service 2017). We then evaluated this area and previous estimates of potentially suitable habitat in the western-northwestern United States to

assess the species' current conditions within that region. Our future-condition analysis includes the potential conditions that the species or its habitat may face, that is, the most probable scenario if those conditions are realized in the future. This most probable scenario includes consideration of the sources that have the potential to most likely impact the species at the population or rangewide scales in the future, including potential cumulative impacts.

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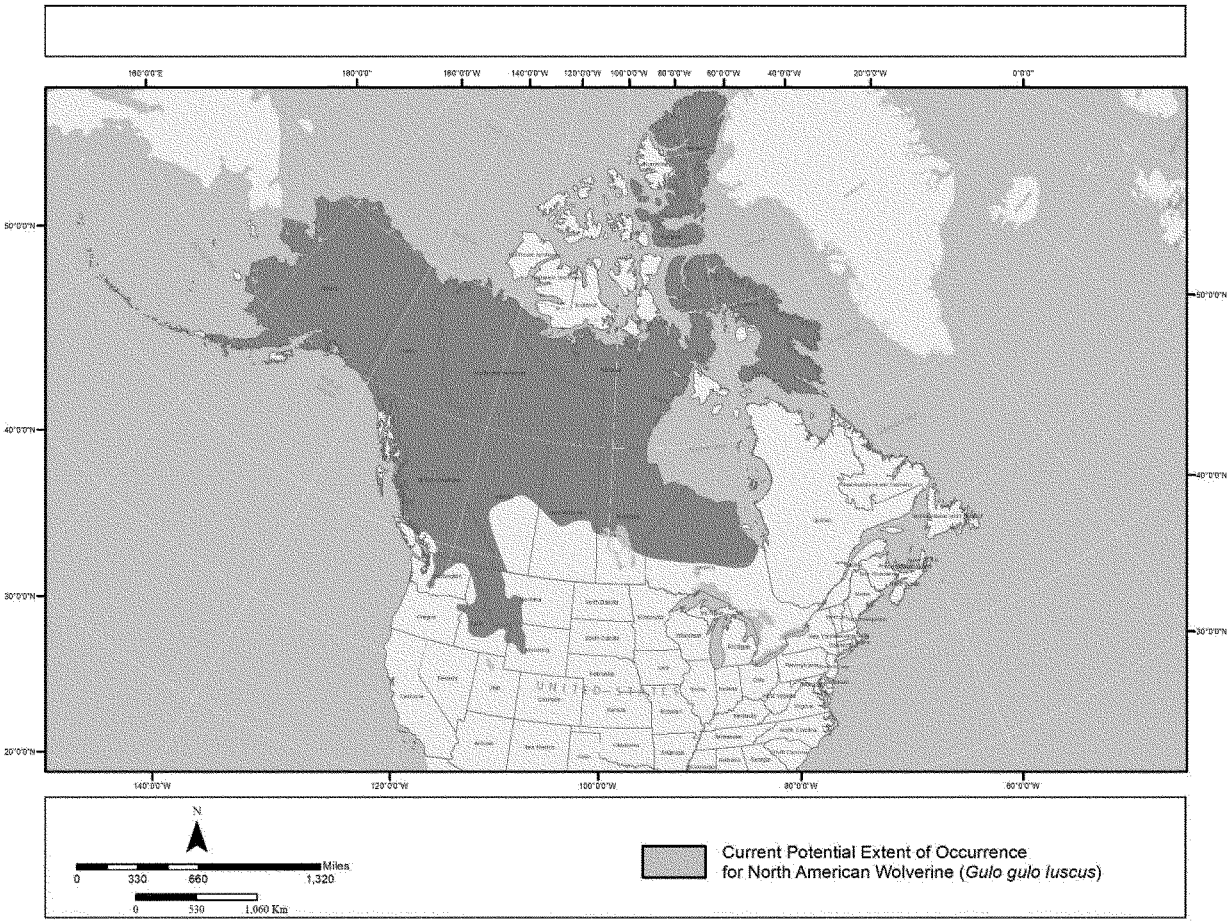

Figure 1—Current potential extent of occurrence for the North American wolverine taxon in North America (Service 2018, p. 16).

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Our analysis of potential future effects to the North American wolverine and its habitat that are associated with climate change (probabilistic estimates for temperature and precipitation) is presented in the SSA report and summarized here. This analysis was based on downscaled (high resolution local climate information derived from global climate models) climate model projections, including a detailed study of two regions in the western United States—Glacier National Park (currently occupied by reproducing wolverines) and Rocky Mountain National Park (occupied by a single male wolverine from 2009 to at least 2012, but not known to be currently occupied). The two regions studied include a high-latitude area near tree line within Glacier National Park, where tree line occurs at ~ 1,800 to 2,100 m (5,906 to 6,890 ft) that is currently occupied by wolverines; and a lower latitude area within Rocky Mountain National Park, where tree line occurs at higher elevation (~ 3,500 m (11,483 ft)) (Ray *et al.* 2017, p. 2). These sites were selected to bracket the range of latitude and elevation wolverines currently occupy in the contiguous United States (Ray *et al.* 2017, p. 2).

For the purpose of this assessment, we generally define viability as ''consisting of self-sustaining populations that are well distributed throughout the species' range,'' and where ''[s]elf-sustaining populations are those that are sufficiently abundant and have sufficient genetic diversity to display the array of life history strategies and forms that will provide for their persistence and adaptability in the planning area over time'' (Committee of Scientists 1999, p. 38). We use a timeframe of approximately 38 to 50 years for assessing future effects to wolverine viability. This timeframe captures consideration of the projected future conditions related to trapping/harvesting, climate change, or other potential cumulative impacts (Service 2018, p. 73). Beyond this range, climate

modeling uncertainty increases substantially. We believe this is a reasonable timeframe to consider as it includes the potential for observing these effects over several generations of the wolverine.

As discussed above in *Analytical Framework,* we consider what the species needs to maintain viability by characterizing the status of the species in terms of resiliency, redundancy, and representation (Wolf *et al.* 2015, entire). Resiliency is having sufficiently large populations for the species to withstand stochastic events (arising from random factors). We can measure resiliency based on metrics of population health; for example, birth versus death rates and population size. Resilient populations are better able to withstand disturbances such as random fluctuations in birth rates (demographic stochasticity), variations in rainfall (environmental stochasticity), or the effects of anthropogenic activities.

Redundancy is having a sufficient number of populations for the species to withstand catastrophic events (such as a rare destructive natural event or episode involving many populations). Redundancy is about spreading the risk and can be measured through the duplication and distribution of populations across the range of the species. The greater the number of populations a species has distributed over a larger landscape, the better it can withstand catastrophic events.

Representation is having the breadth of genetic makeup of the species to adapt to changing environmental conditions. Representation can be measured through the genetic diversity within and among populations and the ecological diversity (also called environmental variation or diversity) of populations across the species' range. The more representation, or diversity, a species has, the more it is capable of adapting to changes (natural or human caused) in its environment. In the absence of species-specific genetic and ecological diversity information, we evaluate representation based on the extent and variability of habitat characteristics within the geographical range.

Life-History Needs

Wolverines are capable of moving and dispersing over great distances over short periods of time. Wolverine populations are characterized by naturally low densities in North America. The species is highly territorial, with very little overlap between same-sex adults. Wolverines occupy a variety of habitats, but generally select habitat in locations away from human settlements. Wolverines consume a variety of food resources, and seasonal switching of prey is commonly observed. As with other Arctic mammals, wolverines have the ability to adapt to both warm and cold ambient temperatures and solar radiation through both physiological and behavioral responses, such as vasodilation, increase in skin temperature, seasonal adjustments in fur insulation, and micro- and macro-habitat selection.

Wolverine reproduction includes the following characteristics: polygamous behavior (*i.e.,* male mates with more than one female each year), delayed implantation (up to 6 months), a short gestation period (30–40 days), denning behavior, and an extended period of maternal care. The reproductive behavior in wolverines is temporally adapted to take advantage of the availability of food resources, limited interspecific competition, and snow cover in the winter.

Since the publication of the Service's 2013 proposed rule to list the distinct population segment of the North American wolverine in the contiguous United States (78 FR 7864; February 4, 2013), several new wolverine studies have been published (*e.g.,* Aronsson 2017, Aronsson and Persson 2016, Aronsson *et al.* 2017, Heinemeyer *et al.* 2019, Jokinen et al, 2019, Magoun *et al.* 2017, Persson *et al.* 2017, Stewart *et al.* 2016, Webb *et al.* 2016, see additional list of citations in the wolverine SSA report). These studies have improved our understanding of wolverine biology while also highlighting new insights into identifying key species' needs and their interactions with both abiotic and biotic factors. Of particular importance relative to life history needs and wolverine reproductive behavior, wolverine populations and wolverine dens have been observed outside previously modeled projections of spring snow cover.

Overall, the best available information indicates that within the contiguous United States the wolverine's physical and ecological needs include:

(1) Large territories in relatively inaccessible landscapes, at high elevation (1,800 to 3,500 m (5,906 to 11,483 ft));

(2) access to a variety of food resources, which vary with seasons; and

(3) physical/structural features (*e.g.,* talus slopes, rugged terrain) linked to reproductive behavioral patterns.

Current Condition

Current Potential Extent of Occurrence

As noted above, using the best available information on current distribution and recent occurrences, we created maps to describe an area of ''current potential extent of occurrence'' (current potential extent) of wolverine for the western-northwestern contiguous United States (Service 2018, pp. 12–13, 15). The current potential extent represents the perimeter of the outermost geographic limits based on all (available) occurrence records (that is, the maximum extent of occurrences) for the wolverine minus those areas where we believe the species has been extirpated (Service 2018, pp. 11–12). The current potential extent area identified in Figure 2 encompasses approximately 280,316 km^2 (69,267,592 acres (ac)) (Service 2018, p. 12). We also prepared a current potential extent map for all of North America, including Canada and Alaska, for a total estimated current potential extent of 8,114,878 km^2 (2,005,230,024 ac) (Service 2018, p. 12 and Figure 1 of this document). The current potential extent area in the contiguous United States represents approximately 3.5 percent of the total current potential extent of wolverines in North America (Service 2018, p. 13 and Figure 2 of this document).

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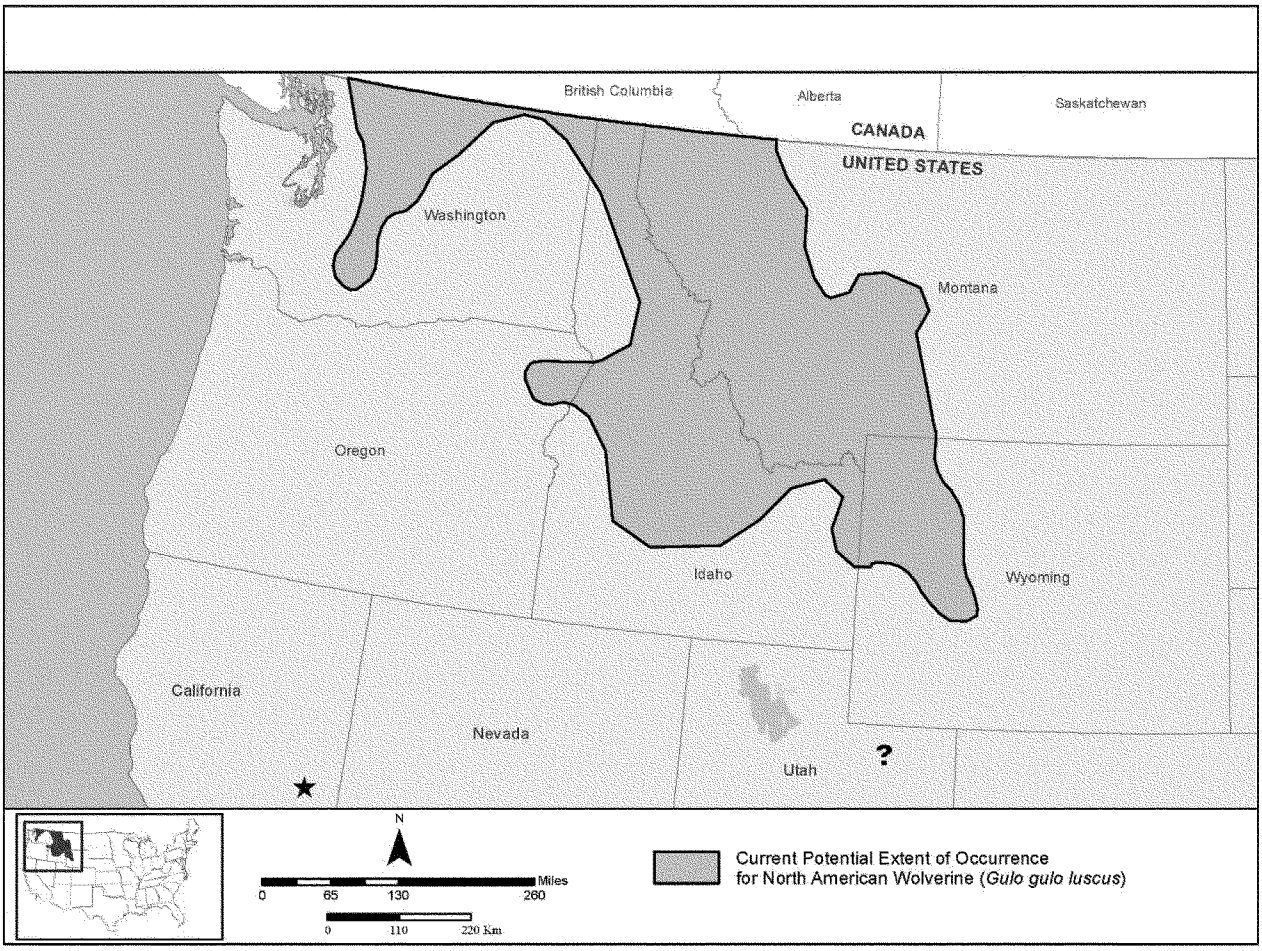

Figure 2—Current potential extent of occurrence for North American wolverine in the western contiguous United States (Service 2018, p. 15). The star symbol represents the single male wolverine who, as of March 2017, continues to occupy the region of California. The '?' represents potential occupancy by individual wolverine(s) in Utah, where sightings of wolverine were reported in 2014, 2015, and 2016.

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Population Abundance and Density

Areas in the western contiguous United States have been previously identified as suitable for wolverine survival (long-term survival; used by resident adults) or primary habitat, reproduction (used by reproductive females), and dispersal (female and male) of wolverines (see methodology in Inman *et al.* 2013, pp. 279–280). From these results, the researchers estimated potential and current distribution and abundance of wolverines in the western contiguous United States. They estimated current population size of wolverines to be 318 individuals (range 249–626) located within the Northern Continental Divide (Montana) and areas within the following ecoregions: Salmon-Selway (Idaho, portion of eastern Oregon), Central Linkage (primarily Idaho, Montana), Greater Yellowstone (Montana, Idaho, Wyoming), and Northern Cascades (Washington) (Inman *et al.* 2013, p. 282). Potential wolverine population capacity based on habitat modeling was estimated to be 644 individuals (range: 506–1,881) (Inman *et al.* 2013, p. 282); however, we do not have information indicating wolverine abundance in the contiguous United States.

In the wolverine SSA report, we provide a discussion of recent studies of wolverine detections and observations in the western United States (Service 2018, pp. 51–56); however, no comprehensive surveys have been conducted across the entire area defined as the species' maximum extent of occurrence (Service 2018, p. 14; Figure 2) or current potential extent of occurrence (Figure 2 above) in the contiguous United States. Below we

provide a summary of recent wolverine observations and detections in the western United States.

A recent study (2007–2015) has demonstrated that the Cascades region of Washington and Canada supports a resident wolverine population (Aubry *et al.* 2016, p. 40). For the first time in recent history, a breeding female wolverine was detected south of I–90 in the south Cascades of Washington, as well as her potential mate, indicating wolverines may be extending their current range in that area (Flatt 2018, p. 1). Wolverines have been detected in the Eagle Cap Wilderness Area in the Wallowa Mountains of northeastern Oregon in 2011–2012, 2016, and 2017 (Magoun *et al.* 2013, p. 17; Magoun 2017, pers. comm.). In California, a single male wolverine occurs in the Truckee area as of March 2017 (Shufelberger 2017, pers. comm.).

Since 2010, survey and monitoring efforts in the Idaho Panhandle and adjoining areas of Washington, Montana, and British Columbia, Canada, have detected five individual male wolverines (Service 2018, p. 52). One male was also detected in British Columbia, north of Canadian Highway 3 (Lucid *et al.* 2016, p. 184), which some consider to be a barrier to wildlife passage (IDFG 2017, pers. comm.). This male was most recently detected in Idaho, on March 6, 2013 (Lucid *et al.* 2016, p. 175). One likely wolverine den was located in the Saint Joe Mountains in Idaho (Lucid *et al.* 2017, p. 12).

Results from a pilot study to evaluate wolverine occupancy in Wyoming indicated at least three individual wolverines (at five stations) with at least one individual in the Gros Ventre and Wind River mountain ranges, and at least two individuals in the Southern Absaroka mountain range (Inman *et al.* 2015, p. 9). Occupancy modeling estimated a probability of occupancy for sampled sites of 62.9 percent (Inman *et al.* 2015, p. 8).

Building on the results of the Wyoming pilot study, the Western Association of Fish and Wildlife Agencies (WAFWA), in coordination with Tribal partners, formed a multi-State, multi-agency working group (Western States Wolverine Working Group) to design and implement the Western States Wolverine Conservation Project (WSWCP)–Coordinated Occupancy Survey. The primary objectives of the WSWCP include: (1) Implement a monitoring program to define a baseline wolverine distribution and genetic characteristics of the metapopulation across Montana, Idaho, Wyoming, and Washington; (2) model and maintain the connectivity of the wolverine metapopulation in the western United States; and (3) develop policies to address socio-political needs to assist wolverine population expansion as a conservation tool, including translocation of wolverines (IDFG 2016, pers. comm.; Montana FWP 2016, pers. comm.; WGFD 2016, pers. comm.).

The Wyoming Game and Fish Department began implementation of the survey in Wyoming in the Greater Yellowstone Ecosystem region and the Bighorn Mountains in the winter of 2015–2016 (WGFD 2016, pers. comm.). That initial survey detected at least three unique wolverines in the Wind River and southern Absaroka Mountain Ranges (WGFD 2016, pers. comm.).

The monitoring effort was expanded in the winter of 2016–2017 in four States (Washington, Idaho, Montana, and Wyoming), and our review of the results indicate that wolverines were detected in all four States (Service 2018, p. 53). From this study, a total of 43 unique individuals were identified, 20 males and 23 females (Pilgrim *et al.* 2018, no page number).

We also received additional wolverine observations from State and Federal agencies in northwestern Wyoming. A wolverine was detected by camera in northern Grand Teton National Park, and a member of the public reported wolverine tracks in southwestern Grand Teton National Park while skiing, which was confirmed by a Forest Service biologist (Service 2018, p. 53). Both of these observations occurred in March 2017. South of this area in the Wyoming Range (about 4 miles east of Alpine, Wyoming), a wolverine was detected by camera in May 2017 (Service 2018, p. 53).

Wolverine densities vary across North America and have been described as naturally low and wolverine populations as naturally uncommon given the species' large home range, wide-ranging movements, and solitary characteristics (Service 2018, p. 56). In the contiguous United States, density estimates (number of wolverines per 1,000 km^2 (386 mi^2)) ranged from 3.5 for the Greater Yellowstone region (2001–2008) (areas above 2,150 m (7,054 ft) (latitude-adjusted elevation), 4.5 for central Idaho (1992–1995), to 15.4 for northwestern Montana (1972–1977) (Service 2018, p. 57).

We note here that in our 2013 proposed listing rule for the wolverine (78 FR 7864), we discussed the occurrences of two dispersing individuals in California and Colorado (the Colorado wolverine was later killed in North Dakota). We know of one male wolverine in California that has consistently occupied an area much farther north in the Sierra Nevada Mountains, and we have no evidence of any other wolverines currently in the State. We have no recent records of wolverines in Arizona. Aubry *et al.* (2007, p. 2,150) identified the year 1860 as the most recent verifiable documentation of wolverines in northern New Mexico. We know of no wolverines currently occupying Colorado. As presented in Aubrey *et al.* (2007, p. 2,151; Figure 1), prior to 1900, the most recent verifiable record for wolverine in New Mexico was 1860 and 1887 for Nebraska; no records were found for Arizona, Texas, Oklahoma. This was also true for most midwestern and mid-Atlantic States (Aubrey *et al.,* 2007, p. 2,152, Figure 1). Additionally, historical range maps shown in Seton (1909, p. 947; Map 51), Aubrey *et al.* (2007, p. 2,152; Figure 1), and the assessment and status review for the wolverine in Canada (COSEWIC 2014, p. 12; Figure 3) do not extend the distribution of wolverines into these regions.

Our updated analysis of wolverine occurrence in the contiguous Unted States is based on a more scientifically robust and spatially explicit assessment of the current areas occupied by wolverines in the contiguous United States, which was prepared based on verifiable wolverine records and comments received by reviewers of a draft of the wolverine SSA report (see the Historical Range and Distribution section of the wolverine SSA report for more on the information used to assess the maximum extent of occurrences ('historical range') and current extent of occurrence (Service 2018, pp. 9–16; Figures 2–4)). Using the current potential extent of occurrence, as presented in Figures 1 and 2 above, provides a more accurate reflection of the areas currently occupied by wolverines in the contiguous United States supported by the best available information.

Alaska and Canada

In the wolverine SSA report, we provide a summary of population abundance in Alaska and Canada where wolverines are more abundant than in the contiguous United States (Service 2018, pp. 57–60). Much of what we know about wolverine occurrences and abundance has been gathered from trapping records (see summary in Service 2018, pp. 53–56).

In Alaska and Yukon, density estimates presented by Inman *et al.* (2012, p. 789) range from 3 to about 14 wolverines per 1,000 km^2 (386 mi^2), using a number of methods. For

example, Royle *et al.* (2011, p. 609) estimated wolverine densities for southeastern Alaska (Tongass National Forest; 2008) from 8.2 to 9.7 per 1,000 km² (386 mi²) (using mark-recapture), where the higher estimate incorporates a positive, trap-specific behavioral response. Density of wolverines were recently reported as an estimated 5–10 wolverines per 1,000 km² (386 mi²) (based on snow tracking) for southcentral Alaska, and approximately 10 per 1,000 km² (386 mi²) (based on DNA mark-recapture methods) for southeastern Alaska (Golden 2017, pers. comm.). A wolverine occupancy study in 2015 within an area of central Alaska reported a density estimate of 9.48 wolverines per 1,000 km² (386 mi²) (Alaska Department of Fish and Game (ADF&G) 2015, p. 7).

Wolverine density estimates for Canada vary across regions, from 5 to 10 per 1,000 km² (386 mi²) in northern mountain and boreal regions to 1 to 4 per 1,000 km² (386 mi²) in southern boreal areas (COSEWIC 2014, p. 27). More recently, Clevenger *et al.* (2017, entire) presented a density estimate (using spatial capture/recapture models) for the Kootenay region of British Columbia of 0.78 wolverines per 1,000 km² (386 mi²), for 3 study years (2014–2016), which they reported as lower than expected (Clevenger *et al.* 2017, p. 6). Researchers in Canada are currently conducting a landscape level analysis to estimate the size and sustainable harvest for wolverine populations within British Columbia (Weir 2017, pers. comm.).

According to the most recent COSEWIC Assessment and Status Report on the Wolverine, *Gulo gulo* in Canada (COSEWIC 2014, entire), Canada's western subpopulation has been estimated at 15,688 to 23,830 adults, which we recognize is an estimate based on several assumptions, such as consistent trapping effort and uniform densities across the species' range (COSEWIC 2014, p. 36). In Alaska, estimates of populations are not available and are best evaluated based on density with recent density estimates ranging from 5 to 10 wolverines per 1,000 km² (386 mi²) for Alaska (Parr 2017, pers. comm.). In Alaska, which, like Canada, allows regulated hunting and trapping of wolverines, an average of 590 wolverines have been taken each year over the past 6 years (Service 2018, p. 68). The consistent harvest levels in these regions suggest relatively stable wolverine populations in Alaska that more likely than not number in the thousands of individuals in order to sustain such level of harvest.

We do not have reliable current population estimates for wolverines in the contiguous United States. As discussed above, the only estimate available is from 2013, when researchers, using spatial modeling methods, estimated the then-current population size of wolverines to be 318 (range: 249–626) (Inman *et al.* 2013, p. 282). Potential wolverine population capacity in the contiguous United States based on habitat modeling was estimated to be 644 individuals (range: 506–1,881) (Inman *et al.* 2013, p. 282). However, these capacity estimates did not consider spatial characteristics related to behavior, such as territoriality (home range), of wolverine populations. Given all the assumptions, differing methods of estimation, limitations, and uncertainties of the available estimates of North American wolverines (as discussed in the wolverine SSA report (Service 2018, pp. 50–56)), we believe caution should be used relative to comparing the number of wolverines in the contiguous United States to the remainder of the taxon. However, even assuming the high population estimate from 2013 for the contiguous United States (n=626) and the low estimate of wolverines in western Canada from 2014 (15,688 adults), the contiguous United States conservatively contains approximately 4 percent of the total wolverines within these two regions. This estimate does not account for wolverines in Alaska, for which we have no population estimate, but, based on a rough estimate of land area for the State occupied by wolverines and estimated wolverine densities of between 5 to 10 animals per 1000 km² (386 mi²) (Parr 2017, pers. comm.), it is reasonable to assume there are thousands of wolverines in the State. The actual percentage of wolverines in the contiguous United States compared to the overall taxon (Canada and Alaska included) is still significantly less than 4 percent of the overall North American wolverine population. Wolverine densities vary across North America and have been described as being naturally low, due in large part to the species having large home ranges, wide-ranging movements, and solitary characteristics (Service 2018, p. 56). It is important to understand that the amount of suitable habitat in the contiguous United States identified both in historical and current distribution maps (see, for example, 1909, p. 947; Map 51), Aubrey *et al.* (2007, p. 2,152) does not support the larger numbers of wolverines and higher densities found in Canada and Alaska (see Figure 3 in the wolverine SSA report (Service 2018, p. 15)).

Summary of Factors Affecting the North American Wolverine

As mentioned above in *Regulatory Framework,* a species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. Listing actions may be warranted based on any of the above threat factors, singly or in combination. Potential stressors evaluated for wolverine in the contiguous United States include effects from roads (Factors A and E); disturbance due to winter recreational activity (Factors A and E); other human disturbance (Factors A and E); effects from wildland fire (Factor A); disease (Factor C); predation (Factor C); overutilization (trapping) (Factor B); genetic diversity (Factor E); small-population effects (Factor E); and climate change (Factors A and E). A summary of the potential stressors affecting wolverine in the contiguous United States is presented below; for a full description of our evaluation of the effects of these stressors, refer to the wolverine SSA report (Service 2018, pp. 57–101).

Effects from Roads: Wolverines are associated with habitat found in high-elevation areas, but are known to disperse over great distances. Major highways can present mortality risks to dispersing individuals and affect immigration to open territories, but roads do not represent absolute barriers to wolverine movements. Wolverines den during winter months in locations that are often inaccessible or restricted to motorized vehicles, though secondary roads and trails are used for winter recreational activity. Although we recognize there are likely additional events that have not been reported, we estimated the total number of wolverine mortalities due to roads from 1972 to 2016 (44 years) in North America was 20, at least 11 of which are from Canada (Service 2018, p. 60). In the SSA report, we calculated a low proportion of major highways in both modeled primary habitat and a low mean density of roads at high elevations where wolverines have been observed, with the exception of the southern Rocky Mountains (Service 2018, p. 60). We therefore determine that the effects from roads present a low stressor to wolverines at the individual and population level in

most of its current area of occupancy within the contiguous United States.

Disturbance due to Winter Recreational Activity: Wolverine behavior patterns, such as denning, rearing of young, movement and dispersal, and foraging/scavenging, may be affected by recreational activities (COSEWIC 2014, p. 42), although several wolverines have been captured for research on or near ski areas (*e.g.,* Teton Mountains) (Montana FWP 2017, pers. comm.). In Norway, one study found, at the home-range scale, a minimal threshold distance of approximately 1.5 km (0.93 mi) for wolverine den sites from private roads and/or recreational cabins (May *et al.* 2012, p. 201). Another study found that in an area of active recreation (Columbia Mountains, Canada), female wolverines were negatively associated with helicopter and backcountry skiing in their winter models (Krebs *et al.* 2007, pp. 2,187–2,188). In summer months, Copeland *et al.* (2007, p. 2,210) reported that wolverines in their study area of central Idaho were not uncommonly found near maintained trails and active campgrounds, which suggests some level of tolerance to human presence/recreational activity.

The Wolverine–Winter Recreation Study represents an ongoing project to evaluate the potential effects of backcountry winter recreation (*e.g.,* backcountry skiers, heli-skiers, cat-skiers, snowmobilers) on wolverines in central Idaho and areas in the western Yellowstone region (Island Park area and Teton Mountains) (Heinemeyer 2016, pers. comm.; Heinemeyer 2019, entire; Heinemeyer and Squires 2015, p. 3). Early analysis of the data suggested that wolverines demonstrate a behavioral response to recreation activities, such as increased movement rates and a reduction in resting periods in areas of high-recreation activity, especially high-recreation days (Saturday and Sunday) (Heinemeyer and Squires 2013, pp. 5, 7–8). However, this research also found that wolverines maintained their home ranges within areas with relatively high winter-recreation activity over several years of monitoring, including some areas found to contain the highest recreational activities (Heinemeyer 2016, pers. comm.). The study has not been able to determine whether these resident wolverines are reproductively successful due to the limited monitoring information available for reproductive females (Heinemeyer 2016, pers. comm.).

A final Winter Recreation Study report found that wolverines maintained multi-year home ranges in areas that support relatively intensive winter recreation, suggesting that wolverines are able to tolerate winter recreation at some scales (Heinemeyer *et al.* 2017, p. iv; Heinemeyer *et al.* 2019, p. 16). Wolverines responded negatively to increasing intensity of winter recreation, with off-road and dispersed recreation having a greater effect than recreation that was concentrated on access routes (Heinemeyer *et al.* 2017, p. 34; Heinemeyer *et al.* 2019, p. 13). Wolverine avoidance of roads and groomed areas used by winter recreationists was found to be less than estimated for dispersed recreation, suggesting that wolverines may be less sensitive to predictable winter-recreational use patterns (Heinemeyer *et al.* 2017, p. 40; Heinemeyer *et al.* 2019, p. 15). Habitat selection in females evaluated in the multi-year study was complex, and likely driven by a combination of abiotic (snow, cold) and biotic factors (predator avoidance, food availability) (Heinemeyer *et al.* 2017, p. 36; Heinemeyer *et al.* 2019, p. 16). This study did not assess demographic effects, fitness effects, or population level effects of winter recreation on wolverines (Heinemeyer *et al.* 2019, p. 17 and 19).

Conservation measures currently being implemented that address the effects of roads in the Teton Mountains include winter closures in certain areas (generally from November 1 through May 1), including road closures in the Bridger-Teton and Caribou-Targhee National Forests and in Grand Teton National Park (Service 2018, p. 67, Appendix F). These closures are being implemented to help minimize disturbance to wildlife (*e.g.,* migration pathways). State Wildlife Action Plans prepared for individual western States identify recreation management strategies within wolverine habitats. For example, in Oregon, the Oregon Department of Fish and Wildlife Conservation Strategy identifies management of winter-recreation use as a conservation action to avoid impacts to wolverines (ODFW 2016). In Montana's State Wildlife Action Plan, conservation actions for the wolverine are identified to address potential impacts from recreation, such as consideration of seasonal closures during denning season (Montana FWP 2015, p. 63). The Idaho Department of Fish and Game Management Plan for the Conservation of Wolverines in Idaho also includes conservation strategies related to developing a better understanding of the relationships between wolverine behavior and winter recreation activities (IDFG 2014, p. 35), and the State continues to support the Wolverine-Winter Recreation Study. Appendix G in the SSA report provides additional details on individual State conservation strategies. Although we do not rely on these conservation measures to support our decision on listing status, they do provide some protections to address potential impacts to wolverine from disturbance from winter recreational activity and mortality from roads.

Based on the studies summarized above, wolverine behavior (movement) is potentially affected by winter recreational activity. However, wolverines can maintain residency in high winter-recreational use areas (Heinemeyer *et al.* 2017, p. iv; Heinemeyer *et al.* 2019, p. 16). Based on the best available scientific and commercial information, the effect of winter recreational activity represents a low stressor to wolverines in the contiguous United States at the individual and population level.

Other Human Disturbance: Infrastructure, such as pipelines, active logging or clearcuts, seismic lines, and activities associated with mining (*e.g.,* producing mines, mines under development, mineral exploration areas), may also affect individual wolverine behavior (*e.g.,* avoidance) or loss or modification of wolverine habitat. In the SSA report, we summarize a recently published study of habitat selection of wolverines in response to human disturbance in western Canadian forested habitat (Service 2018, p. 62). That study found that wolverines avoided interior areas of some logged areas, but also found that wolverines were attracted to all-season road sections with borrow pits (Scrafford *et al.* 2017, pp. 32–34). The authors concluded that wolverine selection patterns relative to industrial activity and infrastructure in their study area represented a balance between exposure to predators and foraging opportunities (Scrafford *et al.* 2017, p. 32). Based on the best available scientific and commercial information, we find that these human disturbance effects are likely to be small or narrow in scope and scale for wolverines in the contiguous United States.

Effects from Wildland Fire: Wildland fire can produce both direct and indirect effects to wildlife. Direct effects include injury and mortality as well as escape or emigration movement away from fires (Lyon *et al.* 2000, pp. 17–21). We are unaware of any studies evaluating direct effects of wildland fire to wolverines. Wildland fire is likely to temporarily displace wolverines, which could affect home range dynamics. Given that

wolverines can travel long distances in a short period of time, individuals would be expected to move away from fire and smoke (Luensmann 2008, p. 14). In addition, because young wolverines are born in underground or otherwise sheltered dens during winter months and in locations where wildland fire risk is low due to snow cover or increased moisture (Luensmann 2008, p. 14), the potential effects of fire at that critical life stage is very low (Luensmann 2008, p. 14). Indirect effects of wildland fire can include habitat-related effects or effects to prey and competitors/predators; however, we are unaware of empirical studies evaluating these potential effects as they relate to wolverines.

Given the diversity of habitats occupied by wolverines, their opportunistic foraging habitats and seasonal switching of food sources, their occupancy of high elevations, and extensive mobility, wildland fire represents a limited indirect and direct stressor, in scope and scale, to wolverine habitat and its prey in the contiguous United States range (Service 2018, pp. 63–64) such that it would not be expected to have population or species-level impacts.

Disease: We are unaware of comprehensive surveys evaluating the prevalence of diseases in wolverines in the contiguous United States. Other than a parasitic pneumonia mortality event and a single rabies case, we are not aware of any other studies documenting impacts of disease to wolverines in North America (Service 2018, p. 65). At this time, based on the best available scientific and commercial information, we do not find that disease is a population- or species-level stressor to the wolverine in the contiguous United States (Service 2018, pp. 64–65).

Predation: A number of potential natural predators have been identified for wolverines within its North American range, including intraspecific predation (Service 2018, p. 65). However, we have no information that suggests predation represents a significant stressor to the wolverine at the population level. At the individual level, we recognize that wolverines likely avoid areas of potential predation risk from wolves and other potential predators (Service 2018, p. 65). Thus, indirect effects of predators may result in predator avoidance behavior of individual wolverines through habitat selection. However, the best scientific and commercial information available indicates that predation is not a stressor for the wolverine (Service 2018, p. 65).

Overutilization for Commercial, Recreational, Scientific, or Educational Purposes: During the late 1800s and early 1900s, the wolverine population declined or was extirpated in much of the contiguous United States, which has been attributed in large part to unregulated persecution (Service 2018, p. 1). Similar range reductions and extirpations of some wolverine populations were observed in parts of Canada during this time period (van Zyll de Jong 1975, entire; COSEWIC 2014, p. iv). However, after unregulated harvest of wolverines ceased, the numbers of wolverines in Canada and the contiguous United States began to recover from this decline (*e.g.,* Aubry *et al.,* 2007, p. 2,151; Aubry *et al.,* 2012, entire; Aubry *et al.* 2016, pp. 14–15; Magoun *et al.* 2013, p. 27).

In Montana, wolverines were a legally harvested furbearer up until 2012 (Service 2018, p. 65). There is, however, no evidence to suggest that the harvest of wolverines in Montana at historical rates (about 10 animals per year) was detrimental to wolverine populations (Service 2018, pap. 65–66 and Appendix G). Furthermore, States within the wolverine range in the contiguous United States have adopted protective regulations to prevent unauthorized take and are implementing other measures to limit incidental mortality of wolverines (Service 2018, p. 66). There is currently no allowable trapping or harvesting of wolverines in the contiguous United States, although incidental trapping, shooting, and poisoning mortalities have been documented (Service 2018, pp. 65–69).

In Alaska, wolverine trapping and hunting is controlled by seasons and bag limits, with about 550 animals harvested each year (ADF&G 2017a). This level of harvest has been fairly consistent since 2010 (Service 2018, Table 7).

Trapping and harvesting of wolverines occurs over much of the range in Canada (COSEWIC 2014, pp. 10, 29–35). Specifically, wolverines are harvested in the northern and western territories—Manitoba, Saskatchewan, Alberta, British Columbia, Yukon, Northwest Territories, and Nunavut (COSEWIC 2014, p. 43). The population of wolverines in British Columbia is estimated to be 2,700–4,760 and 1,500–2,000 animals in Alberta (COSEWIC 2014, p. 36). In the wolverine SSA report, we evaluated trapping of wolverines in British Columbia and Alberta regions of southern Canada in an effort to document potential impacts to dispersing wolverines along the U.S.–Canada border (Service 2018, pp. 68–69). This type of analysis was not conducted for the 2013 proposed listing rule (78 FR 7864; February 4, 2013) or for our 2014 withdrawal (79 FR 47522; August 13, 2014). The results of our spatial analysis for British Columbia indicates a total of 77 wolverines were trapped in wildlife management units within 110 km (68.35 mi) of the U.S.–Canada border in the period 2007–2015, or an average of 8.5 animals per year (Service 2018, pp. 68–69). We used this distance since it is similar to both the average maximum distance per dispersal movement of 102 km (63 mi) for male wolverines in the Greater Yellowstone region of Montana (Inman *et al.* 2012, p. 784), and a reported 100-km (62-mi) dispersal distance for a juvenile male for Ontario, Canada (COSEWIC 2014, p. 24, citing unpublished data from Dawson *et al.* 2013). For Alberta, we identified a total of 15 wolverines harvested by trappers and data presented in other studies within 110 km (68.35 mi) of the U.S.—Canada border in the period 1989–2014 (average of less than 1.0 animal per year) (Service 2018, p. 68).

Based on this new analysis, legal trapping effort along the U.S.–Canada border does not represent a barrier to wolverine movement and dispersal along the international border. As discussed below and in the DPS analysis above, results from genetic analyses provide further evidence of movement and dispersal of wolverines across the international border (see *Genetic Diversity* below).

In summary, overutilization does not currently represent a stressor to the wolverine in the contiguous United States at the individual, population, or species level. Wolverine populations in the contiguous United States are currently protected under several State laws and regulations. Regulated hunting and trapping activities for wolverines are currently suspended or closed entirely for animals that occupy western States of the contiguous United States, though occasional incidental trapping can occur. Current trapping in Alaska and Canada appears to be sustainable and wolverine populations along the Alaska—Canada border are continuous with the Yukon region of Canada, which suggests a rescue effect (animals from a higher population density area moving to areas of lower population density, preventing local extirpation) for Canadian populations along this international boundary (COSEWIC 2014, p. 37). Trapping or harvesting of wolverines along the contiguous U.S.–Canada border does not represent a barrier or stressor to wolverines migrating into the contiguous United States at the individual or population level.

Genetic Diversity: The geographical genetic structure of wolverines is believed to be largely structured around the strong female philopatry characteristic of this species (Rico *et al.* 2015, p. 2) and the species' polygamous behavior. Results from Scandinavia indicate that wolverine population distributions are primarily limited by dispersal of the more philopatric sex (females) (Aronsson 2017, p. 13). The extensive and often asymmetrical movement of male wolverines from core populations to the periphery of their range can result in the addition of nuclear genetic material to these edges (Zigouris *et al.* 2012, p. 1,553). Thus, the dispersal pattern for male wolverines may help explain why allelic richness (*i.e.,* nuclear DNA, which is inherited from both parents) can be similar across regions, but haplotype richness (mitochondrial DNA, which is maternally inherited) is lower at the periphery of the species' range (Zigouris *et al.* 2012, p. 1,553).

Studies evaluating the genetic structure of wolverines, primarily within its core range in North America, were presented in Chappell *et al.* (2004) and Kyle and Strobeck (2001, 2002). Using microsatellite markers, Kyle and Strobeck (2002) and Zigouris *et al.* (2012) found greater genetic structure of wolverines toward the eastern and southern peripheries of their North American distribution, likely due to a west-to-east recolonization during the Holocene (Zigouris *et al.* 2013, p. 9). Similarly, based on an evaluation of mitochondrial DNA, which is used primarily for an evaluation of phylogenetic structure and phylogeography, McKelvey *et al.* (2014, p. 330) concluded that modern wolverine populations in the contiguous United States are the result of recolonization (following persecution during a period of unregulated hunting or trapping and poisoning) from the north.

Genetic diversity and population genetic structure of a larger sample size of wolverines were examined by Cegelski *et al.* (2006, entire) for the southern extent of their North American range using both microsatellite markers and mitochondrial DNA. They concluded that the wolverine populations in the contiguous United States were not sources for dispersing individuals into Canada (Cegelski *et al.* 2006, p. 208). They found that there was significant differentiation between most of the populations in Canada and the United States (Cegelski *et al.* 2006, p. 208). However, they cautioned that their statistical analysis may not have been able to detect ''effective migrants'' and that sample size can affect the detection of dispersers (Cegelski *et al.* 2006, p. 208). They concluded that some migration of wolverines was occurring between the Rocky Mountain Front region (northwestern Montana) and Canada as well as among wolverine populations in the United States, with the exception of Idaho (Cegelski *et al.* 2006, p. 208).

This study also conducted model simulations of the number of effective wolverine breeders necessary to maintain genetic variation (heterozygosity) in their sampled population of the contiguous United States in the absence of gene flow (Cegelksi *et al.* 2006, p. 201). They indicated that two effective migrants from either Canada or Wyoming into the Rocky Mountain Front population would be needed (per generation, 7.5 years) to maintain the levels of genetic diversity in that population, and one effective migrant was needed to maintain levels of diversity in the Gallatin, Crazybelt, or Idaho populations (Cegelski *et al.* 2006, p. 209). They also found that to maintain at least 95 percent of the genetic variation in the next 100 generations (we estimate this to be approximately 750 years, based on generation time) 200 to 300 wolverine breeding pairs were needed in the Wyoming and Rocky Mountain Front populations, respectively, and 200 breeding pairs were needed in the Gallatin, Crazybelts, and Idaho wolverine populations (Cegelski *et al.,* 2006, pp. 208–209). The authors concluded that migration is essential for maintaining diversity in wolverine populations in the contiguous United States since effective population size may never be reached due to the naturally low population densities of wolverines (Cegelski *et al.* 2006, p. 209).

More recently, an analysis of mitochondrial DNA was prepared for wolverine samples collected during the winters of 2015–2016 and 2016–2017 as part of the Western States Wolverine Conservation Project–Coordinated Occupancy provides further support that all contiguous United States historical (pre-1900) and recent wolverine populations are likely descendants of immigrants from Canada and suggest continued connectivity between the contiguous United States and Canadian wolverine populations (Pilgrim and Schwartz 2018, entire).

Effective population size (N_e) is defined as ''the size of an idealized population that would experience the same amount of genetic drift and inbreeding as the population of interest. In popular terms, N_e is the number of individuals in a population that contribute offspring to the next generation'' (Hoffman *et al.* 2017, p. 507; see also Service 2018, Box 2). It represents a metric for quantifying rates of inbreeding and genetic drift and is often used in conservation management to set genetic viability targets (Olsson *et al.* 2017, p. 1). It is not the same as the more commonly used metric, census population size (N), but is often assumed to represent the genetically effective population size.

In his review of the minimum viable population size concept, Ewens (1990, entire) emphasized that the term ''effective population size'' is not a meaningful term unless additional context is provided relative to which concept of population size is being evaluated (Ewens 1990, p. 309). He introduced the concept of mutation effective population size, defined as the size of population defined by its capacity to maintain genetic variation (Ewens 1990, p. 307), which is different than actual population size (Ewens 1990, p. 309). Demographic factors such as sex ratio, subpopulations, dispersal, and immigration are needed when interpreting actual population size from an effective population size; thus, there is no justification for a fixed, genetically derived minimum viable population size value of '500' as each case is unique (Ewens 1990, p. 310). A review of the minimum viable population concept by Flather *et al.* (2011, entire) also found that any ''rule of thumb'' used for minimum viable population will likely be a poor estimate for that population (Flather *et al.* 2011, pp. 311, 313). Minimum viable population estimates therefore vary considerably both within and among species and are sensitive to the timeframe in which data are collected (Flather *et al.* 2011, p. 314).

An effective population size analysis for wolverines in the contiguous United States was presented in Schwartz *et al.* (2009, p. 3,225) using wolverine samples from the main part of the Rocky Mountains populations (*e.g.,* central and eastern Idaho, Montana, northwestern Wyoming). Subpopulations from the Crazy and Belt Mountains in Montana were excluded from this analysis based on suggestion by Cegelski *et al.* (2003) that they represented separate groups (Schwartz *et al.* 2009, p. 3,225). The summed effective population size was estimated at 35, with credible limits from 28–52, and the summed values for the three timeframes was reported as follows: N_e 1989–1994 = 33, credible limits 27–43; N_e 1995–2000 = 35, credible limits 28–57; N_e 2001–2006 = 38, credible limits 33–59 (Schwartz *et al.* 2009, p. 3,226). Thus, the two later time-frames evaluated indicate an

(increasing) effective population size with credible limits above 50.

Of direct relevance to potential gene flow and genetic structure at the landscape level, wolverines travel (disperse) through areas outside high-elevation, forested habitats. For example, tracked dispersal movements of a male wolverine, M56, from Wyoming into Colorado and its subsequent discovery in North Dakota, indicate extensive travel outside of modeled primary wolverine habitat (*i.e.,* Inman *et al.* 2013), including through arid grasslands and shrubland habitats of the Wyoming Basin ecoregion (Packila *et al.* 2017, entire). This animal's movement also supports some level of connectivity (and gene flow) between currently occupied habitat (Wyoming) and unoccupied habitat within the wolverine's historic range (Colorado) (Packila *et al.* 2017, p. 404). Similarly, wolverines have recently moved from Washington and Idaho into British Columbia, and earlier from Montana to British Columbia and Alberta (Service 2018, p. 45). Based on genetic analyses, the male wolverine currently occupying an area within the Sierra Nevada Mountains of California also represents evidence of connectivity between wolverine populations of the Rocky and Sierra Nevada Mountain Ranges (Moriarty *et al.* 2009, p. 154). Wolverines have been detected making cross-valley movements in the Southwestern Crown of the Continent (SWCC) in northwestern Montana, which researchers believe is an indication of good connectivity in this region (SWCC Working Group 2016, pers. comm.).

It can be difficult to make inferences about the relationship between population size and point estimates of genetic diversity without continued genetic monitoring and an understanding of the demographic history of a species' population (Hoffman *et al.* 2017, p. 507), including factors that have historically influenced and continue to influence movement patterns and connectivity. Additionally, the extensive dispersal movements of both male and female wolverines can produce gene flow among diverged populations, making it difficult to distinguish, without additional sampling and analysis, between long-distance dispersal and fragmentation based on the patchy distribution of some haplotypes (Zigouris *et al.* 2013, p. 10). Genetic diversity can be a reflection of favorable adaptations (natural selection) and is necessary for species to locally adapt to environmental stressors or to facilitate range shifts (Zigouris *et al.* 2012, p. 1,544). Genetic distinctiveness in peripheral populations may therefore play a role in both maintaining and generating biological diversity for a species (Zigouris *et al.* 2012, p. 1,544; citing results presented in Channell and Lomolino 2000, p. 84). Relatedly, genetic variation that is adaptive is a better predictor of the long-term success of populations as compared to overall genetic variation (Hoffman *et al.* 2017, p. 510). The challenge is to be able to determine whether genetic variation is adaptive and is a reflection of remnants of high genetic diversity from ancestral populations, or whether that variation is a reflection of accumulated deleterious, nonadaptive genes due to genetic drift in small populations (Hoffman *et al.* 2017, p. 509).

In summary, the currently known spatial distribution of genetic variability in wolverines in North America appears to be a reflection of a complex history where population abundance has fluctuated since the time of the last glaciation and insufficient time has passed since human persecution for a full recovery of wolverine densities (Cardinal 2004, pp. 23–24; Zigouris *et al.* 2012, p. 1,554). Zigouris *et al.* (2012, p. 1,545) noted that the genetic diversity reported in Cegelski *et al.* (2006) and Kyle and Strobeck (2001, 2002) for the southwestern edge of the North American range represented only part of the diversity in the northern populations of wolverines. Zigouris *et al.* (2012, p. 1,545) posit that the irregular distribution of wolverines in the southwestern periphery and the genetic diversity observed in those analyses is a result of population bottlenecks that were caused by range contractions from a panmictic (random mating) northern core population approximately 150 years ago coinciding with human persecution. As described here, recent dispersals of wolverines into Colorado, California, and Utah provide evidence for connectivity and the potential for gene flow between Northern Rocky Mountain populations and areas where wolverines were extirpated.

As noted above in this section (and in the Distinct Population Segment section), there is recent evidence of wolverines traveling across the international border. Furthermore, our analysis of trapping levels in the wolverine SSA report (summarized in *Overutilization for Commercial, Recreational, Scientific, or Educational Purposes* above) does not support previous assumptions that trapping in Canada near the border acts as a barrier to wolverine movement into the contiguous United States. Cegelski *et al.* (2006, p. 209) determined that very few successful migrants are needed per generation to maintain at least 95 percent of the genetic variation in the next 100 generations (approximately 750 years) in the contiguous United States (Cegelski *et al.* 2006, p. 209). We have no reason to believe that this level of migration from the north has not already been occurring following the end of intense persecution of this species to repopulate previously occupied areas within the contiguous United States. This repopulation has occurred without human-assisted introductions and with unregulated trapping from about the 1930s to 1970 in Montana. Given the recent observations of dispersing wolverines moving vast distances over varied terrain and movement of wolverines across the U.S.–Canada border, our recent assessment of the low levels of trapping mortality in Canada near the border, and further confirmation of Canada as the source of wolverine genetics present in contiguous United States wolverines, we conclude that wolverines in the contiguous United States are not separated genetically from the larger population in Canada. Furthermore, even if they were separated genetically, the multiple generations it would take for genetic isolation to potentially result in significantly lower genetic diversity and for the deleterious effects of decreased genetic diversity to then manifest into negative population-level effects is likely beyond the foreseeable future used for this determination (38 to 50 years, see *Future Condition* section below). As such, we conclude that loss of genetic diversity is not a stressor for wolverines in the contiguous United States now or within the foreseeable future.

Small Population Effects: As described above in Population Abundance and Density, the number of wolverines in the contiguous United States is relatively small compared to the remainder of the range in Canada and Alaska, in large part due to limited suitable habitat and previous persecution and unregulated trapping pressures. As described above in *Genetic Diversity,* we now consider wolverines in the contiguous United States to be genetically connected to wolverines in Canada (McKelvey *et al.* 2014; Pilgrim and Schwartz 2018) and wolverines in the contiguous United States are not separated from the larger North American wolverine population to the North (Canada and Alaska). In previous proposed rules and findings, we have discussed small population

size as a vulnerability that places wolverines in the contiguous United States at risk of extirpation. However, those assertions were predicated on a belief that wolverines in the contiguous United States were effectively isolated regionally within the United States and isolated from Canada, thereby increasing the risk of deleterious genetic effects (countered above in *Genetic Diversity*) and susceptibility to stochastic events and limited rescue effect (migrants) from Canada. With further genetic evidence of the recolonization of once-extirpated areas of the contiguous United States by wolverines from Canada post-unregulated trapping over the last approximately 100 years, history has demonstrated the resiliency of the North American wolverine population to recover from extreme persecution and unprecedented direct mortality. We do not currently foresee any stochastic or catastrophic events that could result in a similar population-level effect on wolverines in the contiguous United States. It is no longer accurate to consider contiguous United States wolverines in isolation from the rest of North American wolverines; rather, it is more accurate to consider the contiguous United States wolverines a portion of a much larger and proven resilient North American wolverine population. We conclude that small population effects are not a stressor for wolverines in the contiguous United States now or within the foreseeable future.

Climate Change: In the SSA report, included in our discussion of future conditions, we provide a summary of current trends related to observed climate change effects, such as increased temperatures and changes in precipitation patterns, in areas that encompass the current potential extent of occurrence for the wolverine. We are not aware of any adverse effects of these observed changes to the wolverine in the contiguous United States. The potential effects of future climate change (projections) are fully considered in our future condition analysis in the wolverine SSA report (Service 2018, pp. 73–99). We summarize the results of that analysis in the Future Condition section of this document below.

Summary of Current Condition

Wolverine populations in much of North America are still recovering from large losses of individuals from intensive hunting and unregulated persecution pressures in the late 1880s into the mid-20th century (Service 2018, p. 104). The distribution of wolverines within suitable habitat provides a more appropriate method for estimating population status than using abundance of animals, although there is limited rangewide survey information. Based on the best available information, wolverines continue to be detected within suitable habitat within the western-northwestern contiguous United States including Washington, Oregon, Idaho, Montana, and Wyoming (Service 2018, p. 71). Studies are currently under way to provide a better assessment of the species' current distribution and genetic characteristics of these populations. The best available information does not indicate the portion of the North American wolverine population in the contiguous United States is currently negatively impacted by lower genetic diversity, and there is no evidence that wolverine numbers in the contiguous United States are declining.

We prepared a map of the current potential extent of occurrence to illustrate the species' current distribution in the contiguous United States (Figure 2). We estimate this area represents approximately 3.5 percent of the wolverine's current potential extent in North America (Service 2018, p. 71). We determined that 72 percent of our current potential extent of the wolverine in the contiguous United States is found on lands owned or managed by the Federal Government (Service 2018, p. 72 and Appendix D). We also evaluated previously modeled wolverine primary habitat in the contiguous United States (Inman *et al.* 2013, entire) and estimated that 96 percent of this area is owned or managed by Federal agencies and 41 percent of this area is located in designated wilderness areas (Service 2018, p. 72). In our SSA report, we provide a detailed summary of regulatory mechanisms and conservation measures affecting wolverines related to State and Federal land management in the contiguous United States (Service 2018, Appendix G).

We evaluated several potential stressors that may be affecting wolverine populations or its habitat, including effects from roads, disturbance due to winter recreation and other activities, effects from wildland fire, disease and predation, overutilization for (primarily) commercial purposes, genetic diversity, and small-population effects.

We determined that the effects of roads (evaluated by number of miles, density, and location) and disturbance represent low-level stressors to the wolverine in the contiguous United States. Wildland fire was determined to be a short-term stressor to wolverine habitat and its prey. Disease and predation, genetic diversity, and small population size are not considered stressors to the wolverine.

Trapping or hunting of wolverines is currently prohibited in the contiguous United States. Incidental trapping of wolverines is infrequent in the contiguous United States and, in Idaho and Montana, education programs are being implemented to reduce this stressor. Wolverines are harvested in several Canadian provinces and near the U.S.–Canada border with management and monitoring oversight based on spatial and temporal elements. We evaluated historical trapping information to assess potential impacts to dispersing wolverines into the United States. Based on the best available commercial and scientific information, overutilization does not represent a stressor to the wolverine in the contiguous United States.

We also determined that the wolverines in the contiguous United States are connected to and an extension of the Canadian population that is not genetically isolated nor considered a small population that may be more vulnerable to stressors.

Future Condition

The foreseeable future timeframe evaluated in our SSA analysis is approximately 38 to 50 years, which captures consideration of the projected future conditions related to trapping/harvesting, climate change, or other potential cumulative impacts (Service 2018, p. 73). We use a timeframe of approximately 38 to 50 years because, beyond this range, climate modeling uncertainty increases substantially. We believe this is a reasonable timeframe to consider as it includes the potential for observing these effects over several generations of the wolverine. Evaluations of future conditions for species have an inherent level of uncertainty relative to demographic risks, particularly those related to climate change projections. After considering the current conditions for the wolverine and its habitat, we determine that climate change effects (*i.e.,* significantly elevated temperatures resulting in decline in snowpack) that may modify suitable habitat, including reproductive denning habitat, could also change the scope of the wildland fire stressor and is the most likely future scenario to potentially have an effect on wolverines at the population level in the contiguous United States. Based on our review of the best available information, we determined that there were no other plausible future scenarios that were likely to have population-level impacts

to wolverine in the contiguous United States (Service 2018, p. 73). As described in detail in the wolverine SSA report (Service 2018, pp. 57–72), the effects of disease, predation, overutilization (trapping), genetic diversity, small-population effects, and effects of wildland fire are expected to continue to be at low levels in the future but are not expected to result in population-level effects to wolverine.

Climate Change Effects

In the wolverine SSA report, we considered climate changes that may affect environmental conditions upon which the wolverine relies. As defined by the Intergovernmental Panel on Climate Change (IPCC), the term ''climate'' refers to the mean and variability of different types of weather conditions over time (IPCC 2013, p. 1,450). Thus, the term ''climate change'' refers to a change in the mean or the variability of relevant properties, which persists for an extended period, typically decades or longer, due to natural conditions (*e.g.,* solar cycles) or human-caused changes in the composition of atmosphere or in land use (IPCC 2013a, p. 1,450).

Multiple lines of evidence, not just projections derived from quantitative models, should be examined when conducting climate vulnerability assessments (Michalak *et al.* 2017, entire). Thus, we evaluated projected effects from climate change in the western United States relative to both abiotic (*e.g.,* temperature, precipitation, snow cover) and biotic (*e.g.,* phenology, behavior) factors. Refer to the wolverine SSA report for a complete discussion of our analysis of the effects of climate change to wolverine in the contiguous United States (Service 2018, pp. 73–99). We summarize the results of that analysis below.

Summary of Future Condition

Abiotic Factors: Observed trends and future climate model projections indicate warming temperatures for much of the western United States, including areas within the current potential extent of the wolverine (Service 2018, pp. 75–81). The degree of future warming varies by region and is dependent upon the future emission scenario used during the modeling process. Future precipitation trends are less certain for many regions, in part, due to naturally high inter-annual variability; some regions are projected to experience greater winter precipitation (Service 2018, p. 81). Wolverines have been found to have a wide range in their physiological critical temperature depending on season and undergo seasonal changes in fur insulation to adapt to warmer temperatures in summer (Service 2018, p. 81). Wolverines also exhibit changes in behavior, such as moving to higher elevations in summer months (Service 2018, p. 81). Wolverines continue to occupy areas that have exhibited increases in temperature (*e.g.,* California, parts of Montana and Washington) due to effects of climate change; however, no empirical studies have evaluated these physiological and behavioral adaptations, including sublethal effects, relative to warming temperatures (Service 2018, p. 81).

Biotic Factors: In addition to evaluating changes in abiotic factors, biotic interactions should be considered in evaluating species' response to climate change (reviewed by Post 2013). Although abiotic changes drive ecological processes, the alterations in biotic interactions (*e.g.,* competition among conspecifics, interactions with competitors, resources, and predators) represent the ecological responses that result from those changes (Post 2013, p. 1). Changes in certain abiotic factors, such as snow and ice cover, should also be considered in an ecological context since they represent habitat for many species (Post 2013, p. 11).

The results presented in the wolverine SSA report indicate biotic effects resulting from climate change, varying from phenological changes to shifts in vegetation and vegetation succession (Service 2018, pp. 81–82). We are unaware of studies that have directly evaluated these types of effects to the North American wolverine or its habitat. Given the relatively large area and varied habitats occupied by wolverines in the contiguous United States, the projected shifts in vegetation are likely to be relatively narrow in scope and scale relative to potential effects to wolverines. Furthermore, we have no information to suggest that wolverines selectively use any specific vegetation type, and some projected changes in vegetation may be advantageous for wolverine prey (Service 2018, p. 82).

Climate Change and Potential for Cumulative Effects

Threats can work in concert with one another to cumulatively create conditions that may impact the wolverine or its habitat beyond the scope of each individual threat (Service 2018, p. 82). Given an expected increase in temperature in the western United States, the best available information indicates that, if there are any cumulative impacts in the future, the most likely population-level effects on wolverine in the contiguous United States could be: (1) Changes in snowpack from the combination of increased temperature and changes in precipitation patterns, or (2) changes in snowpack and increase in wildland fire potential (Service 2018, p. 83).

Snowpack/Snow Cover: The effects of climate change on snow persistence has been suggested as an important negative impact on wolverine habitat and populations by the mid-21st century and was the primary basis of our 2013 proposed rule to list the North American wolverine in the contiguous United States (78 FR 7864; February 4, 2013). In light of the court decision remanding our consideration of our withdrawal of the 2013 proposed rule relative to climate change effects to wolverine, the Service pursued a refined methodology to provide insights into the potential impacts of climate change on snow persistence (Service 2018, p. 85; Ray *et al.* 2017, entire).

The Service engaged the National Oceanic and Atmospheric Administration and University of Colorado in Boulder, Colorado, to evaluate and model fine-scale persistence of snow in occupied and potential wolverine habitat in the contiguous United States. The primary objective of this study was to refine spatial and temporal scale of snow modeling efforts and improve the scientific understanding of the extent of spring snow retention currently and into the future under a changing climate (Ray *et al.* 2017, p. 9). The objectives of the study included (Ray *et al.* 2017, p. 10):

- Use of fine-scale models to analyze the topographic effects of snow, including slope and aspect (compass direction that slope faces).
- Use of a range of plausible future climate change scenarios to assess snow persistence.
- Analysis of extremes and year-to-year variability by selecting representative wet, dry, and near normal years (using observed conditions) and then modeling changes for those base years under several future climate scenarios.
- Assessment of changes in snow persistence by elevation.

The study was designed to parallel as much as possible and thereby refine the previous assessment of snow cover persistence in the western United States presented in McKelvey *et al.* (2011). However, an exact replication of the McKelvey *et al.* (2011) study was not possible given the time, funding, and computational constraints needed to develop a fine-scale assessment. The current study was limited to two study

areas (approximately 1,500 to 3,000 km^2 (579 to 1,158 mi^2) each) in the northern and southern Rocky Mountains (see Service 2018, Appendix H). These two National Parks bound the Northern and Southern part of the wolverine historic range, and were selected because they encompass the latitudinal and elevational range of wolverines within the contiguous United States. Glacier National Park is representative of a high-latitude and relatively low-elevation area currently occupied by wolverines. The Rocky Mountain National Park region is a lower latitude and higher elevation area within the wolverine's historical range, which was recently occupied by a wolverine from 2009 to at least 2012. See the wolverine SSA report for a summary of the methods used in Ray *et al.* (2017) (Service 2018, pp. 86–87).

Comparison with McKelvey et al. (2011): Although the methods used in this study have similarities with those presented in McKelvey *et al.* (2011), there are several key differences.

- Ray *et al.* (2017) used a finer spatial resolution model than McKelvey *et al.* (2011) (0.0625 km^2 vs. 37 km^2) (see Service 2018, Appendix I for a comparison figure) that also incorporated slope and aspect.
- The grid cells represented in McKelvey *et al.* (2011) were assumed to be flat (*i.e.,* north-facing slopes treated as identical to south-facing slopes).
- McKelvey *et al.* (2011) focused on May 1 snow depth as a proxy for May 15 snow disappearance, while Ray *et al.* (2017) focused directly on May 15 snow disappearance and produced results for the presence or absence of deeper snow (nominally greater than or equal to 0.5 m (20 in) depth) on May 1 and April 15. Ray *et al.* (2017) originally focused on May 15 to compare to the McKelvey *et al.* (2011) study, and June 1 to bracket the snowmelt season. However, the April 15 and April 30 dates were added to the evaluation of snow-covered areas to align with temporal reproductive patterns of the wolverine (see Use of Dens and Denning Behavior discussion in the *Reproduction and Growth* section of the wolverine SSA report (Service 2018, pp. 23–28)).
- Because of the increased resolution of this study, Ray *et al.* (2017) were able to consider whether any areas of snow with depth greater than 0.5 m (20 in) will persist in these areas in the future at time periods encompassing the end of the wolverine denning period. Additional comparisons are outlined in the wolverine SSA report (Service 2018, p. 88; Table 8) and our rationale supporting the use of snow depth greater than 0.5 m (20 in) is documented in the wolverine SSA report (Service 2018, p. 87) and in Ray *et al.* (2017; Table 5–2).

Interpretation of results and additional analysis relative to wolverine den site scale: Recent studies of wolverine populations and distribution in Sweden have observed wolverine populations and reproductive den sites outside areas modeled with persistent spring snow cover (Aronsson and Persson 2016, p. 266; Persson 2017, pers. comm.). Another recent study, from Canada, concluded wolverines are adaptable and do not require large areas of deep spring snowpack for successful reproduction, and may select small areas covered with deep snow at a finer scale than can be detected using satellite imagery (Webb *et al.* 2016, p. 1,468). Jokinen et al (2019) reported seven wolverine den sites in hollow mounds (caused by the uplifted root masses from fallen Black Spruce trees) in the boreal forest of Alberta. These areas were largely devoid of spring snow cover (mean distance from dens to nearest spring snow cover was 15.2 km) and the authors stated wolverines appear to be using ''locally-available denning structures in the lowland boreal forest, despite a lack of deep snow, persistent spring snow cover, or large boulders documented in other studies.'' Regardless as to whether or not wolverines are obligated to den in areas of deep snow, the Service was interested in exploring the question, ''If snow cover is required for wolverine denning, will there be a sufficient amount of significant snow cover in the future in areas wolverines have historically used for denning in the contiguous United States?'' The Service integrated future Distributed Hydrology Soil Vegetation Model projections (2000–2013 averages) of snow-covered area (greater than 0.5 m (20 in) depth) on May 1 for Glacier National Park and Rocky Mountain National Park with new information obtained from a spatial analysis of documented den sites in the contiguous United States. This analysis indicated 31 of 34 documented den sites in the contiguous United States were located in areas with slopes less than 25 degrees. Avalanche risk increases significantly in areas with slope greater than 25 degrees (Scott 2017, pers. comm.) and thus wolverines maybe avoiding these areas for denning due to this risk (Service 2018, p. 91).

The Service calculated areal estimates for future snow covered area in both study sites and limited these estimates to elevation bands wolverines have used historically for denning and for areas with slopes less than 25 degrees. This approach resulted in providing the most conservative estimates of future snow covered area in the areas wolverines are most likely to use for denning.

Using the projections prepared by Ray *et al.* (2017), the wolverine SSA report presents the spatial distribution of significant snow-covered area with slopes less than 25 degrees and within the elevation bands expected to be used by wolverines for denning for three future climate scenarios in each study area (Service 2018, pp. 92–98). The three scenarios for Glacier National Park and Rocky Mountain National Park were chosen to span the range of Global Climate Model uncertainty regarding temperature and precipitation, and by extension significant snow-covered area (Service 2018, p. 93). A detailed description of methods describing the process of Global Climate Model selection can be found in Ray *et al.* (2017, pp. 35–38). We found that large portions of the study areas meet all three criteria—greater than 0.5 m (20 in) snow depth on May 1, at elevation 1,514–2,252 m (4,967–7,389 ft) for Glacier National Park or 2,700 to 3,600 m (8,858 to 11,811 ft) for Rocky Mountain National Park, and with slopes less than 25 degrees—across both study sites in the future (See map legends in Figures 10–15 in the SSA report, (Service 2018, pp. 94–98)).

We also determined that large tracts (several hundred km^2/mi^2) of significant snow (greater than 0.5 m (20 in) in depth) are projected in close proximity to documented historical den sites across all three climate scenarios (Service 2018, pp. 94–95). This analysis is limited to Glacier National Park because this is the only area where new snow-covered area projections and historical den locations were both available. Wolverines would not have to travel far, or at all, relative to either distance or elevation to reach areas with significant snow-covered area for denning in the future (Service 2018, pp. 94–95).

Based on the best available information, we have no reason to believe wolverines are confined to previously modeled spring snow covered areas. Furthermore, there is no quantitative data documenting spring snow patch size or depth to the denning needs of wolverines. Even if wolverines must have spring snow for denning, which we do not believe to be true, the wolverines in the lower 48 will likely have access to areas with significant spring snow cover in the future. Based on the new information presented above and in the wolverine SSA report, we do not believe wolverines need spring snow cover for denning. Nevertheless, new information suggests that spring

snow cover will not be a limiting resource for wolverines in the contiguous United States in the future. Therefore, based on the best available information, we do not consider the effects of changes in snowpack from the combination of increased temperature and changes in precipitation patterns to be a threat to the wolverine.

Wildland Fire

The wolverine SSA report includes a discussion of available information on the relationship of predicted future climate conditions on wildland fire projections in the western United States (Service 2018, pp. 99–100). In summary, based on these projections, wildland fire risk is likely to increase in the western United States, with future patterns and trends of wildland fire dependent on several factors (*e.g.,* degree of warming and drought conditions, fuel and soil moisture, wildland fire management practices, elevation) and geographic region (Service 2018, p. 100). However, given the diversity of habitats occupied by wolverines, their occupancy of high elevations, extensive mobility, and the positive effect wildland fire may have on wolverine prey species, wildland fire represents a limited stressor, in scope and scale, to wolverine habitat and its prey in the contiguous United States range (Service 2018, pp. 63–64).

To summarize, based on the best available information, the cumulative effects of wildland fire and climate change (*e.g.,* snowpack) will continue to represent a low impact to the wolverine and its habitat into the mid-21st century, based on climate change projections (Service 2018, p. 100).

Other Cumulative Effects

Finally, we note here that the effects of climate change on snowpack are projected to negatively affect the season lengths for winter recreational activities, such as skiing and snowmobiling, shortening the winter recreation season (Service 2018, pp. 100–101). A shorter winter recreation season would likely decrease the amount of winter recreation related disturbance occurring in wolverine habitat and fewer effects to wolverines. Alternatively, even though winter recreation seasons will be shorter, we could see more winter human activity at higher elevations due to snow loss at lower elevations. However, even at current levels, we do not consider winter recreational activities to be a threat to wolverine in the contiguous United States. For further discussion of winter recreational activities see the wolverine SSA report (Service 2018, pp. 100–101).

Summary of Future Conditions

Climate change model projections for the range of the wolverine within the contiguous United States indicate increases in temperature by the mid-21st century as compared to early to mid-20th century values (Service 2018, p. 101). The degree of future warming varies by region; area specific discussions are included in the SSA report (Service 2018, pp. 73–80). Precipitation patterns into the future are less clear as the climate models show significant disagreement in their many regional projections. Although drought conditions in the western United States are not unusual, drought duration and intensity have the potential to be exacerbated by projected temperature increases. Projected temperature and precipitation changes will affect future snow cover and the persistence of snow on the landscape.

Snow cover is projected to decline in response to warming temperatures and changing precipitation patterns, but this varies by elevation, topography, and by geographic region (Service 2018, p. 101). Simulations of natural snow accumulation at winter recreation locations have found that, overall, higher elevation areas (*e.g.,* Rocky Mountains, Sierra Nevada Mountains) are more resilient to projected changes in temperature and precipitation as compared to lower elevations (Wobus *et al.* 2017, p. 12). In general, models indicate higher elevations will retain more snow cover than lower elevations, particularly in early spring (April 30/May 1) (Service 2018, p. 101). In the wolverine SSA report, we present results from several recent climate models projecting snowpack declines in the western United States (Service 2018, pp. 83–100). More specifically, we reviewed a new analysis (Ray *et al.* 2017, entire) that modeled future snow persistence for Glacier and Rocky Mountain National Parks (areas that encompass the latitudinal and elevational range of the wolverine in the contiguous United States) at high spatial resolution and at the den-site scale (Service 2018, pp. 85–98). The results indicate large areas (several hundred km^2/mi^2 for each site) of future snow (greater than 0.5 m (20 in) in depth) will persist on May 1 (end of the denning season) at elevations currently used by wolverines for denning (Service 2018, pp. 93–98). This is true, on average, across the range of climate models used out to approximately year 2055.

Within their North American range, wolverines are found in a variety of habitats within primarily high-elevation areas of the western-northwestern United States, and exhibit wide-ranging movements (Service 2018, p. 102). Wolverines select den sites for differing characteristics depending on location, and natal den locations are generally associated with snow cover; however, many natal dens have been observed outside of the circumpolar boundary of the snow model presented in Copeland *et al.* (2010) (Service 2018, p. 103), particularly in Scandinavia. In addition, reproductive success of wolverines has not been evaluated relative to the depth and persistence of snow cover at the den site scale, or in combination with these or other important key life-history characteristics, including avoidance and/or protection from predators, prey availability, availability of food-caching habitat.

We also considered temperature and precipitation projections from climate change models in conjunction with wildland fire risk. This risk is likely to increase across the western United States, but patterns and trends are dependent on several factors (*e.g.,* degree of warming and drought conditions, fuel and soil moisture) and geographic region (Service 2018, p. 102) and wildland fire represents a limited stressor, in scope and scale, to wolverine habitat and prey as described above in *Effects from Wildland Fire.*

Overall Assessment

The wolverine's current potential extent of occurrence includes the western-northwestern United States (see Figure 2), large areas of Canada, and Alaska (Service 2018, p. 16). The wolverine is found in a variety of habitats in North America, but generally occurs in high-elevation, relatively inaccessible locations (Service 2018, p. 102). In the contiguous United States, potentially suitable habitat (*i.e.,* primary habitat), as determined by the physical and ecological features and the ecological needs of the wolverine, is estimated at 164,125 km^2 (63,369 mi^2) (Inman *et al.* 2013, p. 281). Based on our review of available relevant literature, we identified the physical and ecological needs of the species as follows: large territories in relatively inaccessible landscapes, at high elevation (1,800 to 3,500 m (5,906 to 11,483 ft)) within the contiguous United States; access to a variety of food resources, that varies with seasons; and reproductive behavior linked to both temporal and physical features (Service 2018, p. 104). These needs are currently met for wolverines in the contiguous United States and are expected to be met in the future (*i.e.,* in 38–50 years) (Service 2018, p. 104).

We recognize there is limited information available for the wolverine, including population estimates and abundance trends. In the contiguous United States, the structure of the wolverine population is represented as a metapopulation, although its genetic structure relative to its entire North American range has not been comprehensively evaluated (Service 2018, p. 102). Wolverine populations in Alaska are considered to be continuous with populations in the Yukon and British Columbia provinces of Canada based on genetic studies (COSEWIC 2014, p. 37). Similarly, studies of wolverines in the North Cascades region have documented recent movement of wolverines from Washington into British Columbia (Aubry *et al.* 2016, pp. 16, 20) and from Idaho (Lucid *et al.* 2016, p. 184) to British Columbia, and earlier from Montana to British Columbia and Alberta (*e.g.,* Newby and Wright 1955, p. 252).

We present in our SSA report a detailed discussion of wolverine reproductive behavior. Based on the best available information, wolverines select den sites for different characteristics depending on location. Dens located under snow cover may be related to wolverine distribution based on other life-history traits, including morphological, demographic, and behavioral adaptations that allow them to successfully compete for food resources (Inman 2013, pers. comm.). Structure (*e.g.,* uprooted trees, boulders and talus fields) appears to be an important requirement for natal den sites. However, reproductive success of wolverines has not been evaluated relative to the depth and persistence of snow cover, or in combination with these or other important characteristics, including prey availability and predator avoidance. Recent studies of wolverine populations and distribution in Sweden have observed wolverine populations and reproductive den sites outside areas modeled with persistent spring snow cover (Aronsson and Persson 2016; Persson 2017, pers. comm.). Another recent study concluded that wolverines are adaptable and do not require large areas of deep spring snowpack for successful reproduction, and may select small areas covered with deep snow at a finer scale than can be detected using satellite imagery (Webb *et al.* 2016, p. 1,468). Most recently, wolverine dens have been documented in boreal Alberta, Canada, several kilometers away from spring snow cover, in hollow mounds caused by fallen spruce trees (Jokinen et al, 2019). We would not expect fallen trees, and the potentially suitable denning sites created by them, to be a limiting resource in wolverine habitat.

We identified several potential stressors that may be affecting the species and its habitat currently or in the future, including impacts associated with climate change effects. Based on the best available information, demographic risks to the species from either known or most likely potential stressors (*i.e.,* disturbance due to winter recreational activities, other human disturbances, effects of wildland fire, disease, predation, overutilization, genetic diversity, small-population effects, climate change, and cumulative effects) are low based on our evaluation of the best available information as it applies to current and potential future conditions for the wolverine and in the context of the attributes that affect the needs of the species (Service 2018, p. 103).

Climate change model projections for the range of the wolverine within the contiguous United States indicate increases in temperature by the mid-21st century as compared to early to mid-20th century values (Service 2018, p. 103). Our evaluation of climate change indicates that snow cover is projected to decline in response to warming temperatures and changing precipitation patterns, but this varies by elevation, topography, and by geographic region (Service 2018, p. 103). In general, models indicate higher elevations will retain more snow cover than lower elevations, particularly in early spring (April 30/May 1) (Service 2018, p. 103). Although the persistence of spring snow has not yet been determined to be critical to wolverine survival in North America, our review of projected snow persistence (to approximately 2055) within the Northern and Southern Rocky Mountains, indicates several hundred km^2/mi^2 of deep snow will persist on May 1 at elevations used by the wolverine for denning (Service 2018, p. 103).

Legal protections of the wolverine in the contiguous United States include State listing in California and Oregon (as threatened); Colorado (as endangered); candidate species status in Washington; protected as a non-game species in Idaho and Wyoming; a species of concern and furbearer with a closed season in Montana; and protected from collection, importation, and possession in Utah (Service 2018, p. 107). Trapping or hunting of wolverines is currently prohibited in the contiguous United States. Trapping effort along the U.S.–Canada border does not represent a barrier to wolverine movement and dispersal along the international border (Service 2018, p. 103).

Management actions for conservation of the wolverine and its habitat are included within State Wildlife Action Plans, the Management Plan for the Conservation of Wolverines in Idaho (IDFG 2014), and USDA Forest Service Land and Resource Management Plans (Service 2018, Appendix G). Various provisions of these plans include, but are not limited to, winter road closures, fire management, and land acquisition or conservation easements. These management measures, currently and in the future, will alleviate effects associated with potential impacts related to stressors. However, we do not rely on the management measures and conservation efforts contained in these plans to support our listing decision. In addition, the WAFWA Wildlife Chiefs Wolverine Subcommittee is providing a forum for western States to work collaboratively with each other and with the Service and other partners for conserving wolverines found in the western-northwestern United States, and, to date, approximately $1.5 million of funding has been applied towards conservation and management actions for the wolverine (*e.g.,* Western States Wolverine Conservation Project) (McDonald 2017, pers. comm.).

Determination of Species Status

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species meets the definition of ''endangered species'' or ''threatened species.'' The Act defines an ''endangered species'' as a species that is ''in danger of extinction throughout all or a significant portion of its range,'' and a ''threatened species'' as a species that is ''likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' The Act requires that we determine whether a species meets the definition of ''endangered species'' or ''threatened species'' because of any of the following factors:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

Determination of Status Throughout All of Its Range in the Contiguous United States

Since the publication of the February 4, 2013, proposed rule (78 FR 7864) and reinstatement of that proposed rule on October 18, 2016 (81 FR 71670), we prepared a comprehensive assessment of the current and future status of wolverines in the contiguous United States as presented in the wolverine SSA report (Service 2018, entire). New information from recent surveys and a reevaluation of the species' current range, new genetic information, new studies of wolverine reproductive behavior and denning habitat, and results from detailed modeling of future spring snow persistence are included in the wolverine SSA report and contribute to our current understanding of the species. The wolverine SSA report also provides a comprehensive summary of wolverine life history and ecology, including an assessment of wolverine physiology, and an analysis of new information on wolverine trapping pressure in Canada near the United States-Canada border, as well as analyses of new information relevant to other potential threats to the species. We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to North American wolverines in the contiguous United States including effects from roads (Factors A and E); disturbance due to winter recreational activity (Factors A and E); other human disturbance (Factors A and E); effects from wildland fire (Factor A); disease (Factor C); predation (Factor C); overutilization (trapping) (Factor B); genetic diversity (Factor E); small-population effects (Factor E); and climate change (Factors A and E). We also assessed the adequacy of existing regulatory mechanisms (Factor D).

Consideration of Cumulative Effects—Threats can work in concert with one another to cumulatively create conditions that may impact the wolverine or its habitat beyond the scope of each individual threat. See the *Climate Change and Potential for Cumulative Effects* section above and the wolverine SSA report for an in-depth analysis of cumulative effects (Service 2018, pp. 82–101). We note that by using the SSA framework to guide our analysis of the scientific information documented in the SSA report, we have not only analyzed individual effects on the species, but we have also analyzed their potential cumulative effects. We incorporate the cumulative effects into our SSA analysis when we characterize the current and future condition of the species. Our assessment of the current and future conditions encompasses and incorporates the threats individually and cumulatively. Because the SSA framework considers not just the presence of the factors, but to what degree they collectively influence risk to the entire species, our assessment integrates the cumulative effects of the factors.

Our future-condition analysis in the wolverine SSA report includes the potential conditions that the species or its habitat may face, that is, the most probable scenario if those conditions are realized in the future. This most probable scenario includes consideration of the sources that have the potential to most likely impact the species at the population or rangewide scales in the future, including potential cumulative impacts. Given an expected increase in temperature in the western United States, the best available information indicates that, if there are any cumulative impacts in the future, the most likely to have population-level effects on wolverine in the contiguous United States could be: (1) Changes in snowpack from the combination of increased temperature and changes in precipitation patterns, or (2) changes in snowpack and increase in wildland fire potential (Service 2018, p. 83). The best available information does not indicate that the effects of trapping and mortality from roads will act cumulatively with effects of climate change, and those stressors are expected to remain low-level impacts into the future. We provide a detailed analysis of climate change and the potential for cumulative effects in the wolverine SSA report (Service 2018, pp. 82–102). Based on the best available information, the cumulative effects of wildland fire and climate change (*e.g.,* snowpack) will continue to represent a low impact to the wolverine and its habitat into the mid-21st century, based on climate change projections.

Resilience, Representation, and Redundancy—In order to characterize a species' viability and demographic risks, we consider the concepts of resilience, representation, and redundancy. We also consider known and potential stressors that may negatively impact the physical and biological features that the species needs for survival and reproduction. Stressors are expressed as risks to its demographic features such as abundance, population and spatial structure, and genetic or ecological diversity. We consider the level of impact a stressor may have on a species along with the consideration of demographic factors (*e.g.,* whether a species has stable, increasing, or decreasing trends in abundance, population growth rates, diversity of populations, and loss or degradation of habitat).

Wolverine populations in much of North America are still recovering from large losses of individuals from unregulated hunting and persecution pressures in the late 1880s into the mid-20th century (Service 2018, p. 104). Surveys conducted in the winter of 2015–2016 and 2016–2017 continue to document its presence within portions of its historical range in the western contiguous United States (representation) (Service 2018, p. 104).

Redundancy, the ability to rebound after stochastic perturbation, can be characterized by the distribution and connectivity of populations. In considering wolverine in the contiguous United States, individuals are found in alpine, boreal, and subalpine habitats, with breeding populations in four western States. Additionally, wolverines in the contiguous United States are connected to wolverine populations in Canada along the U.S.–Canada border, which contributes to current and future redundancy (Service 2018, p. 104).

Resiliency, the ability to withstand stochastic events, can be characterized by numbers of individuals and abundance trends. As indicated above, actual current population size, growth rate, and current population trends are unknown for wolverines in the contiguous United States due to the lack of abundance information. However, according to recent estimates, Canada's western subpopulation (which is connected to wolverines in the contiguous United States) has been estimated at 15,688 to 23,830 adult wolverines, with expansion of wolverines into historically occupied areas in both Canada and the contiguous United States with movement across both international borders (Service 2018, pp. 54, 105). The 2014 Committee on the Status of Endangered Wildlife in Canada report concluded that a climate-driven decline in wolverine populations in North America is not evident at this time in much of its range (COSEWIC 2014, p. 22). Wolverine populations in Canada are considered stable (Service 2018, p. 105). We also note that density estimates indicate no declining trend in wolverine populations in Alaska (Service 2018, p. 105). We recognize that there is limited information on populations (representation) or genetic diversity (resiliency and representation) for the wolverine in the contiguous United States, and no comprehensive studies to indicate what a viable (or

minimal) wolverine population size should be across its North American range. However, the best available information does not indicate either increasing or declining numbers of the wolverine in North America, including the contiguous United States. Further, at this time, the best available information does not indicate that the species' abundance is significantly impacted by the stressors evaluated (singly or cumulatively), and this situation is unlikely to change in the future, supporting current and future resiliency.

As discussed in the wolverine SSA report, both direct and cumulative effects of climate change (*e.g.,* higher temperatures, loss of snow cover, wildland fire) may affect the resilience of the wolverine in the future by creating an environment that is less favorable to its physiological and ecological needs (Service 2018, p. 105). We are unaware of studies of the wolverine that have formally evaluated the species' responses (*e.g.,* reproductive success or survival) to warming temperatures or other climate change effects.

As described in the wolverine SSA report, the best available information indicates confirmed observations of wolverines denning in areas with patchy snow cover in Alaska, Canada, and Scandinavia (Service 2018, p. 105). Further, using fine-scale snow modeling, we estimated that large areas of spring snow (May 1) will remain within Glacier National Park, where wolverines are known to den (Service 2018, p. 105). Given their high rate of movement, large dispersal distances, including travel through areas not covered with snow, and other life-history traits (*e.g.,* behavioral plasticity) observed in wolverines, we do not predict a significant loss of individual and population resiliency to the species in the future (*i.e.,* 38–50 years) within its North America range, including the contiguous United States (Service 2018, p. 105).

Currently, we are unaware of any documented specific risks for the wolverine related to a substantial change or loss of diversity in life-history traits, population demographics, morphology, behavior, or genetic characteristics that can be used to characterize species representation (the ability to adapt to change). Rates of dispersal or gene flow are not known to have changed, and recent evidence supports continued connectivity with contiguous United States wolverines and wolverines in Canada. Additionally, there is no currently available information to indicate that the current abundance of the wolverine across its current potential extent in the contiguous United States is at a level that is causing inbreeding depression or that loss of genetic variation is affecting representation or that would affect representation in the future (Service 2018, p. 105). Nor is there any information to indicate that this species is unable to adapt or adjust to changing conditions (*e.g.,* potential reduction in snow cover). We do not expect a reduction in representation of the wolverines in the contiguous United States in the future. We have determined that the needs of the species are provided within the contiguous United States currently and into the future. Thus, after assessing the best available information, we conclude that the North American wolverine in the contiguous United States is not in danger of extinction throughout all of its range (endangered) nor is it likely to become so in the foreseeable future (threatened).

Because we determined that the North American wolverine in the contiguous United States is not in danger of extinction or likely to become so in the foreseeable future throughout all of its range, we will consider whether there are any significant portions of its range in which it is in danger of extinction or likely to become so in the foreseeable future.

Determination of Status Throughout a Significant Portion of Its Range

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so in the foreseeable future throughout all or a significant portion of its range. Having determined that the wolverine is not in danger of extinction or likely to become so in the foreseeable future throughout all of its range, we now consider whether it may be in danger of extinction or likely to become so in the foreseeable future in a significant portion of its range—that is, whether there is any portion of the species' range for which it is true that both (1) the portion is significant; and, (2) the species is in danger of extinction now or likely to become so in the foreseeable future in that portion. Depending on the case, it might be more efficient for us to address the ''significance'' question or the ''status'' question first. We can choose to address either question first. Regardless of which question we address first, if we reach a negative answer with respect to the first question that we address, we do not need to evaluate the other question for that portion of the species' range.

In undertaking this analysis for the North American wolverine in the contiguous United States, we choose to address the status question first—we consider information pertaining to the geographic distribution of both the species and the threats that the species faces to identify any portions of the range where the species is endangered or threatened.

For the North American wolverine in the contiguous United States, we considered whether the threats are geographically concentrated in any portion of the species' range at a biologically meaningful scale. We examined the following threats: effects from roads, disturbance due to winter recreational activity, other human disturbance, wildland fire, disease, predation, overutilization (trapping), genetic diversity, small-population effects, climate change, and cumulative impacts of these potential threats (Service 2018, entire). All of these potential stressors are relatively evenly distributed geographically throughout the range of the wolverine in the contiguous United States. We found no concentration of threats in any portion of the wolverine's range at a biologically meaningful scale. Therefore, no portion of the species' range can provide a basis for determining that the species is in danger of extinction now or likely to become so in the foreseeable future in a significant portion of its range, and we find the species is not in danger of extinction now or likely to become so in the foreseeable future in any significant portion of its range. This is consistent with the courts' holdings in *Desert Survivors* v. *Department of the Interior,* No. 16-cv-01165–JCS, 2018 WL 4053447 (N.D. Cal. Aug. 24, 2018), and *Center for Biological Diversity* v. *Jewell,* 248 F. Supp. 3d, 946, 959 (D. Ariz. 2017).

Determination of Status

We have reviewed the best available scientific and commercial information regarding the past, present, and future threats to the North American wolverine in the contiguous United States and we have determined that, if it were to be a listable entity, it does not meet the definition of an endangered species or a threatened species in accordance with sections 3(6) and 3(20) of the Act. Furthermore, we have determined that the population of wolverines in the contiguous United States is not a DPS. As a consequence of these determinations, we are withdrawing our proposed rule to list the distinct population segment of the North American wolverine occurring in the contiguous United States as a threatened species.

References Cited

A complete list of references cited in this document and the wolverine SSA report are available on the internet at *http://www.regulations.gov* at Docket No. FWS–R6–ES–2016–0106 and upon request from the Montana Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this document are the staff members of the Montana Ecological Services Office and the Mountain-Prairie Regional Office.

Signing Authority

The Director, U.S. Fish and Wildlife Service, 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 U.S. Fish and Wildlife Service. Aurelia Skipwith, Director, U.S. Fish and Wildlife Service, approved this document on August 10, 2020, for publication.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Madonna Baucum,

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Steam Electric Reconsideration Rule; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 423

[EPA–HQ–OW–2009–0819; FRL–10014–41–OW]

RIN 2040–AF77

Steam Electric Reconsideration Rule

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA or the Agency) is finalizing a regulation to revise the technology-based effluent limitations guidelines and standards (ELGs) for the steam electric power generating point source category applicable to flue gas desulfurization (FGD) wastewater and bottom ash (BA) transport water. This final regulation is estimated to save approximately $140 million annually in after tax compliance costs as a result of less costly FGD wastewater technologies that could be used with the modification of the Steam Electric Power Generating Effluent Guidelines 2015 rule (the 2015 rule) limitations; less costly BA transport water technologies made possible by the revision of the 2015 rule's zero discharge limitations; a two-year extension of compliance time frames for meeting FGD wastewater and BA transport water limitations, and additional subcategories for both FGD wastewater and BA transport water. Participation in the voluntary incentive program would contribute to the reduction in pollutant discharges by these steam electric power plants in FGD wastewater by approximately 26.7 million pounds per year.

DATES: This final rule is effective on December 14, 2020. In accordance with 40 CFR part 23, this regulation shall be considered issued for purposes of judicial review at 1:00 p.m. Eastern time on October 27, 2020. Under section 509(b)(1) of the CWA, judicial review of this regulation can be had only by filing a petition for review in the U.S. Court of Appeals within 120 days after the regulation is considered issued for purposes of judicial review. Under section 509(b)(2), the requirements in this regulation may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OW–2009–0819. 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*.

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SUPPLEMENTARY INFORMATION:

Preamble Acronyms and Abbreviations. We use multiple acronyms and terms in this preamble. While this list may not be exhaustive, to ease the reading of this preamble and for reference purposes, EPA defines terms and acronyms in Appendix A.

Supporting Documentation. Today's final rule is supported by numerous documents including:

- *Supplemental Technical Development Document for Revisions to the Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category* (Supplemental TDD), Document No. EPA–821–R–20–001. The Supplemental TDD summarizes the technical and engineering analyses supporting the final rule. It presents EPA's updated analyses supporting the revisions to FGD wastewater and BA transport water. These updates include additional data collected since the signature of the 2015 rule, updates to the industry (*e.g.,* retirements, updates to FGD treatment and BA handling), cost methodologies, pollutant removal estimates, corresponding non-water quality environmental impacts associated with updated FGD and BA methodologies, and explanations of the calculations of the effluent limitations and standards. Except for the updates described in the Supplemental TDD, the *Technical Development Document for the Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category* (2015 TDD, Document No. EPA–821–R–15–007) is still applicable and provides a more complete summary of EPA's data collection, description of the industry, and underlying analyses supporting the ELGs established for other wastestreams in the 2015 rule.
- *Supplemental Environmental Assessment for Revisions to the Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category* (Supplemental EA), Document No. EPA–821–R–20–002. The Supplemental EA summarizes the potential environmental and human health impacts that are estimated to result from implementation of this final rule.
- *Benefit and Cost Analysis for Revisions to the Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category* (BCA Report), Document No. EPA–821–R–20–003. The BCA Report summarizes estimates of the societal benefits and costs resulting from implementation of this final rule.
- *Regulatory Impact Analysis for Revisions to the Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category* (RIA), Document No. EPA–821–R–20–004. The RIA presents a profile of the steam electric power generating industry, a summary of estimated costs and impacts associated with this final rule, and an assessment of the potential impacts on employment and small businesses.
- *Response to Public Comments for Revisions to the Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category.* This document provides EPA's responses to substantive public comments received on the 2019 proposed rule.
- *Docket Index for the Revisions to the Steam Electric ELGs.* This document provides a list of the additional memoranda, references, and other information relied upon by EPA for this final rule.

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I. Executive Summary

A. Purpose of Rule

Coal-fired plants are affected by several environmental regulations. One of these regulations, the Steam Electric Power Generating ELGs, was promulgated in 2015 (80 FR 67838; November 3, 2015) and applies to the subset of the electric power industry in which ''generation of electricity is the predominant source of revenue or principal reason for operation, and whose generation of electricity results primarily from a process utilizing fossil-type fuel (coal, oil, gas), fuel derived from fossil fuel (*e.g.,* petroleum coke, synthesis gas), or nuclear fuel in conjunction with a thermal cycle employing the steam-water system as the thermodynamic medium'' (40 CFR 423.10). The 2015 rule addressed discharges from FGD wastewater, fly ash (FA) transport water, BA transport water, flue gas mercury control wastewater, gasification wastewater, combustion residual leachate, and non-chemical metal cleaning wastes.

Since the Steam Electric Power Generating ELGs were revised in 2015, steam electric power plants have installed more affordable technologies that can remove similar amounts of pollution as those operating in 2015. This final rule revises limitations and standards for two of the wastestreams addressed in the 2015 rule: BA transport water and FGD wastewater. Today's rule does not revise the other wastestreams covered by the 2015 rule.

B. Summary of Final Rule

For existing sources that discharge directly to surface water, with the subcategories discussed below excepted, the final rule establishes the following effluent limitations based on Best Available Technology Economically Achievable (BAT):

- For FGD wastewater, the final rule establishes numeric BAT effluent limitations on mercury, arsenic,

selenium, and nitrate/nitrite as nitrogen.[1]

• For BA transport water, the final rules establishes as BAT a high recycle rate system with a site-specific volumetric purge (defined in the final rule as BA purge water) which cannot exceed 10 percent of the BA transport water system's volume where the purge volume and associated effluent limitations are established by the permitting authority.

The final rule includes separate requirements for the following subcategories: High FGD flow plants, electric generating units (EGUs) that will permanently cease the combustion of coal by 2028, and low utilization EGUs (LUEGUs). The 2015 rule's subcategories for oil-fired EGUs and small generating units (50 MW or less) were not reopened in this rulemaking and remain in effect. For high FGD flow plants (FGD wastewater flows over four million gallons per day, after accounting for the plant's ability to recycle the wastewater to the maximum limits of the FGD system's materials of construction) and LUEGUs (those with a capacity utilization rating (CUR) of less than 10 percent), the final rule establishes BAT limitations in the discharged FGD wastewater as numeric effluent limitations on mercury and arsenic. For LUEGUs, the final rule establishes BAT limitations for BA transport water for total suspended solids (TSS) and also includes standards for implementing a best management practices (BMP) plan. For EGUs permanently ceasing the combustion of coal by 2028, the final rule establishes BAT limitations for total suspended solids (TSS) in FGD wastewater and bottom ash transport water.

The final rule establishes a voluntary incentives program that provides the certainty of more time (until December 31, 2028) for plants to meet new standards and limitations, if they adopt additional process changes and controls that achieve more stringent limitations on mercury, arsenic, selenium, nitrate/nitrite, bromide, and TSS in FGD wastewater. The optional program offers environmental protections beyond those achieved by the final BAT limitations, while providing plants that opt into the program more flexibility when permeate or distillate is used as boiler makeup water, and additional time to meet the limitations established for BAT in this final rule.

For indirect discharges (*i.e.,* discharges to publicly owned treatment works (POTWs)), the final rule establishes pretreatment standards for existing sources that are the same as the BAT limitations, except for TSS, there is no pass through of pollutants at POTWs.

Where BAT limitations in this rule are more stringent than previously established BPT limitations applicable to the relevant wastestreams, those limitations do not apply until the permitting authority determines a date that is as soon as possible on or after October 13, 2021, but no later than December 31, 2025.

C. Summary of Costs and Benefits

EPA estimates that the final rule will save $127 million per year in social costs and result in between $ − 1.7 million and $43 million in benefits, using a three percent discount rate, and will save $153 million per year in social costs and between $6.5 million and $46 million in benefits, using a seven percent discount. Table XV–1 summarizes the benefits and social costs for the four regulatory options that EPA analyzed at a three percent discount rate. EPA's analysis reflects the Agency's understanding of the actions steam electric power plants are expected to take to meet the limitations and standards in the final rule. EPA based its analysis on a modeled baseline that reflects the expected effects of announced retirements and fuel conversions, impacts of relevant final rules such as the Coal Combustion Residuals (CCR) Part A final rule that the Agency promulgated in August 2020 and the Affordable Clean Energy (ACE) rule that the Agency promulgated in 2019, and full implementation of the 2015 rule. EPA has also provided an assessment of the economic impacts of the final revised Steam Electric ELGs relative to an alternative baseline including the CCR Part B Rule, which EPA is working on but which has not been issued at this time (see DCN SE09360). EPA understands that these modeled results have uncertainty and that the actual costs for individual plants could be higher or lower than estimated. The current estimate reflects the best data and analysis available at this time. For additional information, see Sections V and VIII.

II. Public Comments and Online Public Hearing

During the 60-day public comment period for the 2019 proposed rule (November 22, 2019 to January 21, 2020), EPA received more than 7,400 public comment submissions from private citizens, industry members, technology vendors, government entities, environmental groups, and trade associations. EPA also hosted an online public hearing on December 19, 2019 (during the public comment period). The hearing had 110 attendees, 32 of whom spoke about the proposed rule. Available documents from the public hearing include the presentation given by EPA and a transcript (DCN SE08497 and DCN SE08498).

III. General Information

A. Does this action apply to me?

Entities potentially regulated by the final rule include:

Category	Example of regulated entity	North American industry classification system (NAICS) code
Industry	Electric Power Generation Plants—Electric Power Generation	22111
	Electric Power Generation Plants—Fossil Fuel Electric Power Generation	221112

This section is not intended to be exhaustive, but to provide a guide to entities likely to be regulated by the final rule. Other types of entities that do not meet the above criteria could also be regulated. To determine whether your plant is regulated by the final rule, you should carefully examine the applicability criteria listed in 40 CFR

[1] While the proposed rule described ''two sets'' of BAT limitations for both FGD wastewater and BA transport water, this rulemaking has been focused on revisions to the 2015 rule limitations and standards that were new and more stringent than previously established BPT limitations and standards (the ''second set'' of limitations). It was not intended to address the TSS BAT limitations for these wastestreams promulgated in the 2015 rule (the ''first set'' of limitations), which have since been vacated by the U.S. Court of Appeals for the Fifth Circuit, see Section IV.D, below.

423.10 and the definitions in 40 CFR 423.11 of the 2015 rule, as amended by this final rule. If you still have questions regarding the applicability of the final rule to a particular entity, consult the person listed for technical information in the preceding section, titled **FOR FURTHER INFORMATION CONTACT**.

B. What action is EPA taking?

EPA is revising certain BAT ELGs and pretreatment standards for existing sources in the Steam Electric Power Generating point source category that apply to FGD wastewater and BA transport water.

C. What is EPA's authority for taking this action?

EPA is finalizing this rule under the authority of sections 301, 304, 306, 307, 308, 402, and 501 of the Clean Water Act (CWA), 33 U.S.C. 1311, 1314, 1316, 1317, 1318, 1342, and 1361.

D. What are the monetized incremental costs and benefits of this action?

This action is estimated to save $127 million per year in social costs and result in between −$1.7 million and $43 million in benefits, using a 3 percent discount rate. Using a 7 percent discount rate, the estimated savings are $153 million per year and benefits are between $6.5 million and $46 million.

IV. Background

A. Clean Water Act (CWA)

Among its core provisions, the CWA prohibits the discharge of pollutants from a point source to waters of the U.S., except as authorized under the CWA. Under section 402 of the CWA, 33 U.S.C. 1342, discharges may be authorized through a National Pollutant Discharge Elimination System (NPDES) permit. The CWA establishes a dual approach for these permits: (1) Technology-based controls that establish a floor of performance for all dischargers, and (2) water quality-based effluent limitations, where the technology-based effluent limitations are insufficient to meet applicable water quality standards (WQS). As the basis for the technology-based controls, the CWA authorizes EPA to establish national technology-based ELGs and new source performance standards (NSPS) for discharges into waters of the United States from categories of point sources (such as industrial, commercial, and public sources).

The CWA also authorizes EPA to promulgate nationally applicable pretreatment standards that control pollutant discharges from sources that discharge wastewater indirectly to waters of the U.S., through sewers flowing to POTWs, as outlined in sections 307(b) and (c) of the CWA, 33 U.S.C. 1317(b) and (c). EPA establishes national pretreatment standards for those pollutants in wastewater from indirect dischargers that pass through, interfere with, or are otherwise incompatible with POTW operations. Pretreatment standards are designed to ensure that wastewaters from direct and indirect industrial dischargers are subject to similar levels of treatment. *See* CWA section 301(b), 33 U.S.C. 1311(b). In addition, POTWs are required to implement local treatment limitations applicable to their industrial indirect dischargers to satisfy any local requirements. *See* 40 CFR 403.5.

Direct dischargers (those discharging to waters of the U.S. rather than to a POTW) must comply with effluent limitations in NPDES permits. Indirect dischargers, who discharge through POTWs, must comply with pretreatment standards. Technology-based effluent limitations and standards in NPDES permits are derived from ELGs (CWA sections 301 and 304, 33 U.S.C. 1311 and 1314) and NSPS (CWA section 306, 33 U.S.C. 1316) promulgated by EPA, or are based on best professional judgment (BPJ) where EPA has not promulgated an applicable ELG or new source performance standard (CWA section 402(a)(1)(B), 33 U.S.C. 1342(a)(1)(B)). Additional limitations are also required in the permit where necessary to meet WQS. CWA section 301(b)(1)(C), 33 U.S.C. 1311(b)(1)(C). The ELGs are established by EPA regulation for categories of industrial dischargers and are based on the degree of control that can be achieved using various levels of pollution control technology, as specified in the CWA (*e.g.,* BPT, BCT, BAT; see below).

EPA promulgates national ELGs for industrial categories for three classes of pollutants: (1) Conventional pollutants (TSS), oil and grease, biochemical oxygen demand (BOD5), fecal coliform, and pH), as outlined in CWA section 304(a)(4), 33 U.S.C. 1314(a)(4), and 40 CFR 401.16; (2) toxic pollutants (*e.g.,* toxic metals such as arsenic, mercury, selenium, and chromium; toxic organic pollutants such as benzene, benzo-a-pyrene, phenol, and naphthalene), as outlined in CWA section 307(a), 33 U.S.C. 1317(a); 40 CFR 401.15 and 40 CFR part 423, appendix A; and (3) nonconventional pollutants, which are those pollutants that are not categorized as conventional or toxic (*e.g.,* ammonia-N, phosphorus, and total dissolved solids (TDS)).

B. Relevant Effluent Guidelines

EPA establishes ELGs based on the performance of well-designed and well-operated control and treatment technologies. The legislative history also supports that EPA need not consider water quality impacts on individual water bodies as the guidelines are developed; see Statement of Senator Muskie (principal author) (October 4, 1972), reprinted in Legislative History of the Water Pollution Control Act Amendments of 1972, at 170. (U.S. Senate, Committee on Public Works, Serial No. 93–1, January 1973).

There are various levels of control applicable to direct and indirect dischargers, based on the type of pollutant controlled. The three standards relevant to this rulemaking are described in detail below.

1. Best Practicable Control Technology Currently Available (BPT)

Traditionally, EPA establishes effluent limitations based on BPT by reference to the average of the best performances of facilities within the industry, grouped to reflect various ages, sizes, processes, or other common characteristics. EPA promulgates BPT effluent limitations for conventional, toxic, and nonconventional pollutants. In specifying BPT, EPA looks at a number of factors. EPA first considers the cost of achieving effluent reductions in relation to the effluent reduction benefits. The Agency also considers the age of equipment and facilities, the processes employed, engineering aspects of the control technologies, any required process changes, non-water quality environmental impacts (including energy requirements), and such other factors as the Administrator deems appropriate. CWA section 304(b)(1)(B), 33 U.S.C. 1314(b)(1)(B). If, however, existing performance is uniformly inadequate, EPA may establish limitations based on higher levels of control than those currently in place in an industrial category, when based on an Agency determination that the technology is available in another category or subcategory and can be practically applied.

2. Best Available Technology Economically Achievable (BAT)

BAT represents the second level of control for direct discharges of toxic and nonconventional pollutants. As the statutory phrase intends, EPA considers the technological availability and the economic achievability in determining what level of control represents BAT. CWA section 301(b)(2)(A), 33 U.S.C. 1311(b)(2)(A). Other statutory factors

that EPA must consider in assessing BAT are the cost of achieving BAT effluent reductions, the age of equipment and facilities involved, the process employed, potential process changes, non-water quality environmental impacts (including energy requirements), and such other factors as the Administrator deems appropriate. CWA section 304(b)(2)(B), 33 U.S.C. 1314(b)(2)(B); *Texas Oil and gas Ass'n* v. *EPA,* 161 F.3d 923, 928 (5th Cir. 1998). The Agency retains considerable discretion in assigning the weight to be accorded each of the factors it is required to consider. *Weyerhaeuser Co.* v. *Costle,* 590 F.2d 1011, 1045 (D.C. Cir. 1978). Generally, EPA determines economic achievability based on the effect of the cost of compliance with BAT limitations on overall industry and subcategory (if applicable) financial conditions. BAT may reflect the highest performance in the industry, and it may reflect a higher level of performance than is currently being achieved based on technology transferred from a different subcategory or category, bench scale or pilot studies, or foreign facilities. *Am. Paper Inst.* v. *Train,* 543 F.2d 328, 353 (D.C. Cir. 1976); *Am. Frozen Food Inst.* v. *Train,* 539 F.2d 107, 132 (D.C. Cir. 1976). BAT may be based upon process changes or internal controls, even when these technologies are not common industry practice. *See Am. Frozen Food Inst.,* 539 F.2d at 132, 140; *Reynolds Metals Co.* v. *EPA,* 760 F.2d 549, 562 (4th Cir. 1985); *Cal. & Hawaiian Sugar Co.* v. *EPA,* 553 F.2d 280, 285–88 (2nd Cir. 1977).

One way that EPA may take into account differences within an industry when establishing BAT limitations is through subcategorization. The Supreme Court has recognized that the substantive test for subcategorizing an industry is whether the plants are different with respect to relevant statutory factors. *See Chem. Mfrs. Ass'n* v. *EPA,* 870 F.2d 177, 214 n.134 (5th Cir. 1989) (citing *Chem. Mfrs. Ass'n* v. *NRDC,* 470 U.S. 116, 119–22, 129–34 (1985)). Courts have stated that there need only be a rough basis for subcategorization. *See Chem. Mfrs. Ass'n* v. *EPA,* 870 F.2d at 215 n.137 (summarizing cases).

3. Pretreatment Standards for Existing Sources (PSES)

Section 307(b) of the CWA, 33 U.S.C. 1317(b), authorizes EPA to promulgate pretreatment standards for discharges of pollutants to POTWs. PSES are designed to prevent the discharge of pollutants that pass through, interfere with, or are otherwise incompatible with the operation of POTWs. Categorical pretreatment standards are technology-based and are analogous to BPT and BAT effluent limitations guidelines, and thus the Agency typically considers the same factors in promulgating PSES as it considers in promulgating BPT and BAT. Legislative history indicates that Congress intended for the combination of pretreatment and treatment by the POTW to achieve the level of treatment that would be required if the industrial source were discharging to a water of the U.S. Conf. Rep. No. 95–830, at 87 (1977), reprinted in U.S. Congress. Senate Committee on Public Works (1978), A Legislative History of the CWA of 1977, Serial No. 95–14 at 271 (1978). The General Pretreatment Regulations, which set forth the framework for the implementation of categorical pretreatment standards, are found at 40 CFR 403. These regulations establish pretreatment standards that apply to all non-domestic dischargers. *See* 52 FR 1586 (January 14, 1987).

C. 2015 Steam Electric Power Generation Point Source Category Rule

EPA, on September 30, 2015, finalized a rule revising the regulations for the Steam Electric Power Generating point source category (40 CFR part 423) (hereinafter the ''2015 rule''). The rule set the first federal limitations on the levels of toxic metals in wastewater that can be discharged from steam electric power plants, based on technology improvements in the steam electric power industry over the preceding three decades. Prior to the 2015 rule, regulations for the industry had last been updated in 1982.

New technologies for generating electric power and the widespread implementation of air pollution controls over the last several decades have altered wastewater streams or created new wastewater streams at many steam electric power plants, particularly coal-fired plants. Discharges in these wastestreams include arsenic, lead, mercury, selenium, chromium, and cadmium. Many of these toxic pollutants can be persistent, meaning once in the environment they can remain there for years.

The 2015 rule addressed effluent limitations and standards for multiple wastestreams generated by new and existing steam electric facilities: BA transport water, combustion residual leachate, FGD wastewater, flue gas mercury control wastewater, FA transport water, and gasification wastewater. The rule required most steam electric power plants to comply with the effluent limitations ''as soon as possible'' after November 1, 2018, and no later than December 31, 2023. Within that range, except for indirect dischargers, the NPDES permitting authority (typically a state environmental agency) would determine the particular compliance date(s) for each plant in the NPDES permit.

On an annual basis, the 2015 rule was projected to reduce the amount of metals defined in the Act as toxic pollutants, nutrients, and other pollutants that steam electric power plants are allowed to discharge by 1.4 billion pounds and reduce water withdrawal by 57 billion gallons. At the time, EPA estimated annual compliance costs for the final rule to be $480 million (in 2013$) and estimated benefits associated with the rule to be $451 million to $566 million (in 2013$).

D. Legal Challenges, Administrative Petitions, Section 705 Action, Postponement Rule, and Reconsideration of Certain Limitations and Standards

Seven petitions for review of the 2015 rule were filed in various circuit courts by the electric utility industry, environmental groups, and drinking water utilities. These petitions were consolidated in the U.S. Court of Appeals for the Fifth Circuit, *Southwestern Electric Power Co., et al.* v. *EPA.*[2] On March 24, 2017, the Utility Water Act Group (UWAG) submitted to EPA an administrative petition for reconsideration of the 2015 rule. Also, on April 5, 2017, the Small Business Administration (SBA) submitted an administrative petition for reconsideration of the final rule.

On April 25, 2017, EPA responded to these petitions by publishing a postponement of the 2015 rule compliance deadlines that had not yet passed, under Section 705 of the Administrative Procedure Act (APA). This Section 705 Action drew multiple legal challenges.[3] The Administrator then signed a letter on August 11, 2017, announcing his decision to conduct a rulemaking to potentially revise the new, more stringent BAT effluent limitations and pretreatment standards for existing sources in the 2015 rule that apply to FGD wastewater and BA transport water. The Fifth Circuit subsequently granted EPA's request to sever and hold in abeyance aspects of the litigation related to those limitations and standards. With respect to the remaining claims related to limitations applicable to legacy wastewater and

[2] Case No. 15–60821.

[3] *See Clean Water Action.* v. *EPA,* No. 17–0817 (D.D.C.), appeal dismissed, No. 18–5149 (D.C. Cir.); *see also Clean Water Action.* v. *EPA,* No. 18–60619 (5th Cir.) (case dismissed for lack of jurisdiction on October 18, 2018).

leachate, which are not at issue in this final rule, the Fifth Circuit issued a decision on April 12, 2019, vacating those limitations as arbitrary and capricious under the APA and unlawful under the CWA, respectively. EPA plans to address this vacatur in a subsequent action.

In September 2017, EPA finalized a rule, using notice-and-comment procedures, postponing the earliest compliance dates for the new, more stringent BAT effluent limitations and PSES for FGD wastewater and BA transport water in the 2015 rule, from November 1, 2018 to November 1, 2020. EPA also withdrew its prior action taken pursuant to Section 705 of the APA. The rule received multiple legal challenges, but the courts did not sustain any of them [4] and EPA prevailed.

E. Other Ongoing Rules Affecting the Steam Electric Sector

1. Affordable Clean Energy (ACE) Rule

On June 19, 2019, EPA issued the ACE rule pursuant to Clean Air Act (CAA) sections 111(a)(1) and 111(d), providing states with guidelines for establishing standards of performance regulating CO_2 emissions at existing coal-fired electric utility generating units (EGUs).[5] This action was finalized in conjunction with two related, but separate and distinct rulemakings: (1) The repeal of the Clean Power Plan (CPP), and (2) revised implementing regulations for ACE, ongoing emission guidelines, and all future emission guidelines for existing sources issued under the authority of CAA section 111(d).

Under CAA section 111(a)(1) and 111(d), respectively, EPA determines the best system of emission reduction (BSER) and states submit plans establishing standards of performance based on the BSER. The BSER must be applicable to, at, and on the premises of a source that is subject to CAA section 111(d). EPA repealed the CPP on the basis that it in part improperly premised its BSER on power generation that was shifting between EGUs and other, lower-emitting sources. In ACE, EPA determined the BSER for coal-fired EGUs as six heat rate improvements (HRI) ''candidate technologies,'' as well as additional operations and maintenance (O&M) practices, all of which are applicable to and at the source.[6] For each candidate technology, EPA has provided the extent of achievable emissions limitations through application of the BSER as ranges of expected improvements and costs. States are required to submit plans by July 8, 2022 that establish standards of performance for their EGUs that are subject to the ACE rule. The standards of performance must reflect the degree of emissions limitation through application of the BSER, and states may take into account remaining useful life and other factors in applying a standard to a particular EGU. Multiple legal challenges to this rule were consolidated in *American Lung Association* v. *EPA,* No. 19–1140, and are currently pending in the D.C. Circuit Court of Appeals.

2. Coal Combustion Residuals (CCR)

On April 17, 2015, the Agency published the Disposal of Coal Combustion Residuals from Electric Utilities final rule (2015 CCR rule). This rule finalized national regulations to provide a comprehensive set of requirements for the safe disposal of CCR, commonly known as coal ash, from steam electric power plants. The final 2015 CCR rule was the culmination of extensive study on the effects of coal ash on the environment and public health. The rule established technical requirements for CCR landfills and surface impoundments under subtitle D of the Resource Conservation and Recovery Act (RCRA), the nation's primary law for regulating solid waste.

These regulations addressed coal ash disposal, including regulations designed to prevent leaking of contaminants into groundwater, blowing of contaminants into the air as dust, and the catastrophic failure of coal ash surface impoundments. Additionally, the 2015 CCR rule set recordkeeping and reporting requirements as well as the requirement for each plant to establish and post specific information to a publicly accessible website. This final 2015 CCR rule also supported the responsible recycling of CCR by distinguishing beneficial use from disposal.

As a result of the D.C. Circuit Court rulings in *USWAG* v. *EPA,* No. 15–1219 (D.C. Cir. 2018) and *Waterkeeper Alliance Inc. et al.* v. *EPA,* No. 18–1289 (D.C. Cir. 2019), the Administrator signed *A Holistic Approach to Closure Part A: Deadline to Initiate Closure and Enhancing Public Access to Information* on July 29 (CCR Part A). In particular, four amendments to the CCR rule were finalized which could impact plants' decisions under this final ELG rule. First, the CCR Part A rule establishes a new deadline of April 11, 2021, for all unlined surface impoundments, as well as those surface impoundments that failed the location restriction for placement above the uppermost aquifer, to stop receiving waste and begin closure or retrofit. EPA determined this date after evaluating the steps that owners and operators need to take for surface impoundments to stop receiving waste and begin closure, and the time frames needed for implementation. Second, the rule establishes procedures for plants to obtain additional time to develop alternate capacity to manage their wastestreams (both coal ash and non-coal ash) before they have to stop receiving waste and begin closing their coal ash surface impoundments. Third, the rule changes the classification of compacted-soil-lined and clay-lined surface impoundments from lined to unlined. Finally, the rule revises the coal ash regulations to specify that all unlined surface impoundments are required to retrofit or close. This would not affect the ability of plants to install new, composite-lined surface impoundments.

As explained in the 2015 ELG rule and 2019 ELG proposal, the ELGs and 2015 CCR rule may affect the same EGU or activity at a plant. Therefore, when EPA finalized the ELG and CCR rule in 2015 and proposed revisions to both rules in 2019, the Agency coordinated the ELG and CCR rules to facilitate and minimize the complexity of implementing engineering, financial, and permitting activities. EPA continued to coordinate these two rules during the development of the final rule for ELG and CCR Part A. EPA's analysis now estimates how the CCR Part A rule may affect surface impoundments and the ash handling systems and FGD treatment systems that send wastes to those impoundments. This is further described in Supplemental TDD, Section 3. For more information on the CCR Part A rule and accompanying background documents, visit *www.regulations.gov* Docket EPA–HQ–OLEM–2019–0172 and *www.epa.gov/coalash/coal-ash-rule*.

In addition to the final CCR Part A rule, EPA has proposed further revisions to the CCR regulations (CCR Part B). Specifically, EPA proposed four changes in the CCR Part B rule. First, EPA proposed procedures to allow plants to request approval to continue operating CCR surface impoundments equipped

[4] *See Center for Biological Diversity* v. *EPA,* No. 18–cv–00050 (D. Ariz. filed Jan. 20, 2018); *see also Clean Water Action.* v. *EPA,* No. 18–60079 (5th Cir.). On October 29, 2018, the District of Arizona case was dismissed upon EPA's motion to dismiss for lack of jurisdiction, and on August 28, 2019, the Fifth Circuit denied the petition for review of the postponement rule.

[5] 84 FR 32520.

[6] These six technologies are: (1) Neural network/intelligent soot blowers, (2) EGU feed pumps, (3) air heater and duct leakage control, (4) variable frequency drives, (5) blade path upgrade (steam turbine), and (6) redesign/replace economizer.

with an alternate liner. Second, EPA proposed two options to allow the continued placement of CCR in surface impoundments undergoing forced closure. Third, EPA proposed an additional closure option for CCR units being closed by removal of CCR. Finally, EPA proposed requirements for annual closure progress reports. While the Part B proposal was issued after the comment period for the ELG rule had closed and EPA had already taken significant steps to respond to public comments on the ELG rule and develop the final ELG rule, EPA recognizes that, just as with the Part A rule, the first provision of the Part B rule may affect the same EGU or activity at a plant that these final ELGs affect. EPA is continuing to work on the Part B rule and may finalize this provision in the future. Thus, to provide the public with meaningful analysis of the potential overlap and impacts of this final rule with the CCR Part B rule, EPA has conducted a sensitivity analysis that is described further in a memo titled ''Assessment of the economic impacts of the final revised Steam Electric ELGs relative to an alternative baseline including the CCR Part B Rule'', (DCN SE09360). For more information on the CCR Part B rule and accompanying background documents, visit *www.regulations.gov* Docket EPA–HQ–OLEM–2019–0173.

F. Scope of the Final Rule

The final rule revises the new, more stringent BAT ELGs and pretreatment standards for existing sources in the 2015 rule that apply to FGD wastewater and BA transport water.

V. Steam Electric Power Generating Industry Description

A. General Description of Industry

EPA provided a general description of the steam electric power generating industry in the 2013 proposed rule, the 2015 rule, the 2019 proposed rule, and has continued to collect information and update that industry profile. The previous descriptions reflected the known information about the universe of steam electric power plants and incorporated final environmental regulations applicable at that time. For the final rule, as described in the Supplemental TDD, Section 3, EPA has revised its description of the steam electric power generating industry (and its supporting analyses) to incorporate major changes such as additional retirements, fuel conversions, ash handling conversions, wastewater treatment updates, and updated information on capacity utilization.[7] The analyses supporting the final rule use an updated baseline that incorporates these changes in the industry. The analyses then compare the effect of the final rule's requirements for FGD wastewater and BA transport water to the effect on the industry (as it exists today) of the 2015 rule's limitations for FGD wastewater and BA transport water.

As described in the Regulatory Impact Analysis, of the 914 steam electric power plants in the country identified by EPA, only those coal-fired power plants that discharge bottom ash transport water or FGD wastewater may incur compliance costs under this final rule. EPA estimates that 108 such plants could have incurred non-zero compliance costs under the 2015 rule but that only 75 plants may incur non-zero compliance costs under this final rule. As described above, this difference is due to plant retirements, fuel conversions, ash handling conversions, wastewater treatment updates, and updated information on capacity utilization discussed in *Changes to Industry Profile for Coal-Fired Generating Units for the Steam Electric Effluent Guidelines Final Rule* (DCN SE08688), but does not include additional changes since this document was developed.

B. Current Market Conditions in the Electricity Generation Sector

Market conditions in the electricity generation sector have changed significantly and rapidly in the past decade. These changes include availability of abundant and relatively inexpensive natural gas, emergence of alternative fuel technologies, and continued aging of coal-fired steam electric power plants. These changes have resulted in coal-fired unit and plant retirements and switching of fuels. The lower cost of natural gas and technological advances in solar and wind power have had a depressive effect on both coal-fired and nuclear-powered generation. (This rule will have no direct effect on the nuclear-powered sector, except as it might affect relative prices through its effects on coal-fired generation.) In the coal-fired sector, the market forces manifest as scaling back coal-fired power generation (including unit and plant closures) at an accelerated rate. The rate of coal capacity retirement is affected by regulations adopted in the last decade (*e.g.,* CCR, CPP, and the 2015 Steam Electric ELG), that are cited by some power companies when they announce unit or plant closures, fuel switching, or other operational changes. Some utilities are also trending toward supplementing or replacing traditional generation with alternative sources. The electric power infrastructure adjusts to these changes and generally trends toward optimal infrastructure and operations to deliver the country's power demand. Some communities experience negative effects, while for others the effects are positive. The negative distributional effects can be particularly difficult for communities affected by company decisions to scale back or retire a plant. Also see Section 2.3 of the RIA.

C. Control and Treatment Technologies

In general, control and treatment technologies for some wastestreams have continued to advance since the 2015 rule. Often, these advancements provide plants with additional ways of meeting effluent limitations, sometimes at a lower cost. For this final rule, EPA incorporated updated information and evaluated several technologies available to control and treat FGD wastewater and BA transport water. See Section VIII of this preamble for details on updated cost information.

1. FGD Wastewater

FGD scrubber systems, either dry or wet, remove sulfur dioxide from flue gas, preventing sulfur dioxide emissions into the air. Dry FGD systems generally do not discharge wastewater, as the water they use evaporates during operation; wet FGD systems do produce a wastewater stream.

Steam electric power plants discharging FGD wastewater currently employ a variety of wastewater treatment technologies and operating/management practices to reduce the pollutants associated with discharged FGD wastewater. As part of the 2015 rule, EPA identified the following types of treatment and handling practices for FGD wastewater:

- Chemical precipitation systems that use tanks to treat FGD wastewater. Chemicals are added to help remove suspended solids and dissolved solids, particularly metals. The precipitated solids are then removed from solution by coagulation/flocculation, followed by clarification and/or filtration. The 2015 rule focused on a specific design that employs hydroxide precipitation, sulfide precipitation (organosulfide), and iron coprecipitation to remove suspended solids and to convert soluble metal ions to insoluble metal hydroxides or sulfides.
- Biological treatment systems that use microorganisms to treat FGD wastewater.

[7] The data presented in the general description continue to reflect some conditions existing in 2009, as the industry survey remains EPA's best available source of information for characterizing operations across the industry.

EPA identified three types of biological treatment systems used to treat FGD wastewater: (1) Anoxic/anaerobic fixed-film bioreactors, which remove nitrogen compounds and selenium, as well as other metals; (2) anoxic/anaerobic suspended growth systems, which remove selenium and other metals; and (3) aerobic/anaerobic sequencing batch reactors, which remove organics and nutrients. The 2015 rule focused on a specific design of anoxic/anaerobic fixed-film bioreactors that employs a relatively long residence time for the microbial processes. The bioreactor design used as the basis for the 2015 rule, with a typical hydraulic residence time of approximately 10 to 16 hours, is referred to in this rulemaking as high residence time reduction (HRTR). The BAT technology basis for the 2015 rule also included chemical precipitation as a pretreatment stage prior to the bioreactor and a sand filter as a polishing step following the bioreactor (*i.e.,* CP + HRTR).

• Thermal evaporation systems that use a falling-film evaporator (or brine concentrator). Following a softening pretreatment step, thermal evaporation systems produce a concentrated wastewater stream and a distillate stream to reduce the volume of wastewater by 80 to 90 percent and also reduce the discharge of pollutants. The concentrated wastewater is usually further processed in a crystallizer, which produces a solid residue for landfill disposal and additional distillate that can be reused within the plant or discharged. These systems are designed to remove the broad spectrum of pollutants present in FGD wastewater to very low effluent concentrations.

• Constructed wetland systems using natural biological processes. These systems involve wetland vegetation, soils, and microbial activity to reduce the concentrations of metals, nutrients, and TSS in wastewater. High temperature, chemical oxygen demand (COD), nitrates, sulfates, boron, and chlorides in the wastewater can adversely affect constructed wetlands' performance. To avoid this, plants typically find it necessary to dilute the FGD wastewater with service water before it enters the wetland.

• Eliminating discharged FGD wastewater. Some plants operate their wet FGD systems using approaches that eliminate the discharge of FGD wastewater. These plants use a variety of operating and management practices to achieve this.

—Complete recycle. Plants that operate in this manner do not produce a saleable solid product from the FGD system (*e.g.,* wallboard-grade gypsum). Because the plants are not selling the FGD gypsum, they are able to allow the landfilled material to contain elevated levels of chlorides, and as a result do not need a separate wastewater purge stream.

—Evaporation impoundments. Some plants in warm, dry climates have been able to use surface impoundments as holding basins from which the FGD wastewater evaporates. The evaporation rate from the impoundments at these plants is greater than or equal to the flow rate of the FGD wastewater plus the rate at which precipitation enters the impoundments; therefore, there is no discharge to surface water.

—FA conditioning. Many plants that operate dry FA handling systems will add water to the FA to suppress dust or improve handling and/or compaction characteristics in an on-site landfill. EPA is not aware of any plants using FGD wastewater to condition ash that will be marketed.

—Combination of wet and dry FGD systems. The dry FGD process involves atomizing and injecting wet lime slurry, which ranges from approximately 18 to 25 percent solids, into a spray dryer. The water in the slurry evaporates from the heat of the flue gas within the system, leaving a dry residue that is removed from the flue gas by a fabric filter (*i.e.,* a baghouse) or electrostatic precipitator (ESP).

—Underground injection. These systems dispose of wastes by injecting them into an underground well as an alternative to discharging wastewater to surface waters.

As part of the proposed rule, EPA added two additional FGD wastewater treatment technologies to the suite of regulatory options that were evaluated in the 2015 rule: Low hydraulic residence time biological reduction (LRTR) and membrane filtration, which are further described below.

• LRTR system. A biological treatment system that targets removal of selenium and nitrate/nitrite using fixed-film bioreactors in smaller, more compact reaction vessels than those used in the biological treatment system evaluated in the 2015 rule (referred to in this rule as HRTR—high residence time biological reduction). The LRTR system is designed to operate with a shorter residence time (approximately 1 to 4 hours, as compared to a residence time of 10 to 16 hours for HRTR), while still removing significant volumes of selenium and nitrate/nitrite. The LRTR technology option selected for this final rule includes chemical precipitation as a pretreatment stage, followed by the bioreactor, then ultrafiltration as a polishing step.

• Membrane filtration. A membrane filtration system typically combines pretreatment for potential scaling agents such as calcium, magnesium, and sulfates, and one or more types of membrane technology (*e.g.,* nanofiltration or reverse osmosis) to remove a broad range of particulate and dissolved pollutants from FGD wastewater. The membrane filtration units may also employ advanced techniques, such as vibration or creation of vortexes, to mitigate fouling or scaling of the membrane surfaces. The membrane filtration technology option considered for this final rule includes a pretreatment stage.

EPA also collected new information on other FGD wastewater treatment technologies, including spray dryer evaporators, direct contact thermal evaporators, zero valent iron treatment, forward osmosis, absorption or adsorption media, ion exchange, electrocoagulation, and electrodialysis reversal. These treatment technologies have been evaluated at full scale or pilot scale, or are being developed to treat FGD wastewater. See Section 4.1 of the Supplemental TDD for more information on these technologies.

2. BA Transport Water

BA consists of heavier ash particles that are not entrained in the flue gas and fall to the bottom of the furnace. In most furnaces, the hot BA is quenched in a water-filled hopper.[8] Many plants use water to transport (sluice) the BA from the hopper to an impoundment system or a dewatering bin system. In both the impoundment and dewatering bin systems, the BA transport water is usually discharged to surface water as overflow from the system, after the BA has settled to the bottom. In both the impoundment and dewatering bin systems, the BA transport water is usually discharged to surface water as overflow from the system, after the BA has settled to the bottom. In addition to wet sluicing to an impoundment or dewatering bin system, the industry also uses the following BA handling systems that generate BA transport water:

• Remote mechanical drag system (remote MDS). These systems use the same processes as wet sluicing to an impoundment or a dewatering bin system to transport bottom ash to a remote MDS. A drag chain conveyor dewaters the bottom ash by pulling it out of the water bath on an incline. The system can either be operated as a closed loop (evaluated during the 2015 rule)[9] or a high recycle rate system. For the high recycle rate system that serves as the basis for BAT in the final rule, plants would be permitted to purge a portion of the wastewater from the system to maintain a high recycle rate, as described in Section VII of this preamble.

• Dense slurry system. These systems use a dry vacuum or pressure system to convey the bottom ash to a silo (as described below for the dry vacuum or pressure system), but instead of using trucks to transport the bottom ash to a landfill, the plant mixes the bottom ash with water (a lower percentage of water compared to a wet sluicing system) and pumps the mixture to the landfill.

As part of the 2015 rule and the final rule, EPA identified the following BA handling systems that do not generate bottom ash transport water.

• Mechanical drag system. These systems operate directly underneath the EGU. The bottom ash is collected in a water quench bath. A drag chain conveyor dewaters the

[8] Consistent with the 2015 rule, boiler slag is considered BA.

[9] Additional treatment may be necessary to maintain a true closed loop system. This additional treatment could include adding a polymer to enhance removal of suspended solids, or membrane filtration of a slip stream to remove dissolved solids.

bottom ash by pulling it out of the water bath on an incline.

- Dry mechanical conveyor. These systems operate directly underneath the EGU. The system uses ambient air to cool the bottom ash in the EGU and then transports the ash out of the EGU on a conveyor. No water is used in this process.
- Dry vacuum or pressure system. These systems transport bottom ash from the EGU to a dry hopper without using any water. Air is percolated through the ash to cool it and combust unburned carbon. Cooled ash then drops to a crusher and is conveyed via vacuum or pressure to an intermediate storage destination.
- Vibratory belt system. These systems deposit bottom ash into a vibratory conveyor trough, where the ash is air-cooled and ultimately moved through the conveyor deck to an intermediate storage destination without using any water.
- Compact submerged conveyor.[10] These systems are located directly underneath the EGU and are designed to reuse slag tanks, ash gates, clinker grinders, and transfer enclosures from the existing wet sluicing systems. The system collects bottom ash from the discharge of each clinker grinder. A series of submerged drag chain conveyors transports and dewaters the bottom ash.

See Section 4.2 of the Supplemental TDD for more information on these technologies.

VI. Data Collection Since the 2015 Rule

A. Information From the Electric Utility Industry

1. Engineering Site Visits

During October and November 2017, EPA conducted seven site visits to plants in five states. EPA selected plants to visit using information gathered in support of the 2015 rule, information from industry outreach, and publicly available plant-specific information. EPA re-visited four plants that were previously visited in support of the 2015 rule because they had recently conducted, or were currently conducting, FGD wastewater treatment pilot studies. EPA also revisited plants that had implemented new FGD wastewater treatment technologies or BA handling systems (after the 2015 rule) to learn more about implementation timing, start-up and operation, and implementation costs. Following the proposal, EPA also conducted five teleconference calls in the spring of 2020. One of these plants was selected for a conference call because it had installed a compact submerged conveyor for management of BA. Two additional plants were selected for a conference call due to installed FGD wastewater technologies that EPA understood could potentially achieve the limitations in the VIP. The final two conference calls were with companies whose plants EPA believed were planning or constructing FGD wastewater technologies that could potentially achieve the limitations in the VIP, based on preliminary information provided by third parties.[11]

The specific objectives of these visits and calls were to gather general information about each plant's operations, pollution prevention and wastewater treatment system operations, ongoing pilot or laboratory scale studies of FGD wastewater treatment, and BA handling system conversions.

2. Data Requests, Responses, and Meetings

Under the authority of Section 308 of the Clean Water Act (CWA) (33 U.S.C. 1318), in January 2018, EPA requested supplemental information from nine steam electric power companies that own coal-fired facilities generating FGD wastewater:

- FGD wastewater characterization data associated with testing and implementation of treatment technologies, in 2013 or later.
- Information on halogen usage to reduce flue gas emissions, as well as data on halogen concentrations in FGD wastewater.
- Projected installations of FGD wastewater treatment technologies.
- Cost information for projected or installed FGD wastewater treatment systems, from bids received in 2013 or later.

EPA selected these nine companies to provide supplemental information because EPA became aware that these companies may be testing, piloting or otherwise investigating new wastewater treatment technologies and EPA was unable to obtain information about these studies on a voluntary basis. After receiving each company's response, EPA met with these companies to discuss the FGD-related data they submitted, other FGD and BA data outside the scope of the request that the company believed to be relevant, and suggestions each company had for potential changes to the 2015 rule with respect to FGD wastewater and BA transport water. EPA used this information to learn more about the performance of new treatment systems, inform the development of FGD wastewater limitations, learn more about plant-specific halogen usage (such as bromide), and obtain information useful for updating cost estimates for installing candidate treatment technologies. As needed, EPA conducted follow-up meetings and conference calls with industry representatives to discuss and clarify these data.

3. Voluntary BA Transport Water Sampling

In December 2017, EPA invited seven steam electric power plants to participate in a voluntary BA transport water sampling program designed to obtain data to supplement the wastewater characterization data set for BA transport water included in the record for the 2015 rule. EPA asked plants to provide analytical data for ash impoundment effluent and untreated BA transport water (*i.e.,* ash impoundment influent). EPA selected the plants based on their responses to its 2010 Questionnaire for the Steam Electric Power Generating Effluent Guidelines (see Section 3.2 of the 2015 TDD). Two plants chose to participate in the voluntary BA sampling program. These data were incorporated into the analytical data set used to estimate pollutant removals for BA transport water.

4. Electric Power Research Institute (EPRI) Voluntary Submission

EPRI conducts studies—funded by the steam electric power generating industry—to evaluate and demonstrate technologies that can potentially eliminate wastestreams or remove pollutants from them. Following the 2015 rule, and prior to the final rule, EPA reviewed 46 reports published between 2011 and 2020 that EPRI voluntarily provided regarding characteristics of FGD wastewater and BA transport water, FGD wastewater treatment pilot studies, BA handling practices, halogen addition rates, and the effect of halogen additives on FGD wastewater. These EPRI reports include those cited by EPRI in their comments on the proposed rule. EPA used information presented in these reports to inform the development of numeric effluent limitations for FGD wastewater and to update methods for estimating the costs and pollutant removals associated with candidate treatment technologies.

5. Meetings With Trade Associations

In May and June of 2018, EPA met with the Edison Electric Institute (EEI), the National Rural Electric Cooperatives Association (NRECA), and the American Public Power Association (APPA). These trade associations represent investor-owned utilities, electric

[10] At proposal, EPA referred exclusively to one specific vendor's compact submerged conveyor technology (submerged grinder conveyors), but is using the more generic term for the technology (compact submerged conveyors) for this final rule because the Agency did not intend to limit its consideration to only one vendor's technology.

[11] In one case this preliminary information was provided by a membrane vendor and in the other the information was provided by a state permitting authority.

cooperatives, and community-owned utilities, respectively. EPA also met with the Utility Water Act Group (UWAG), an association comprising the trade associations above as well as individual electric utilities. EPA met with each of these trade associations separately and together to discuss the technologies and the analyses presented in the 2015 rule and receive information related to reconsidering the 2015 rule. EPA used information from these meetings to update industry profile data (*i.e.,* accounting for retirements, fuel conversions, and updated treatment technology installations). EPA also met with UWAG and EEI to discuss their comments with them after the close of the 2019 proposed rule comment period.

B. Information From the Drinking Water Utility Industry and States

EPA received additional information from the drinking water utility sector and states on the effects of bromide discharges from steam electric power plants on drinking water treatment processes. First, EPA received letters from, and met with, the American Water Works Association (AWWA), the Association of Metropolitan Water Agencies (AMWA), the National Association of Water Companies (NAWC), the Association of Clean Water Administrators (ACWA), and the Association of State Drinking Water Administrators (ASDWA). Second, EPA visited two drinking water treatment plants in North Carolina that have modified their treatment processes to address an increase in disinfection byproduct levels due to bromide discharges from an upstream steam electric power plant. Finally, EPA obtained data on surface water bromide concentrations and data from drinking water monitoring from the two drinking water treatment plants. EPA also obtained existing state data from other drinking water treatment plants from the states of North Carolina and Virginia.

C. Information From Technology Vendors and Engineering, Procurement, and Construction (EPC) Firms

EPA gathered data on availability and effectiveness from technology vendors and EPC firms through presentations, conferences, meetings, and email and phone contacts regarding FGD wastewater and BA handling technologies used in the industry. The data collected informed the development of the technology costs and pollutant removal estimates for FGD wastewater and BA transport water. The EPC firms also suggested potential changes to the 2015 rule.

D. Other Data Sources

EPA gathered information on steam electric power plants from the Department of Energy's (DOE's) Energy Information Administration (EIA), forms EIA–860 (Annual Electric Generator Report) and EIA–923 (Power Plant Operations Report). EPA used the 2017 and 2018 data to update the industry profile, including commissioning dates, energy sources, capacity, net generation, operating statuses, planned retirement dates, ownership, and pollution controls at the EGUs.

EPA conducted literature and internet searches to gather information on FGD wastewater treatment technologies, including information on pilot studies, applications in the steam electric power generating industry, and implementation costs and timelines. EPA also used the internet searches to identify or confirm reports of planned plant and EGU retirements, and reports of planned unit conversions to dry or closed-loop recycle ash handling systems. EPA used this information to inform the industry profile and identify process modifications occurring in the industry.

EPA received information from several environmental groups and other stakeholders following the 2015 rule. These groups provided examples of when, they believed, state permitting authorities had not properly implemented the ''as soon as possible date'' for the new, more stringent BAT requirements in the 2015 rule when issuing permits. EPA also met with these groups after the close of the comment period of the 2019 proposed rule to discuss those organizations' comments.

VII. Final Regulation

A. Description of the Main BAT/PSES Options

EPA analyzed four regulatory options at proposal, the details of which were discussed in the proposed rule (84 FR 64620). For the final rule, EPA evaluated four regulatory options, as shown in Table VII–1. Proposed regulatory options 1, 2, 3, and 4 correspond generally to regulatory options D, A, B, and C in this final rule, respectively, but contain certain differences, as detailed below. Public commenters generally supported three of the regulatory options that EPA proposed, or variants thereof.[12] The availability and achievability of technologies with better pollutant removals, as well as the general lack of public comments supporting proposed regulatory option 1, led EPA to focus updates to the Agency's analysis on the remaining three regulatory options. EPA did not update the analyses for regulatory option D, but rather retained the results of the proposed rule analysis for this option.

EPA is finalizing Option A in the final rule. All four options include the same technology bases for BA transport water, except Option A, which includes a different technology basis for the subcategorized low utilization EGUs and surface impoundments for EGUs permanently ceasing combustion of coal by 2028. In regards to FGD wastewater, Option D is based on chemical precipitation, Options A and B are based on a combination of chemical precipitation and low hydraulic residence time biological treatment, while Option C is based on membrane filtration; the difference between Options A and B is that the former includes three subcategories while the latter does not. Table VII–1 below summarizes the regulatory options considered in this rulemaking. The subcategories identified below are described further in Section VII.C, below.

[12] Some commenters also supported retaining the 2015 rule.

TABLE VII–1—MAIN REGULATORY OPTIONS

Wastestream	Subcategory	Technology basis for the BAT/PSES regulatory options			
		D	A (final rule)	B	C
FGD Wastewater	N/A	Chemical precipitation	Chemical precipitation + low hydraulic residence time biological treatment.	Chemical precipitation + low hydraulic residence time biological treatment.	Membrane filtration.
	High FGD flow plants	NS	Chemical precipitation	NS	NS.
	Low utilization EGUs	NS	Chemical precipitation	NS	NS.
	EGUs permanently ceasing the combustion of coal by 2028.	NS	Surface impoundments.	NS	NS.
FGD Wastewater Voluntary Incentives Program (Direct Dischargers Only)					
BA Transport Water	N/A	High recycle rate systems.	High recycle rate systems.	High recycle rate systems.	High recycle rate systems.
	Low utilization EGUs	NS	Surface impoundments +BMP plan.	NS	NS.
	EGUs permanently ceasing the combustion of coal by 2028.	NS	Surface impoundments.	NS	NS.

NS = Not Subcategorized.

Note: The table above does not present subcategories included in the 2015 rule because EPA did not reopen the subcategorization of oil-fired units or units with a nameplate capacity of 50 MW or less.

1. FGD Wastewater

Under Option D, EPA would establish BAT limitations and PSES for mercury and arsenic based on chemical precipitation. Under Options A and B, EPA would establish BAT limitations and PSES for mercury, arsenic, selenium, and nitrate/nitrite based on chemical precipitation followed by LRTR and ultrafiltration. Option A contains three subcategories. The first subcategory under Option A is for plants with high FGD flows (defined as greater than four MGD). For these plants, Option A would establish limitations and standards for mercury and arsenic based on chemical precipitation. The second subcategory under Option A is for low utilization boilers with a capacity utilization rating (CUR) of less than 10 percent per year. This is a change from the proposed subcategory, which was based on a cutoff of 876,000 MWh utilization. For those low utilization EGUs, Option A would require mercury and arsenic limitations based on chemical precipitation.[13] The third subcategory under Option A is for EGUs permanently ceasing the combustion of coal by December 31, 2028. This is a change from the proposed subcategory, which only included EGUs retiring by December 31, 2028. For this subcategory of EGUs, Option A would establish BAT limitations equal to BPT limitations for TSS based on the use of surface impoundments with a best management plan for minimizing discharges. For Options A, B, and D, EPA would establish voluntary incentives program limitations for mercury, arsenic, selenium, nitrate-nitrite, bromide, and TDS based on membrane filtration preceded by pretreatment (*i.e.,* chemical precipitation).[14] For Option C, EPA would establish BAT limitations and PSES for mercury, arsenic, selenium, nitrate/nitrite, bromide, and TDS based on membrane filtration, which would be applicable to all steam electric power plants (except if they qualify for the subcategories contained in the 2015 rule). For Options B and C, the final rule preamble evaluates alternative technology bases for all units to address comments that the proposed rule preamble did not evaluate technology alternatives for high flow plants, retiring units, or repowering units.

2. BA Transport Water

Under all options described above, the final rule controls the discharge of pollutants from BA transport water by establishing daily BAT limitations and PSES on the volume of BA transport water that can be discharged, based on high recycle rate systems. A high recycle rate system is a recirculating, wet ash handling system that periodically discharges (purges) a small portion of the process wastewater from its system. This is a correction of the proposal, in which the Agency in some instances identified ''dry handling or high recycle rate systems'' as the proposed technology basis. While plants are free to use dry handling technologies to achieve the limitations in the rule, the final rule limitations are based on high recycle rate systems (as were the proposed limitations).[15] The only difference between Options A through D for BA transport water is that Option A includes two subcategories. The first subcategory under Option A is for low utilization EGUs with a CUR of less than 10 percent per year. This is a change

[13] As explained above, EPA did not propose to revise BAT limitations or PSES for oil-fired EGUs and/or small EGUs (50 MW or smaller).

[14] The proposal relied on data from three data sets to establish limits for the VIP membrane technology—two using chemical precipitation as the pretreatment technology for a portion of the pilot and one using chemical precipitation as the pretreatment for some portions of the pilot and only microfiltration for other portions of the pilot. However, the cost estimates for membrane filtration technology at proposal were based on microfiltration (or comparable large particle filter) pretreatment technology for plants without existing FGD wastewater treatment, which is less costly than chemical precipitation. The final rule limits are based entirely on those data using chemical precipitation pretreatment, and the final rule costs are also based on chemical precipitation as pretreatment. See Section XIII for further discussion on the use of data to establish limits.

[15] Public comments focused on the appropriateness of high recycle rate systems and did not discuss or recommend dry handling or other zero discharge systems as the technology basis, which is consistent with EPA's intent that the technology basis be high recycle rate systems alone, rather than include dry handling or high recycle rate systems.

from the proposed subcategory which was based on a cutoff at 876,000 MWh utilization. For these low utilization EGUs, Option A would establish BAT limitations for BA transport water equal to the BPT limitations based on gravity settling in surface impoundments to remove TSS.[16] Such plants would also be required to develop and implement a BMP plan to minimize the discharge of pollutants from BA transport water. Because POTWs are designed to treat conventional pollutants such as TSS, TSS is not considered to pass through, and EPA would establish PSES based on the inclusion of a BMP plan only. For additional information on pass through analyses, see Section VII(C) of the 2015 rule preamble.

The second subcategory under Option A is for EGUs permanently ceasing the combustion of coal by December 31, 2028. This is a change from the proposed subcategory, which only included retiring EGUs. For this subcategory of EGUs in Option A, EPA would establish BAT limitations equal to BPT limitations for TSS, based on gravity settling in surface impoundments. For Options B and C, EPA evaluated high recycle rate systems for all units to address comments that technology options should have considered alternatives for retiring units or repowering units. This is a change from the original regulatory options presented at proposal.

Finally, EPA is not finalizing the proposed definitional change to exclude water remaining in a tank-based high recycle rate system when the plant permanently ceases coal combustion. Instead, facilities with high recycle rate systems may properly discharge this water as BA purge water subject to the BPJ limits established by the permitting authority, as discussed in section XIV(A)(2) of this preamble.

B. Rationale for the Final BAT

In light of the criteria and factors specified in CWA sections 304(b)(2)(B) and 301(b)(2)(A) (see Section IV of this preamble), EPA is establishing BAT effluent limitations based on the technologies described in Option A. EPA's selection of the generally applicable BAT (LRTR plus chemical precipitation for FGD wastewater and high recycle rate for BA transport water) in Option A is independently supported by this rulemaking record and not dependent upon the subcategories that are also included in Option A.[17] EPA's rationale for the final rule's limitations are discussed below. EPA is not finalizing the bromide sub-options proposed in 2019 and, as a result, this section does not include discussion of those sub-options. A more complete discussion of site-specific water quality-based effluent limitations for bromides provided in Section XIV(C) of this preamble.

1. FGD Wastewater

This final rule identifies treatment using chemical precipitation followed by a low hydraulic residence time biological treatment, including ultrafiltration as the BAT technology basis for control of pollutants discharged in FGD wastewater. More specifically, the technology basis for BAT includes the same chemical precipitation system described in the 2015 rule, which employs equalization, hydroxide and organosulfide precipitation, iron coprecipitation, and removal of suspended and precipitated solids. This chemical precipitation system is followed by a low hydraulic residence time, anoxic/anaerobic biological treatment system designed to remove heavy metals, selenium, and nitrate-nitrite.[18] The LRTR bioreactor stage is followed by ultrafiltration to remove suspended solids, including colloidal particles, exiting the bioreactor.

Both chemical precipitation and biological treatment are well-demonstrated technologies that are available to steam electric power plants for use in treating FGD wastewater. In addition to the 39 plants using chemical precipitation that were mentioned in the 2015 rule preamble, plants have installed, or have begun installation, of such systems, and have taken steps to cease using surface impoundments to treat their FGD wastewater. This trend is expected to continue in response to the April 11, 2021 cease receipt of waste date in the CCR Part A final rule. In addition, thousands of industrial plants nationwide have used chemical precipitation for the last several decades, as described in the 2015 rule record. Ultrafilters downstream of the biological treatment stage are designed to remove suspended solids—*i.e.,* any reduced, insoluble selenium, mercury, or other particulates—exiting the bioreactor. Ultrafiltration uses a membrane with pore size small enough to remove these smaller suspended particulates after the biological treatment stage, but still much larger than the pore size of the membrane filtration technology (which uses nanofiltration or reverse osmosis). Membrane filtration is the basis for Option C and the VIP under Options A and B, and is designed to remove dissolved metals and inorganics (*e.g.,* nutrients, bromides, etc.). Unlike the nanofiltration and reverse osmosis technologies included as the technology in Option C and the VIP, ultrafilters do not generate a brine that would require encapsulation with FA or other disposal techniques. The types and quantities of solids removed by the ultrafilter in the CP+LRTR treatment system are similar to the particulates captured in other multimedia filters (*e.g.,* sand filters), or settled out in HRTR or surface-impoundment-based systems with longer residence times. These systems do not result in the same non-water quality environmental impacts that are associated with the brine generated by the membrane filtration technology.

After accounting for the changes in the industry described in Section V of this preamble, at the time *Changes to Industry Profile for Coal-Fired Generating Units for the Steam Electric Effluent Guidelines Final Rule* (DCN SE08688) was developed 15 steam electric power plants with wet scrubbers that discharge FGD wastewater are expected to already have technologies in place that can meet the final BAT effluent limitations for FGD wastewater.[19] Of these 15 plants, seven are currently operating anoxic/anaerobic biological treatment designed to substantially reduce nitrogen compounds and selenium in their FGD wastewater. These biological treatment

[16] Although TSS is a conventional pollutant, regulation of TSS in this final rule is intended as regulation of the particulate form of toxic metals through the use of an indicator pollutant.

[17] If any provisions of this rule are reviewed and vacated by a court, it is EPA's intent that as many portions of this rule remain in effect as possible.

[18] Similar to the 2015 rule and consistent with discussions with engineering firms and plant staff, EPA assumed that in order to meet the limitations and standards, plants would take steps to optimize wastewater flows as part of their operating practices (by reducing the FGD purge rate or recycling a portion of their FGD wastewater back to the FGD system), where the FGD system metallurgy can accommodate an increase in chlorides. See Section 5.2.1 of the Supplemental TDD.

[19] Two plants will retire or cease burning coal prior to 2028. The remaining 13 plants represent 14 percent of steam electric power plants with wet scrubbers. EPA notes that 35 percent of all steam electric power plants with wet scrubbers use FGD wastewater management approaches that eliminate the discharge of FGD wastewater altogether. But, although these technologies (described above in Section V.C.1) may be available to some plants, none of them are available nationwide, and thus do not form the basis for the final BAT limitation. For example, evaporation impoundments are only practical in certain climates. Similarly, complete recycle FGD systems are only available at plants with appropriate FGD metallurgy. Facility conditions and availability of these technologies have not materially changed since the 2015 rule, and EPA thus reaffirms that these technologies are not available nationwide and are not a basis for the final BAT limitations.

systems are a mix of low and high hydraulic residence time.[20] EPA identified an eighth plant that previously operated an anoxic/anaerobic biological treatment system, but more recently installed a thermal system for the treatment of FGD wastewater. See DCN SE08964. A ninth plant is also operating an anoxic/anaerobic biological treatment system, but is expected to retire all generating units by 2028. Another six steam electric power plants are operating thermal treatment systems for FGD wastewater; one of these is expected to retire all generating units by 2028.

In the 2015 rule, EPA rejected three availability arguments made against biological treatment. EPA solicited comment on retaining its 2015 findings concerning biological treatment, and no new information was provided by commenters suggesting that EPA's 2015 analysis was incorrect. Instead, EPA has continued to confirm its prior findings concerning the availability of biological treatment. First, EPA rejected the argument that maintaining a biological system over the long run is infeasible. Of the nine full-scale systems mentioned above, three plants have used the biological technology for more than a decade, with varying operating conditions, climate conditions, and coal sources, to treat FGD wastewater. Many pilot tests of the biological technology have been conducted at various plants, and data from these tests demonstrate that, even in the face of major upsets during chemical precipitation, the biological stage continues to reduce selenium and nitrogen.

In the 2015 rule, EPA also rejected the argument that selenium removal efficacy is subject to the type of coal burned and coal-switching. Plants have continued to operate biological treatment systems while switching coals and, in those cases, have maintained selenium removal. Furthermore, at least three pilot- and one full-scale system have now been successfully run or installed to treat FGD wastewater at plants burning subbituminous coals or blends of bituminous and subbituminous coals, encompassing both HRTR and LRTR technologies.

Finally, in the 2015 rule, EPA rejected arguments that cycling plants up and down in production, and even out of service for various periods of time, would affect the ability of plants to meet the effluent limitations. Industry provided data for two plants showing that they successfully operated biological systems while cycling operations and undergoing shutdowns in the years since the 2015 rule.

While the rationale above applies to both CP+HRTR and CP+LRTR technologies, EPA is establishing BAT based on the CP+LRTR technologies rather than the CP+HRTR technologies. Some commenters pointed out that CP+HRTR technologies are still available and economically achievable,[21] and argued that EPA is thus obligated to select CP+HRTR. EPA agrees that CP+HRTR continues to be available and economically achievable; however, after considering the statutory factors in section 304 of the CWA (as EPA is required to do), EPA does not find that CP+HRTR is the *Best* Available Technology Economically Achievable. CP+LRTR pollutant reductions are comparable to CP+HRTR pollutant reductions,[22] are less costly, and require significantly less process or plant footprint modifications than the CP+HRTR option.

As explained in Section XIII of this preamble, the long-term averages forming the basis of the selenium limitations for CP+LRTR and CP+HRTR are similar, and the higher selenium limitations for the CP+LRTR systems are largely driven by increased short-term variability around that average, rather than a meaningful difference in long-term pollutant removals.[23] Some commenters argued that CP+LRTR pollutant reductions are not comparable to HRTR pollutant reductions. EPA disagrees with these commenters and rejects this characterization for several reasons. First, these comments appear to be limited to a single pollutant: Selenium. When comparing the limitations of all four regulated pollutants (mercury, arsenic, selenium, and nitrate/nitrite) in the 2015 rule to this final rule, some limitations are more stringent, while others are less stringent.[24] Some commenters expected the limitations and long-term averages for all constituents to be less stringent with CP+LRTR as compared to CP+HRTR due to the shorter residence time. This is not the case. Indeed, some limitations become more stringent due, in part, to the different design of CP+LRTR systems, which include ultrafiltration in the prefabricated systems delivered for pilot studies and full-scale installations to date.[25] Thus, to the extent that commenters relied on the limitations and long-term averages to make this argument, EPA concludes it is reasonable and allowed by the Act to consider removals as a whole, which results in comparable removals for the suite of pollutants in FGD wastewater discharges.

Second, even taking selenium in isolation, EPA disagrees that a simple comparison of numeric limitations and long-term averages is the only way to identify pollutant removals attainable through the application of BAT. It can be misleading to look at the numeric limitations in isolation. Instead, EPA has considered pollutant concentrations in treated effluent as compared to those in raw FGD wastewater. In the 2015 rule TDD, EPA estimated the average selenium concentration in untreated FGD wastewater as 3,130 ug/L. Using this for comparison demonstrates that both the CP+LRTR and CP+HRTR treatment trains remove more than 99 percent of selenium initially present in FGD wastewater. Even were EPA to examine incremental removals, when compared to the performance of surface impoundments under existing BPT regulations, both treatment trains would remove more than 99 percent of the selenium remaining after physical settling. EPA also notes that both the long-term average and the actual limitations for selenium in this final rule are more stringent than they were in the proposed rule. In summary, CP+LRTR and CP+HRTR are two very effective selenium removal technologies. Between these two, EPA selected as BAT the technology that is also less costly and requires significantly less modification of a plant's process or footprint.

[20] In addition to these seven plants, some plants employ other types of biological treatment. Some of these systems are sequencing batch reactors (SBR), which treat nitrogen and can be operated to remove selenium. The SBR systems currently operating at steam electric power plants, however, would likely not be able to meet the limitations discussed in the final rule without reconfiguration.

[21] Without support, some commenters also suggested that CP+LRTR and CP+HRTR are the same technologies. A more detailed response is provided in *Response to Public Comments for Revisions to the Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category* (DCN SE08615).

[22] For example, while the effluent from CP+LRTR is more variable than from CP+HRTR, both technologies achieve long-term average effluent concentrations for selenium lower than 20 mg/L.

[23] Courts have recognized that while section 301 of the CWA is intended to help achieve the national goal of eliminating the discharge of all pollutants, at some point the technology-based approach has its limitations. *See Am. Petroleum Inst.* v. *EPA,* 787 F.2d 965, 972 (5th Cir. 1986) (''EPA would disserve its mandate were it to tilt at windmills by imposing BAT limitations which removed de minimis amounts of polluting agents from our nation's waters [. . .]'').

[24] While these four indicator pollutants are regulated, the record for the 2015 rule and current final rule both indicate reductions in many other pollutants.

[25] To the extent that limits become more stringent due to the use of data from pilot studies with chemical precipitation systems designed to meet the 2015 rule limits prior to the biological treatment components, CP+HRTR limits would also be expected to become more stringent to some extent.

CP+LRTR is less costly than the CP+HRTR technology selected as the BAT basis of the 2015 rule. Compared to the baseline of the 2015 rule, CP+LRTR is estimated to save approximately $52 million per year in after-tax costs to industry [26] While the CP+HRTR costs are economically achievable, EPA finds those costs unreasonable for a treatment technology that would result in marginal additional reductions in selenium and that would result in marginal increases in other pollutants, such as mercury.

CP+LRTR requires fewer process changes than CP+HRTR. Compared to HRTR, LRTR installations are less complex and require fewer modifications to a plant's footprint. The HRTR systems used as the basis for BAT in the 2015 rule were large, concrete tanks, which, along with their associated piping and pumping and control equipment, would be fabricated on site. By contrast, new LRTR systems have smaller footprints, and in many cases come prefabricated as modular components, including the ultrafilter polishing stage, and require little more than a concrete foundation, electricity supply, and piping connections. For further public comments and responses regarding HRTR and LRTR, see DCN SE08615.

a. Membrane Filtration

Except for plants participating in the VIP discussed below, the final rule does not establish BAT limitations based on membrane filtration (Option C). EPA received many comments arguing both in favor and against the use of membrane filtration as BAT for treatment of FGD wastewater, including comments on the technology's availability, costs, economic achievability, and non-water quality environmental impacts. With respect to availability, some commenters argued that the technology is available, citing pilot studies, three full-scale foreign installations,[27] use in other industrial sectors, and vendor claims of product performance. Other commenters argued that this technology is not available due to uncertainties regarding the extent of pretreatment required to ensure reliable treatment performance and management of the resulting brine. With respect to costs, some commenters argued that costs were overestimated due to decreasing EGU use, resulting in reduced flow volumes that require treatment; while other commenters argued that costs were underestimated due to incomplete pretreatment costs (*e.g.,* microfiltration rather than full chemical softening), failure to analyze costs using maximum design flows, missing cost components, and underestimated ash needs for brine management. With respect to economic achievability, some commenters pointed to uncertainties about the costs and asserted that membrane filtration would not be economically available for some plants. Finally, with respect to non-water quality environmental impacts, some commenters argued that many plants currently make beneficial use of some or all of their FA (a practice that could be hindered if plants use membrane filtration); while other commenters argued that beneficial use of FA would not be affected by use of membrane filtration and that EPA failed to evaluate alternative brine management methods.

As the summary of comments presented above makes clear, EPA received a wide range of comments on membrane filtration technology. After carefully considering the statutory factors for BAT and available data, EPA is rejecting membrane filtration as BAT. First, based on significant information gaps and uncertainties in EPA's record, EPA cannot conclude that membrane filtration is technologically available nationwide, as required by the CWA. Second, the Agency finds that, on a nationwide basis, membrane filtration entails unacceptable non-water quality environmental impacts associated with management of the membranes' byproduct, brine. Finally, while the factors above are sufficient to reject membrane filtration as BAT, EPA also notes that membrane filtration would result in higher costs to industry.

At the time of the 2015 rule, EPA had no record of information about membrane filtration technologies. Since that time, EPA collected information on several types of membrane filtration technologies. Microfiltration and ultrafiltration membranes are used primarily for removing suspended solids, including colloids. Nanofiltration, reverse osmosis, forward osmosis, and electrodialysis reversal (EDR) membranes are used to remove a broad range of dissolved pollutants. Each of these membrane filtration technologies generate both a treated effluent and a residual wastestream that requires further treatment or disposal. Microfiltration and ultrafiltration generate a solid waste residual, which is disposed of. Nanofiltration, reverse osmosis, forward osmosis, and EDR all produce a concentrated brine residual which must be disposed of. At proposal, EPA considered nanofiltration, reverse osmosis, forward osmosis, and EDR membranes and proposed effluent limitations for the VIP option based specifically on a combination of microfiltration and reverse osmosis membrane technologies.

Other industries use a variety of different types of membrane filtration technologies. EPA met with vendors that have installed membrane systems in several industries, including textiles,[28] chemical manufacturing,[29] mining,[30] and agriculture.[31] Within the steam electric power generation industry, reverse osmosis membranes are a technology used for treating EGU makeup water and cooling tower blowdown, and EDR membranes are a technology used for treating ash impoundment discharges.[32] Nevertheless, it cannot be assumed that membrane filtration technology is transferable, and the information presented below demonstrates that, despite its use in other industries, there may be technical issues constraining its use for treating FGD wastewater.

EPA's record demonstrates that no domestic steam electric power plants have installed full-scale nanofiltration, reverse osmosis, or EDR membrane filtration systems to remove dissolved pollutants in FGD wastewater.[33] A vendor email cited by some commenters erroneously asserted that a full-scale installation of such a technology had begun at Georgia Power's Plant Scherer. Follow-up discussions with staff working on that project revealed that the plant is not installing a permanent full-scale membrane technology to treat FGD wastewater, but is performing a long-term pilot of both membrane filtration and biological treatment systems to

[26] Due to the final rule's changed compliance dates, this estimate also includes discounting which may overstate the savings.

[27] The record at proposal included three full-scale foreign installations.

[28] ERG. 2020. Final Notes from Call with Dupont. DCN SE08618.

[29] ERG. 2020. Final Notes from Call with Dupont. DCN SE08618.

[30] ERG. 2019. Final Notes from Meeting with Pall Water. (5 March). EPA–HQ–OW–2009–0819–7613; Wolkersdorfer, Christian *et al.* 2015. Intelligent mine water treatment—recent international developments. (21 July). DCN SE08581; U.S. EPA. 2014. Office of Superfund and Remediation and Technology Innovation. Reference Guide to Treatment Technologies for Mining-Influenced Water. EPA 542–R–14–001. (March). DCN SE08582.

[31] CH2M Hill. 2010. Review of Available Technologies for the Removal of Selenium from Water. (June). DCN SE08583.

[32] EPRI (Electric Power Research Institute). 2015. *State of Knowledge: Power Plant Wastewater Treatment—Membrane Technologies.* August. 3002002143.

[33] Ultrafiltration has been installed as part of several FGD wastewater treatment systems in the U.S. and is included as a back-end component of the CP+LRTR BAT established in this final rule; however, these membranes are only capable of removing suspended solids, not dissolved pollutants.

evaluate possible compliance alternatives under planned future changes to the plant (see DCN SE08619). The State of Maryland also informed EPA that three GenOn plants planned to install technologies to meet the 2015 rule VIP effluent limitations. In a teleconference call held to learn more about these plans, GenOn staff stated that one of these plants (Dickerson) had announced its retirement, but confirmed that the other two (Chalk Point and Morgantown) are currently considering reverse osmosis systems (see DCN SE08614).[34] EPA views GenOn's consideration of membrane technology similarly to the bids and engineering reports for full-scale systems that the agency was aware of at proposal. As discussed at proposal, the sources of the bids and engineering reports expressed concerns about operating a technology on this wastewater that would be the first of its kind in the U.S. While bids, engineering reports, and one company considering potential membrane installations are important considerations in evaluating the availability of a technology, they do not demonstrate that the technology is available under the CWA. Because no full-scale membrane filtration system for treatment of FGD wastewater is yet operating domestically, EPA carefully considered available data from pilots, foreign installations, and other industries.

With respect to pilots, EPA is aware of at least 19 previous or ongoing domestic pilot studies and one foreign pilot study of FGD wastewater treatment using four different membrane filtration technologies.[35] All of these technologies first used some form of suspended solids removal, such as microfiltration or chemical precipitation. This pretreated FGD wastewater was then fed into either nanofiltration, reverse osmosis, or EDR membrane filtration systems. For several of the pilot studies, the resultant brines were mixed with FA and/or lime to test the potential for encapsulation of the concentrated brine wastestream.[36]

EPA is aware of 12 foreign installations: One in South Korea, one in Finland, and 10 in China. EPA's rulemaking record contains very limited information about these plants. When EPA contacted Doosan about its system in South Korea, the company declined to share plant operation, maintenance, or performance information, and indicated that it was not interested in the U.S. market. Similarly, EPA contacted Lenntech regarding its system in Finland, but has received no information about this plant's operation, maintenance, or performance.

Regarding the plants in China, EPA is generally aware that two of the plants employ pretreatment and a combination of reverse osmosis and forward osmosis. But EPA was not able to obtain further information about the specific configurations, maintenance, or long-term performance of these two systems.[37] EPA also has no information about how the resultant brine is being managed or disposed of. Furthermore, the company that sold these two systems has since ceased commercial operations.[38] EPA is aware that two other plants operating in China employ pretreatment followed by nanofiltration and reverse osmosis. As with the systems above, the vendors declined to provide plant operation, maintenance, or performance information to EPA. The remaining Chinese systems were developed by DuPont, which met with EPA after proposal to provide what limited information was available. While DuPont has sold six systems to Chinese plants to treat FGD wastewater, the company did not have access to operation, maintenance, or performance data for these systems.

Due to travel restrictions in place during the COVID–19 pandemic in spring and summer 2020, EPA representatives were unable to travel abroad to visit these plants. Because the vendor companies either ceased operations or declined to provide EPA with information about the operation, maintenance, or performance of their membrane filtration products, and EPA's lack of regulatory authority to compel the production of information from foreign plants, EPA's record has significant information gaps on the operation and performance of membranes used to treat FGD wastewater.

With respect to the use of membrane filtration in other industries and in connection with non-FGD power plant wastestreams, given what is known about FGD wastewater, EPA focused its evaluation on the more challenging wastewaters in other industries. In the mining industry, reverse osmosis is employed to treat mine-influenced water. For example, since 2006, the Bingham Canyon Water Treatment Plant (BCWTP) at the Kennecott South Superfund site treats 3,200 gallons per minute of mine-influenced water and has maintained a TDS removal efficiency of 98.9 percent, given an expected influent TDS of approximately 2,000 mg/L.[39] Mining wastewaters demonstrate some similar challenges seen in FGD wastewaters, but there are also differences in the two wastestreams. For example, both are highly scaling in gypsum,[40] but as the BCWTP example demonstrates, mining influent TDS concentrations can be an order of magnitude (or more) lower than the TDS concentrations found in some FGD wastewater streams.[41] In the mining industry, brine generated by reverse osmosis is typically disposed of through evaporation, deep well injection, or ocean discharge.[42]

In the oil and gas industry, there are several applications and opportunities for membrane filtration, recently summarized by Adham et al. (2018).[43] For example, nanofiltration is used worldwide for sulfate removal in offshore oil and gas operations. Reverse osmosis is the standard treatment for coal seam gas water in Australia, where regulations restrict underground

[34] The company indicated that plans for both units will depend on the requirements of this final rule, and also, for one of its units, changing electricity demand.

[35] Two of these pilot studies were completed in 2014, but information about these tests was not provided to EPA prior to the 2015 rule.

[36] The record includes additional encapsulation studies and data not explicitly linked to these 19 pilots.

[37] This is in contrast to biological treatment systems for which EPA has long-term performance data. Although LRTR and HRTR systems differ in their configuration (*e.g.,* residence time), the underlying performance has been well demonstrated on this wastewater.

[38] DCN SE08034 contains a story summarizing the forward osmosis company Oasys ceasing commercial operations.

[39] U.S. EPA (Environmental Protection Agency). 2014. *Reference Guide to Treatment Technologies for Mining-Influenced Water.* EPA 542–R–14–001. Office of Superfund Remediation and Technology Innovation. March. Available online at: *https://clu-in.org/download/issues/mining/Reference_Guide_to_Treatment_Technologies_for_MIW.pdf* (DCN SE09084).

[40] Patel, S. 2020. Rethinking Wastewater Treatment for Better FGD Economics. *Power Magazine.* May 31. Available online at: *https://www.powermag.com/rethinking-wastewater-treatment-for-better-fgd-economics/ (DCN SE09085).*

[41] The FGD wastewater treatment system pilot tests that were highlighted in the petitions for reconsideration of this rule illustrate this point. EPRI. 2017. *Biological Treatment of Flue Gas Desulfurization Wastewater at a Power Plant Burning Powder River Basin Coal—Pilot Demonstration with the ABMet Technology.* EPA–HW–OW–2009–0819–6480.2.

[42] U.S. EPA (Environmental Protection Agency). 2014. *Reference Guide to Treatment Technologies for Mining-Influenced Water.* EPA 542–R–14–001. Office of Superfund Remediation and Technology Innovation. March. Available online at: *https://clu-in.org/download/issues/mining/Reference_Guide_to_Treatment_Technologies_for_MIW.pdf (DCN SE09084).*

[43] Adham, S., Hussain, A., Minier-Matar, J., Janson, A., Sharma, R. 2018. *Membrane applications and opportunities for water management in the oil and gas industry. Desalination.* 440. 2–17. Available online at: *https://www.sciencedirect.com/science/article/pii/S0011916417321380 (DCN SE09087).*

injection. Reverse osmosis is also a standard treatment for desalination (*i.e.,* TDS removal) in this industry. In contrast to the uses for mining wastewaters discussed above, the oil and gas industry's use of membranes typically involves wastewaters with TDS concentrations at least as high as those found in FGD wastewater, but with different scaling potential. Within the oil and gas industry, underground injection, evaporation, and ocean discharge are common disposal methods for the resulting brine.

Membrane filtration technologies are also employed for other, non-FGD wastestreams at steam electric power plants. Reverse osmosis is a generally accepted, standard practice for treating EGU makeup water at steam electric power plants.[44] EGU makeup water is often treated groundwater or surface water which would, therefore, not have TDS or scaling potential similar to FGD wastewater. Reverse osmosis has also been used to treat cooling tower blowdown at several coal-fired and non-coal-fired steam electric power plants. According to one reverse osmosis technology vendor, cooling tower blowdown has similar scaling potential to FGD wastewater. EPA does not have information in this record to either confirm this statement or to extrapolate this finding to the industry more broadly; however, scaling is a known issue for cooling tower water, which is ultimately blown down.[45] The vendor that made this statement sold the system, comprising microfiltration followed by reverse osmosis, to a plant to treat high TDS cooling tower blowdown that was corroding its brine concentrators (thermal systems). This membrane filtration system was able to replace the brine concentrators, resulting in a reduction of parasitic load in cooling tower blowdown and substantial cost savings.[46] Finally, EDR has also been used at a power plant in South Korea to treat ash transport water for further use as FGD makeup water.[47] While ash transport water can have high variability, there is no information in the record suggesting that ash transport water has scaling potential or TDS concentrations similar to FGD wastewater.

After evaluating all available information on membrane filtration, EPA has concluded that critical uncertainties remain regarding operation of the suite of membrane filtration technologies that the Agency evaluated as the basis for Option C. With respect to data from the pilot studies, these studies focused on membrane technologies intended to remove dissolved pollutants. Several studies of the technologies designed to remove dissolved pollutants either did not include a second stage of membrane filtration (*i.e.,* a reverse osmosis polishing stage, which electric utilities and vendors indicated would need to be part of any potential future membrane filtration system that they would consider installing to operate with a discharge) or provided only summaries of effluent data because of nondisclosure agreements between EPRI, treatment technology vendors, and/or the plant operators. Both of these limitations prevented EPA from fully analyzing the pollutant removal efficacy and effluent variability associated with the treatment systems used in those studies. The pilot tests that omitted the second stage of membrane filtration do not provide sufficient insight into the performance capabilities of the membrane technology because the initial membrane filtration step (*e.g.,* a nanofilter unit) does not by itself remove the broad range of pollutants as effectively as would be achieved by the two-stage configuration. The pilot tests, for which EPA has only summary-level data, provide summary statistics, such as the observed range of pollutant concentrations, average influent and effluent pollutant concentrations, and duration of the testing periods. EPA, however, lacks the individual daily sample results that are needed to fully evaluate treatment system operation and calculate effluent limitations. Complete data sets were only available from three pilot plants using a single vendor's reverse osmosis technology.[48] EPA further finds that use of data from treatment of non-FGD wastewaters in this and other industries would not be appropriate because the other wastewaters that are currently being treated by membrane filtration systems at full scale differ in variability, scaling potential, TDS, or a combination thereof.

Some commenters argue that certain data limitations are not sufficient to reject membrane filtration systems as BAT for FGD wastewater because such systems can be operated as no discharge systems. EPA agrees that membrane filtration systems can be operated as no discharge systems; however, due to the significant data gaps in the record, EPA cannot conclude that such systems can operate continuously as no discharge systems for FGD wastewater, nor that they can operate as no-discharge systems on FGD wastewater in all cases, nor that their continuous operation would not result in other unacceptable non-water quality impacts. Staff working on one current membrane filtration pilot indicated that, with additional flexibility to reuse membrane filtration permeate as EGU makeup water, the plant may consider a no-discharge alternative in the future. At present, however, the pilot is being conducted to determine the feasibility of operating a membrane filtration system with a discharge, including the evaluation of pretreatment and post-treatment to comply with the proposed VIP mercury limitations. Similarly, while GenOn indicated that it is considering installing membrane filtration systems that would recirculate permeate as a no discharge system, GenOn acknowledged that at least some discharges would eventually be necessary, for example when the EGU is not operating or is being retired.

While the limited information in EPA's record on foreign installations may suggest that these systems operate as no-discharge systems, EPA does not have information on these systems' long-term performance to confirm that they continually operate as no-discharge systems, whether there are some periods during which discharges occur, or whether their operation may result in other unacceptable non-water quality impacts. Furthermore, the information that EPA does possess on foreign installations indicates that pretreatment before membrane filtration is a challenge due to FGD wastewater

[44] EPRI (Electric Power Research Institute). 2015. *State of Knowledge: Power Plant Wastewater Treatment—Membrane Technologies.* August. 3002002143.

[45] Daniels, D.G. 2015. Winning the Cooling Tower Trifecta: Controlling Corrosion, Scale, and Microbiological Fouling. *Power Magazine.* August 21. Available online at: *https://www.powermag.com/winning-the-cooling-tower-trifecta-controlling-corrosion-scale-and-aqmicrobiological-fouling/* (DCN SE09088).

[46] Drake, M., Wise, S., Charan, N., and Venkatadri, R. 2012. ZLD Treatment of Cooling Tower Blowdown with Membranes. *WaterWorld.* December. Available online at: *https://www.watertechonline.com/process-water/article/16211541/zld-treatment-of-cooling-tower-blowdown-with-membranes (DCN SE09089).*

[47] *https://www.ge.com/in/sites/www.ge.com.in/files/GE_solves_ash%20pond_capacity_issue.pdf (DCN SE09090).*

[48] These three data sets served as the basis of the final VIP limitations, described further in Section XIII of this preamble. These limited data sets do not provide sufficient information to evaluate the performance of nanofiltration and reverse osmosis membrane filtration technology as the primary treatment for dissolved pollutants in FGD wastewater. Additional pilots, tests, and data collection could result in these technologies becoming available by the VIP compliance date of 2028; however, the VIP compliance date is not based on an assumption that the technology will be available by 2028.

variability. This is consistent with the public comments received on the proposal, as well as the main focus of the long-term pilot at Plant Scherer. In contrast to the thermal system that EPA visited in Italy before the 2015 rule (and where EPA took samples and discussed the system with experienced engineers), EPA does not have access to the Chinese plants to resolve some of the critical unanswered questions discussed above.

Supplementing what is known about pilot studies and foreign plants with information about the use of membrane filtration on non-FGD wastestreams in this and other industries still does not address or resolve the uncertainties in EPA's record. Although EPA acknowledges that some of the other wastewaters discussed above are subject to operational variability, scaling potential, and high levels of TDS, the unique combination of these factors present in steam electric FGD wastewater favors EPA's conclusion that membrane filtration is not available for treatment of FGD wastewater at all plants in the steam electric power generating industry.[49] Nevertheless, like evaporation-based and thermal treatment technologies, FGD wastewater may be amenable to treatment with membrane filtration technologies in at least some circumstances. Thus, EPA's conclusion that membranes are not available nationwide, as required under the CWA, does not conflict with EPA's finding that membrane filtration may be available at specific sites for purposes of the VIP.

EPA also rejects membranes as the technology basis for BAT for all existing plants because it could discourage more valuable forms of beneficial reuse of FA (such as replacing Portland cement in concrete), causing more FA to be disposed of as waste.[50] While EPA agrees with comments that there may be several alternative ways to treat or dispose of the brine generated by membrane filtration, as discussed further below, plants are most likely to encapsulate the brine with FA and lime and dispose of the resulting solid in a landfill.

In concluding that the selection of membranes as BAT would result in unacceptable non-water quality environmental impacts, EPA evaluated brine management alternatives that were discussed with domestic plants employing thermal systems, foreign plants employing membrane filtration systems, and domestic plants in other industries employing membrane filtration systems.[51] EPA also evaluated whether FA is being disposed of or is being sold and productively reused. After careful review of the information in the record for this rulemaking, EPA projects that, in the United States, the least cost option if membrane filtration were selected would be encapsulation with FA and lime and disposal of the resulting solid in a landfill. The following paragraphs summarize the evaluations which led to EPA's conclusion that there is an unacceptable non-water quality environmental impact in selecting membrane filtration systems as BAT.

There are no domestic plants operating membrane filtration systems for EPA to contact. EPA therefore contacted two domestic plants operating thermal FGD systems and examined information submitted to EPA's Region 1 regarding a third thermal FGD system. Thermal and membrane filtration systems generate similar brines, as both increase the concentration of TDS in FGD wastewater by removal of ''clean'' water. For the three domestic thermal systems treating FGD wastewater, the resultant brine is either used to condition (*i.e.,* wet) ash for disposal without encapsulation[52] or is crystallized and sent to a landfill. Thus, encapsulation of the brine using FA at these three plants is unnecessary. When asked about the availability of FA for sale, one of the three plants indicated that its particular market for FA is flush, and that plant was no longer able to maintain contracts for the sale of its FA, which would make it available for the plant to use to encapsulate the thermal system brine. In contrast, two of the plants with which EPA discussed possible future installations of membrane filtration systems stated that they sell 100 percent of the FA generated for beneficial reuse. Although some commenters suggested that there is more than sufficient FA available for reuse, the EPA's rulemaking record contains information to the contrary. According to 2017 and 2018 EIA data, the median percentage of FA that was sold for beneficial use by plants with wet FGD systems was approximately 14 percent, with some plants selling all of their fly ash and some plants selling none. Furthermore, these EIA estimates may be low, as one plant's staff represented that they were beneficially using 100 percent of their FA rather than the amount reported in the EIA data.[53] A quantitative comparison of EIA data for plants with FGD wastewater indicates that if plants currently disposing of their FA installed membrane filtration, they may have enough FA to encapsulate the quantities of brine produced by membrane filtration. Two assumptions underly EPA's comparison of EIA FA beneficial use and disposal data to FGD brine encapsulation. First, EPA assumes that the fraction of brine generated from all FGD wastewaters is the same at all plants that would install a membrane system. Second, it assumes that all plants that would install a membrane system would be able to make use of similar encapsulation blends as the bids and pilots which EPA reviewed. In practice, EPA expects the percent of brine generated by membrane systems to differ from plant to plant, based on FGD wastewater characteristics. EPA also expects the encapsulation blend to differ from plant to plant based on both the brine characteristics and the fly ash characteristics. This is consistent with public comments EPA received on the proposal. Thus, while EPA's assumption of a typical blend is reasonable for a nationwide assessment, the Agency anticipates that there will be sites where non-water quality environmental impacts are particularly unacceptable.[54]

But, while these assumptions are appropriate for nationwide cost estimates which are needed to demonstrate economic achievability for the industry as a whole, this does not necessarily mean that these assumptions should be used for analyzing the non-water quality environmental impacts associated with the resultant brine from membrane use, and in particular, estimating what plants are likely to do with this by-product in relation to available FA. Whether sufficient FA is present on site or available in the local market is a site-specific question. Should plants generate more brine than EPA estimated in its analysis, or should plants not have the quality of FA (*e.g.,* class C, class F) necessary for the

[49] While one membrane vendor commented that FGD wastewater is no different than any other industrial wastewater, it did not provide any data or analysis to support this statement.

[50] While EPA considers FA use for waste solidification and stabilization as beneficial use, the CCR waste being solidified or stabilized must still be disposed of in accordance with 40 CFR 257.

[51] EPA did not evaluate alternatives which would not be available to the industry (*e.g.,* unlike offshore oil and gas facilities, ocean discharge would not be available to inland power plants).

[52] Ash conditioning with water or surfactants is a standard industry practice to control fugitive dust emissions, and also a standard component of fugitive dust plans required under the CCR rule.

[53] EPA was unable to resolve the conflicting company-stated beneficial use rates at this plant with the plant-specific EIA data.

[54] While there may be some sites where these non-water quality environmental impacts are acceptable, the Agency has not identified either information or a consistent basis upon which to subcategorize these plants. In any case, such a subcategorization approach may still not address the availability concerns raised in the discussion above.

assumed blend, those plants would need to reduce the quantity of ash beneficially reused or acquire a substitute to encapsulate the brine byproduct of an installed membrane system.

Based on the limited available information, EPA understands that at least two foreign plants operating full-scale membrane systems send the resulting brine to a crystallizer to generate and sell a 95 percent high-purity industrial salt. However, there are too many uncertainties for EPA to estimate with confidence how many plants in the United States might be able do the same. EPA understands that these foreign plants engaged in negotiations with end-users prior to commissioning their membrane systems. At one example system, the plant generates and sells approximately 10,000 tons of industrial-grade salt per year. While a crystallizer would be a more expensive option than ash conditioning practiced at no-discharge plants in the U.S., the sale of industrial salt could generate additional revenue to offset those additional costs. Without salt revenue data from China, it is not possible to compare these specific scenarios either in terms of costs or non-water quality environmental impacts and any conclusions would be speculative and lack factual support in this rulemaking record. Furthermore, EPA cannot evaluate the practicality of such sales in the U.S. because the Agency does not know which industries are purchasing these salts, if these industries operate in the U.S., if they would be willing to purchase salts from the U.S., or what the specifications are for the salt product.

Finally, EPA examined brine management in other industries. In both the mining industry and in oil and gas, brine is managed through evaporation (including evaporation impoundments), deep well injection, and ocean discharge. Most steam electric power plants are not near enough to an ocean for ocean discharge to be a feasible alternative. Evaporation is more consistent with disposal methods at the domestic thermal and foreign membrane filtration plants discussed above. The use of evaporation impoundments is generally dependent upon climate and plant space, so not all steam electric power plants may be able to employ evaporation impoundments as is done at some mining and oil and gas establishments. However, crystallization is an evaporation means that is employed at some domestic and foreign plants to manage FGD wastewater brine. Finally, deep well injection is not known to be used at any steam electric power plants to manage FGD wastewater brine.

After consideration of the information above, EPA evaluated membrane filtration with three representative brine management alternatives to determine which could most likely represent future brine management. First, as it did for the proposed rule, EPA evaluated brine encapsulation with FA and lime, in a blend representative of the information in EPA's record.[55] Second, EPA conducted a sensitivity analysis which examined crystallization and disposal of the resultant salt.[56] Finally, EPA conducted a sensitivity analysis which examined deep well injection. While EPA received comments that the brine might be sold to oil and gas companies, commenters did not provide any examples where this is currently occurring, nor is the Agency aware of any. Thus, as it did for ocean discharge (see above), EPA concluded that direct sale of brine to oil and gas companies would not be representative of potential brine management in the steam electric power generating industry.

After conducting these three representative brine management analyses, EPA concludes that the method most likely to be employed by steam electric power plants using membrane filtration to treat FGD wastewater would be encapsulation with FA and lime for disposal of the resulting solid in a landfill. This brine management alternative was the least cost solution in the bids and engineering documents examined, was the least cost solution in EPA's own cost estimates, and is the disposal approach discussed by both Georgia Power[57] and GenOn[58] as their most likely procedure if theyose ultimately choose to participate in the VIP and install membrane filtration systems by the 2028 compliance date.

As described in the proposal, landfilling an encapsulated material raises challenges. For instance, comingling encapsulated material with other landfill refuse could result in a leachate blowout. The King County Landfill in Virginia experienced a leachate blowout when compact CCR materials with a low infiltration rate were layered with normal municipal solid waste having a higher infiltration rate. Similarly, in the case of encapsulated brine paste, the paste would set and thereafter achieve a very low infiltration rate. When comingled with CCR having a higher infiltration rate, this would lead to layers with disparate infiltration rates akin to those experienced in the King County scenario. Thus, segregation of low infiltration rate encapsulated brine in a landfill cell separate from other, higher infiltration wastes could be necessary to prevent this layering and a potential leachate blowout. Such dedicated landfill cells do not exist today and would require time to permit and construct.[59]

Moreover, instead of disposing of their FA, plants can sell it for beneficial use. As stated in the 2015 CCR rule:

> The beneficial use of CCR is a primary alternative to current disposal methods. And as EPA has repeatedly concluded, it is a method that, when performed correctly, can offer significant environmental benefits, including greenhouse gas (GHG) reduction, energy conservation, reduction in land disposal (along with the corresponding avoidance of potential CCR disposal impacts), and reduction in the need to mine and process virgin materials and the associated environmental impacts.[60]

Specifically, the Agency estimated (U.S. EPA 2011) that each ton of FA used as a substitute for Portland cement would avoid the use of 5,400 megajoules of nonrenewable energy, 690 liters of water use, 1,000,000 grams (g) of CO_2 emissions, 840 g of methane emissions, 1,400 g of CO emissions, 2,700 g of NO_X emissions, 2,500 g of SO_X emissions, 2,400 g of PM, 0.08 g of Hg, 490 g of TSS discharge, 23 g of BOD discharge, and 46 g of COD discharge.[61] After considering these cross-program environmental impacts, EPA finds that discouraging this beneficial use of FA on a nationwide basis would result in unacceptable non-water-quality

[55] This scenario is representative not only of that blend, but also of blends that would use more or less fly ash and/or lime, as well as less expensive ash conditioning, in which ash is wetted just with the brine (in lieu of other water or surfactants) prior to disposal.

[56] This scenario could also be representative of crystallization with sale of the resultant salt; however, EPA's rulemaking record lacks information with which to analyze potential sales.

[57] In discussions about the potential for Plant Scherer to install a membrane filtration technology under the proposed VIP, Georgia Power staff indicated that should such an installation occur, it would make use of a paste landfill where encapsulation of brine would occur.

[58] GenOn indicated that plans for Chalk Point and Morgantown included off-site disposal without FA from those plants because so much of that FA is already beneficially used.

[59] EPA also estimates that the volume of waste requiring disposal if membrane filtration was selected is 10 times the volume of waste estimated under the selected LRTR technology.

[60] 80 FR 21329 (April 17, 2015).

[61] U.S. EPA (Environmental Protection Agency). 2011. *Waste and Materials—Flow Benchmark Sector Report: Beneficial Use of Secondary Materials—Coal Combustion Products.* Office of Solid Waste and Emergency Response. Washington, DC 20460. April.

environmental impacts.[62] As discussed below in connection with the VIP, however, EPA finds that, based on site-specific circumstances, the non-water quality environmental impacts identified on a nationwide basis could exist to a lesser extent (thereby not resulting in unacceptable non-water quality environmental impacts).[63]

While EPA views the foregoing reasoning as sufficient to find that membrane filtration is not BAT for existing sources, EPA notes that membrane filtration is projected to cost industry 26 percent more than estimated at proposal. As identified by commenters, the data used to establish limitations for membrane filtration for the proposed rule included pilots that preceded membrane filtration with chemical precipitation, while the cost estimates were based only on microfiltration as pretreatment. EPA agrees. Where EPA has information on pretreatment at foreign plants, none of those plants relies on microfiltration alone. To correct this inconsistency, in the final rule, EPA included the cost of chemical precipitation as the pretreatment method for the membrane filtration cost estimates and adjusted the set of data used to establish effluent limitations. For the final rule, both effluent limitations and cost estimates reflect data for systems using chemical precipitation as pretreatment before membrane filtration. EPA disagrees with comments that suggested the costs were not estimated correctly due to the use of incorrect flows and FA consumption rates. For a more detailed discussion of the membrane filtration public comments and responses, see DCN SE08615.

In addition to the estimated pretreatment costs, plants will also incur costs to dispose of the resulting brine. Some plants that may otherwise sell their FA may choose to use their FA to encapsulate the brine, thereby foregoing revenue from FA sales. Other plants that choose to continue to sell their FA will need to dispose of the brine using another disposal alternative, such as crystallization, at an additional cost. Costs are a separate statutory factor that EPA considers in selecting BAT (*see,* for example, *BP Exploration & Oil, Inc.* v. *EPA,* 66 F.3d 784, 796 (6th Cir. 1996)). Here, while these costs do not make the membrane filtration option economically unachievable across the point source category as a whole,[64] these estimated increased costs do weigh against selecting membranes as BAT.

b. Other Technologies Evaluated for BAT Limitations

As described further below, EPA is also not establishing BAT limitations based on other technologies evaluated in the 2019 proposed rule and 2015 rule.

First, except for the permanent cessation of coal combustion and low-utilization subcategories discussed below, EPA is not establishing BAT limitations based on surface impoundments. One commenter suggested that EPA should adopt a high recycle rate system for FGD wastewater if the purge from such a system would receive BAT limitations equal to BPT limitations. The commenter relied on EPA's proposed BAT for BA transport water for this suggestion. Even for the purged wastewater from a high recycle rate BA transport water system, however, the final rule does not establish BAT limitations equal to BPT limitations. Instead, EPA leaves the BAT limitations to be determined by the permitting authority on a case-by-case basis, subject to BPJ. Such a case-by-case determination is not warranted for FGD wastewater because EPA has determined that CP+LRTR is available and economically achievable for treatment of FGD wastewater. Furthermore, EPA confirms its previous findings that surface impoundments are not as effective at controlling pollutants (such as dissolved metals and nutrients) as available and achievable technologies like CP+LRTR; however, as described in Section X below, other statutory factors and EPA's rulemaking record support the use of surface impoundments for two subcategories.

Second, except for the low utilization EGU subcategory discussed below, the final rule does not establish BAT limitations or PSES based on chemical precipitation alone. As EPA noted during the development of the 2015 rule, chemical precipitation is effective at removing mercury, arsenic, and certain other heavy metals. This technology alone does not remove nitrogen, nor does it remove the majority of selenium. Furthermore, the data in EPA's rulemaking record demonstrate that both LRTR and HRTR remove approximately 90 percent of the mercury remaining in the effluent from chemical precipitation treatment.[65] Because the combination of chemical precipitation with LRTR provides substantial further reductions in the discharge of pollutants industry-wide, EPA has established BAT based on CP+LRTR.

Third, the final rule does not establish BAT limitations based on thermal technologies, such as chemical precipitation (including softening) followed by a falling film evaporator, based on the statutory factors of total costs to industry and non-water quality environmental impacts. EPA received comments stating that thermal technologies are available, are unavailable, are economically achievable, and are not economically achievable. EPA agrees that these technologies are available but disagrees that these technologies are economically achievable. Although commenters arguing against availability raise a number of arguments, these arguments were considered and rejected in the 2015 rule, and no new information has been provided that warrants revisiting those findings. Since the 2015 rule, EPA has collected additional information on full-scale installations and pilots of thermal technologies to treat FGD wastewater. EPA's rulemaking record includes information about nine pilot studies conducted in the United States, providing performance data for five different thermal technologies. In addition, full-scale installations are operating at six domestic plants,[66] and a seventh purchased thermal equipment, but elected not to install it.[67] EPA is also now aware of seven foreign installations in Italy and China, five more foreign installations than at the time of the 2015 rule.

With respect to economic achievability, in the 2015 rule EPA rejected thermal technology as a basis for BAT limitations due to high costs to industry. New thermal technologies have been pilot tested and used at full scale since the 2015 rule, and related

[62] Although EPA evaluated FA and lime encapsulation as the least-cost nationally available brine disposal alternative, other alternatives with higher costs may also have adverse non-water quality environmental impacts. For example, if a plant chose to crystallize the resulting brine to continue selling its FA, this thermal crystallization process could have a higher cost and parasitic energy load.

[63] The same would be true for other VIP-compliant technologies (*e.g.,* thermal) that might be installed.

[64] *See, e.g., Texas Oil and Gas Ass'n et al.* v. *EPA,* 161 F.3d 923, 927 (5th Cir. 1998).

[65] Recall that the FGD mercury and arsenic limitations in the 2015 rule were based on chemical precipitation data alone because the plants operating biological systems were not using all of the chemical precipitation additives in the technology basis.

[66] One of these plants successfully ran three different thermal systems to treat its wastewater, transitioning from a falling film evaporator to a direct-contact evaporator, which mixes hot gases in a high turbulence evaporation chamber, and finally to a spray dryer evaporator.

[67] This plant purchased a falling film evaporator for the purpose of meeting water quality-based effluent limitations for boron, but then elected to instead pay approximately $1 million per year to send its wastewater to a local POTW.

cost information demonstrates that thermal technologies are now less costly than when estimated for the 2015 rule. Nevertheless, the thermal costs evaluated in EPA's memorandum *FGD Thermal Evaporation Cost Methodology* (DCN SE08631) are still 2.4 times higher than the CP+LRTR technology selected as BAT, and 1.04 times higher than the membrane filtration costs in Option C. As authorized by section 304(b) of the CWA, which requires EPA to consider costs, as well as the discretion that the statute gives EPA to weigh the statutory factors, the Agency finds that, for this final rule, thermal technologies are not BAT due to the unreasonably high costs to industry.[68] Given the high costs associated with thermal technology, and the fact that the steam electric power generating industry continues to face costs associated with several other rules, in addition to this rule, EPA is not establishing BAT limitations for FGD wastewater based on thermal technologies.

In addition to the unreasonably high costs, thermal technologies have unacceptable non-water quality environmental impacts associated with management of the resultant brine. Thermal technologies generate a brine similar to membrane filtration technologies. For this reason, portions of the discussion of membrane filtration brine above are based on brine management at plants with thermal systems. EPA also concludes that thermal technologies have unacceptable non-water quality environmental impacts. The reasoning is the same as for membrane filtration—unacceptable non-water quality environmental impacts would occur as a result of discouraging the beneficial use of FA, and additional disposal requirements would result from the production of a brine byproduct.

Furthermore, since the membrane filtration technologies evaluated in Option C appear to achieve similar pollutant removals at lower costs than thermal, as discussed later in this section, EPA is revising the basis for the VIP limitations adopted in the 2015 rule to membrane filtration, instead of thermal technologies.[69]

Finally, EPA is declining to establish BAT limitations for FGD wastewater as a case-by-case determination to be made by the permitting authority using BPJ. EPA explained in the 2015 rule why BPJ determinations would not be appropriate for FGD wastewater, particularly given the availability of several other technologies, and nothing in EPA's record would alter the Agency's previous conclusion.

2. BA Transport Water

Under the final rule, EPA has selected high recycle rate systems as the technology basis for establishing the BAT requirements to control pollutants discharged in BA transport water. EPA determines that this technology is available and economically achievable after evaluating the factors specified in CWA section 304(b)(2)(B). In the 2015 rule, EPA selected dry BA handling or closed-loop wet ash handling systems as the technology basis for the no-discharge BAT requirements for BA transport water. EPA established no discharge effluent limitations based on these technologies, while also creating a limited allowance for pollutant discharges associated with leaks and certain maintenance activities.[70]

At the time of the 2015 rule, EPA estimated that more than 50 percent of plants already employed dry handling systems or wet sluicing systems designed to operate closed-loop, or had announced plans to switch to such systems in the near future. Based on new information collected since the 2015 rule, EPA now estimates that number to be over 75 percent of the industry. However, since the 2015 rule, EPA's understanding has changed regarding the types of available dry systems, and the ability of wet systems to operate a true closed-loop system (or to achieve complete recycle) has changed.

EPA is aware of advances in dry BA handling systems since the 2015 rule.[71] For example, in addition to under-EGU mechanical drag chain systems (described in the 2015 rule), pneumatic systems and compact submerged conveyors (CSCs, which are referred to in the proposed rule and in many public comments as submerged grinder conveyors, the appellation of the most commonly sold system) are now in use at some plants. EPA received comments that it failed to consider whether plants could retrofit their operation using CSC systems, and that EPA should retain the zero discharge limitations established in the 2015 rule. EPA also received comments that CSCs could be more costly than other technologies and that CSCs are not available. These included comments that CSCs are not demonstrated, that CSCs cannot handle the high ash loading rates of larger EGUs, and that retrofit with CSCs are not feasible for EGUs below grade or with space constraints leaving the EGU.

EPA disagrees with commenters who asserted that it failed to consider zero discharge requirements for BA transport water. While the Agency acknowledges that it did not identify technologies that could achieve zero discharge of BA transport water among its ''main'' regulatory options at proposal, the 2015 rule required zero discharge, and EPA described the technologies forming the basis for the 2015 rule and considered them and others, including CSCs, in this rulemaking.

With respect to costs, since the proposal, EPA has conducted conference calls with two plants, one of which operates a vacuum system and one that operates a CSC. The Agency acknowledges that, at proposal, it did not estimate costs of installing pneumatic systems (which include both dry vacuum or pressure systems) or CSCs. In the case of pneumatic systems, these systems tend to be more expensive than alternatives, and third party EPCs have indicated that the decision to install such systems is often driven by a combination of space constraints and limitations on water withdrawals. EPA continues to view pneumatic systems as more expensive than alternatives. With respect to CSCs, the Agency did not have cost data at proposal to conduct a cost analysis; however, since proposal the Agency has obtained CSC cost information from one plant, which demonstrates that for that plant it was the least-cost technology alternative. The costs for this plant are comparable to other technologies that EPA evaluated, and this finding is consistent with the representations of electric utilities, vendors, and third-party EPC firms, which have found that, on a plant-specific basis, CSCs may be the least costly bottom ash conversion option. However, because CSCs serve only an individual EGU, the more EGUs a plant has, the less economical this technology becomes. One vendor suggested that plants with three or more EGUs would generally find remote MDSs to be a least-cost alternative.

With respect to availability, commenters disputed that CSCs are demonstrated, but did not make the

[68] Some industry comments asserted that EPA underestimated the cost for thermal technologies and that more accurate costs would make these technologies economically unachievable. However, as described above, EPA need not adjust its cost assumptions because the Agency's own cost estimates result in unreasonably high costs.

[69] EPA notes that thermal technologies could continue to be used to meet the voluntary incentives program limitations based on membrane filtration.

[70] *See* 40 CFR 423.11(p).

[71] The term ''dry handling'' is used to refer to ash handling systems that do not use water as the transport medium for conveying ash away from the EGU. Such systems include pneumatic and mechanical processes (some mechanical processes use water to cool the BA or create a water seal between the EGU and ash hoppers, but the water does not act as the transport medium).

same claim for pneumatic systems. Two full-scale CSCs became operational in 2019,[72] while 50 plants employing pneumatic systems are currently operating, with retrofits dating back to 1992. EPA is aware of only two CSCs in operation domestically today; however, the Agency has identified three additional CSCs currently being installed. Furthermore, in a conference call with one plant, it appears that, while there were some challenges, especially during installation, this particular system has operated successfully since its commissioning. However, this plant did not experience the same space constraints discussed below. Similarly, commenters raised issues with the ability of CSCs to handle high ash loading rates. While staff at one plant indicated that they successfully ramped up the speed of their CSC to handle more tons of ash per hour, and constructed a 100 percent redundant system, AEP submitted comments that the installation of CSCs at a larger lignite EGU with high ash loading rates would be considered high ''application risk.'' [73] Specifically, the lignite coal burned in this EGU has a much higher ash content, and its bottom ash tends to be more abrasive, relative to the typical bituminous coals burned and bottom ash produced at other AEP EGUs. As a result, 100 percent redundant systems would be required, which would eliminate the cost savings potential of the CSC system.[74] In contrast, no commenters claimed that pneumatic systems had loading rate constraints. Finally, industry engineers, third-party EPC firms, and vendors have indicated that pneumatic systems and CSCs can be installed at plants that are constrained from retrofitting the larger under-EGU MDS due to insufficient vertical space under the EGU. EPA has identified five EGUs at three plants where MDS installation is precluded due to insufficient vertical space. Commenters stated that CSCs, while smaller, could not be installed at these space-constrained plants where MDS installation is precluded without dismantling and excavating beneath the EGU, and EPA finds that, at a minimum, these five EGUs could face such limitations. AEP additionally described EGUs where space constraints would not preclude installation of a single CSC, but would preclude the installation of AEP's required 100 percent redundant design basis.[75] Commenters did not argue that space constraints would preclude pneumatic systems.

With respect to wet BA handling systems, in their petitions for reconsideration and in recent meetings with EPA, utilities and trade associations informed EPA that many existing remote wet systems are, in reality, ''partially closed'' rather than fully closed-loop, as assumed by EPA in the 2015 rule. Utilities and trade associations informed EPA that these systems operate partially closed, rather than closed, due to small discharges associated with: (1) Additional maintenance and repair activities not accounted for in the 2015 maintenance allowances; [76] (2) water imbalances within the system, such as those associated with stormwater; [77] and (3) water chemistry imbalances, including acidity and corrosiveness, scaling, and fines buildup. While some plants have controlled or eliminated these challenges with relatively straightforward steps (*See* DCNs SE08179 and SE06963), others require more extensive process changes and associated increased costs or find them difficult to resolve (*See* DCNs SE08188, SE08180, and SE06920).

EPA agrees that the new information indicates that some plants with wet ash removal systems can operate as zero discharge systems, but in many cases must operate as high recycle rate systems. While some plants currently handle the challenges discussed above by discharging some portion of their BA transport water, the record demonstrates that plants can likely eliminate such discharges with additional process changes and expenditures. For the 2015 rule, EPA estimated costs of chemical additions to manage scaling. Now, companies could be adding additional treatment chemicals (caustic) to manage acidity or other chemicals to control alkalinity, using reverse osmosis filters to remove dissolved solids from a slipstream of the recycled water, adding polymer to enhance settling and removal of fine particulates (''fines''), and building storage tanks to hold water during infrequent maintenance or precipitation events. Industry-wide, EPA conservatively estimates the costs of the additional measures needed to achieve and maintain a truly closed-loop system to be $63 million per year in after-tax costs, beyond the costs of the systems themselves.[78] [79] These additional costs and process changes were not accounted for in the 2015 rule; however, as discussed in Section 5.3.3 of the Supplemental TDD, EPA has accounted for these costs in estimating the baseline costs of the BA limitations in the 2015 rule. Some commenters argued that EPA's costs were too conservative and asserted that these costs would not be necessary at most sites. While EPA agrees that it is not likely that all plants would incur these additional costs, EPA had no means to predict which plants would ultimately incur these additional costs, and thus the Agency reasonably assumed, for purposes of its economic achievability analysis, that each plant would incur these costs—in order to ensure that the costs upon which economic achievability are based are not underestimated. However, to the extent that necessary purges are smaller than this upper bound, EPA evaluated an alternate scenario in a Bottom Ash Alternate Purge Sensitivity Analysis (DCN SE09073). These lower costs were considered in addition to the costs presented above and would not change EPA's conclusion that high recycle rate systems, rather than closed-loop systems, are BAT. For further discussion of public comments and responses about closed loop and high recycle rate systems, *see* DCN SE08615.

EPA also recognizes the need for plants to consider their ability to comply with multiple environmental regulations simultaneously. As discussed in Section IV above, EPA has recently finalized the CCR Part A rule, requiring plants to cease receipt of waste in unlined surface impoundments by April 11, 2021 (with certain

[72] EPA only had a conference call with one of these two plants because the second plant did not respond to EPA outreach.

[73] AEP indicated that the vendor had found this application to be high risk as well.

[74] *See* DCNs SE08695 and SE08695A1.

[75] *See* DCNs SE08695 and SE08695A1.

[76] The 2015 rule maintenance discharges were characterized as not a significant portion of the system volume, compared to, for example, potential discharges resulting from maintenance of the remote MDS tank or the conveyor itself. Such maintenance could require draining the entire system, which would not be permissible under the 2015 rule maintenance discharge allowance.

[77] The 2015 rule provided no exemption or allowance for discharges due to precipitation events. While systems are often engineered with extra capacity to handle rainfall and runoff from a certain size precipitation event, these events may occur back-to-back, or plants may receive events with higher rates of accumulation beyond what the plant was designed to handle.

[78] Due to the final rule's changed compliance dates this estimate also includes discounting, which may overstate the savings.

[79] Utilities and EPC firms have discussed the availability of new dry systems, such as the CSC or pressure systems, which at some plants would have costs similar to recirculating wet systems (which would require a purge). Because EPA did not have cost information to determine the subset of plants for which new dry systems might be least costly, some portion of the costs estimated for this rule may be based on selecting recirculating wet systems at plants that could ultimately choose to install dry handling technologies. Thus, EPA may overestimate costs or underestimate pollutant removals at the subset of plants where such a dry system would be selected.

exceptions).[80] The challenges of operating a truly closed-loop system, discussed above, are compounded by the requirements of the CCR rule. Plants often send various CCR and non-CCR wastestreams, such as coal mill rejects, economizer ash, etc., with BA transport water into their surface impoundments. According to reports provided to EPA and conversations with electric utilities, several plants have already begun (or even completed) the transition away from impoundments and use the BA treatment system for some of their non-CCR (*i.e.,* non-FA, BA, or FGD) wastewaters.[81] This can be beneficial where it reduces the discharge of the non-CCR wastewaters, which might otherwise be discharged subject only to the TSS limitations applicable to low volume wastewater. At the same time, however, doing so can lead to or exacerbate scaling, corrosion, or plugging of equipment, all of which require process changes and additional expense to address, thereby complicating establishment of a closed-loop system. These problems could be avoided by purging the system from time to time, as necessary. Fewer than 25 percent of plants have not yet installed a BA transport water technology beyond surface impoundments and could potentially employ a dry system. However, due to the fast approaching cease-receipt-of-waste date under the CCR rule, it is probable that the majority of these plants have already begun their conversions to wet ash handling systems, which makes switching to a wholly different BA handling technology infeasible so late into the process.[82] For EPA to not allow a purge may encourage more of the non-CCR wastewaters mentioned above to be discharged as low volume waste. In order to accommodate both compliance with this rule and the CCR Part A rule, EPA finds it necessary for the permitting authority to allow for a high recycle rate system with some purge rather than a truly closed-loop system.

Furthermore, to the extent that plants had not designed, planned, procured, or commissioned segregated non-CCR wastewater treatment systems yet, requiring a plant to close the loop where closed loop operation would require wastewater segregation may force those plants to continue to send the non-CCR wastewater to their existing surface impoundments, thus extending their surface impoundment operations until new non-CCR wastewater systems can be commissioned. Some comments point to CCR rule requirements and Duke Energy's installation of lined retention basins in an attempt to demonstrate that non-CCR wastewaters can be managed separately within the 2015 rule time frames. EPA disagrees in both instances. While it might be possible for the retention basins being installed by Duke Energy to handle redirection of all of these non-CCR wastewaters, Duke Energy itself did not design for this, and instead designed and currently operates at least some of its high recycle rate systems to handle non-CCR wastewaters.[83] The CCR Part A rule generally requires plants to cease receiving waste in unlined surface impoundments no later than April 2021. Nevertheless, in cases where alternative capacity is not available, plants may request a site-specific alternative closure extension to operate that surface impoundment until 2023 or 2024. Thus, if the final rule were to require complete recycling of BA transport water, and this could only be accomplished by segregating wastewaters, at least some plants that might currently be able to meet the CCR Part A rule's April 2021 cease-receipt-of-waste date would instead be forced to request a site-specific alternative closure extension and continue operating the existing, unlined surface impoundment while they developed alternative disposal capacity to manage these newly segregated wastestreams.

In light of the foregoing process changes and associated engineering challenges facing plants needing to implement a true zero discharge BA transport water limitation in combination with the CCR rule, and to give plants flexibilities that will facilitate orderly compliance with the fast-approaching CCR rule deadlines, EPA determines that the basis of the BA transport water BAT limitations is the use of high recycle rate systems rather than dry handling or closed-loop systems, which were the technologies on which the zero discharge BAT limitation (adopted in the 2015 rule) were based. EPA's conclusion is based on its discretion to give particular weight to the CWA Section 304(b) statutory factor of ''process changes.'' Process changes to existing high recycle rate, non-closed loop systems made to comply with this rule in conjunction with the CCR rule, as discussed above, could be more challenging without a further discharge allowance, and in some plants could also prolong use of unlined surface impoundments.

EPA concludes that the factors discussed above are sufficient to support the Agency's decision not to select dry handling or closed-loop systems as BAT for BA transport water. EPA also notes that cost is a statutory factor that it must consider when establishing BAT, and that closed-loop systems cost more than high recycle rate systems for treatment of BA transport water. Some commenters stated that high recycle rate systems cannot be selected solely on the basis of higher costs when those costs are economically achievable. While EPA does not find the estimated additional cost to industry would result in plant closures, cost is a statutory factor that EPA must consider under section 304(b) of the CWA, and EPA has discretion in weighing the statutory factors, *see, e.g., BP Exploration & Oil Inc.* v. *EPA,* 66 F.3d 784, 799–800 (6th Cir. 1995) (citation omitted)). EPA views the higher cost of fully closed-loop systems as an additional factor supporting EPA's decision to reject closed-loop systems as BAT for treating BA transport water.

Some commenters argued that the proposed BAT based on high recycle rate systems is not warranted because that technology basis does not represent what is achieved by the single best performing plant, and even went so far as to say that this standard reflected the worst performing plant. EPA disagrees with these commenters. Some companies began proactive fleetwide conversions either before the effective dates of the 2015 rule or in some cases before the 2015 rule was signed. Many of these fleetwide conversions were to the remote MDS, a specific type of high recycle rate system that formed the ''closed-loop'' part of the 2015 rule BA transport water BAT technology basis. As discussed above, these systems do not all operate 100 percent closed-loop, as EPA assumed they did when finalizing the 2015 rule. Based on actual, measured purge rates in EPRI (2016), however, the Agency estimates that actual purge rates necessary on a day-to-day basis may be less than one percent of the system's volume, with higher purges necessary at less frequent intervals due to precipitation and maintenance. Furthermore, while surface impoundments can cover dozens of acres and contain volumes in the billions of gallons, typical high

[80] As mentioned in Section IV of this preamble, further information about this proposal is available at *http://www.regulations.gov,* Docket EPA–HQ–OLEM–2019–0172.

[81] In some cases, the treatment system predated even the proposed CCR rule.

[82] The CCR Part A rule acknowledges that a subset of plants which were lined or met the groundwater monitoring requirements and location restrictions may not yet have taken steps to convert their systems.

[83] For example, Duke Energy's Belews Creek plant manages its coal mill rejects wastestream in its recently commissioned remote mechanical drag system.

recycle rate systems have volumes closer to one-half million gallons (½ million). Thus, even assuming the proposed maximum allowable purge of 10 percent is necessary for a unit, the average gallons per day released by high recycle rate systems will be two percent of the average gallons per day released by surface impoundments, and therefore will also be 1.5 percent of the pollutant releases expected from surface impoundments. Industry-wide, EPA estimates this combination of reduced volume and increased recycling reduces discharges by 366 million pounds of pollutants per year, and thus makes reasonable further progress toward the CWA goal to eliminate the discharge of pollutants. *See* 33 U.S.C. 1251(a), 1311(b)(2)(A). Therefore, it is the combination of the reduced system volume and high capacity to recycle BA transport water that supports EPA's basis for high recycle rate systems as BAT.

The Agency also received comments that a generic 10 percent purge was not justified and that tighter limitations could be applied in some cases. One state commenter argued that it should be permissible for a permitting authority to continue to set zero discharge requirements. EPA has considered these comments and made modifications to improve the final rule. EPA is finalizing the site-specific alternative for which it solicited comment. Under the final rule, EPA establishes that the NPDES permitting authority will determine on a case-by-case basis the purge allowance (not to exceed 10 percent) necessary at a particular plant with a wet transport system.[84]

As with the proposal, this site-specific purge could in no case exceed 10 percent of the system volume per day on a 30-day rolling average. EPA concludes that the maximum purge volume would more than account for the challenges identified above, including infrequent large precipitation and maintenance events. EPA defines the term ''30-day rolling average'' to mean the series of averages using the measured values of the preceding 30 days for each average in the series. The purge volume is more appropriately determined on a case-by-case basis because these plants vary so much with regard to what purge is needed to maintain the wastewater treatment system versus the tradeoffs at each site regarding what options are available for the non-CCR wastewater, Thus, this option is designed to provide flexibility if and when needed to address site-specific challenges of operating the recirculating ash system (for more on implementation, *see* Section XIV of this preamble).[85]

Some commenters suggested that EPA establish a BMP plan rather than a 10 percent purge. Commenters seemed to misunderstand the 10 percent purge in relation to BAT. When EPA establishes BAT, it selects a technology that is available nationally and economically achievable industry-wide. EPA then calculates the effluent limitations expected from the performance of the selected technology. Only after establishing those limitations might EPA impose an additional BMP plan under section 304(e) of the CWA. Here, BAT is high recycle rate systems, and based on the available data, EPA has established limitations that such systems can achieve.

Under the final rule's site-specific requirement for determining discharge allowances there may be wastewater from whatever is purged by the high recycle rate system, and plants may wish to discharge this wastewater. At proposal, EPA solicited comment on whether specific technologies should be selected as BAT for the purged wastewater. Some commenters suggested that surface impoundments should be selected because the high recycle rate systems already make reasonable forward progress. While EPA agrees that high recycle rate systems make reasonable forward progress in accordance with the CWA, the Agency must still consider any available treatment alternatives for the purged wastewater. Two considerations make determining a nationwide BAT for these discharges challenging and site-specific. First, in the case of precipitation or maintenance-related purges, such purges could be large volumes at infrequent intervals.[86] Each plant necessarily has different climates and maintenance needs that make selecting a uniform treatment system more difficult. Second, utilities have stated that discharges of wastewater associated with high recycle rate systems are sent to low volume wastewater treatment systems, which are typically dewatering basins or surface impoundments. Many of these systems are in transition as a result of the CCR rule. New wastewater treatment systems installed for low volume wastewater and other wastestreams (which could be used to treat the wastewater purged from a high recycle rate system), as well as the types of wastestreams combined in such systems, are likely to vary across plants. For further purge-related public comments and responses see DCN SE08615.

In light of the information discussed above, and EPA's authority under section 304(b) to consider both the process employed (for maintenance needs) and process changes (for new treatment systems installed to comply with the CCR rule), EPA concluded that BAT limitations for any wastewater that is purged from a high recycle rate system and then discharged, should be established by the NPDES permitting authority on a case-by-case basis using BPJ. EPA concludes that permitting authorities are in a better position than EPA to examine site-specific climate and maintenance factors, especially since the permitting authority will already be determining the allowable volume of purge, up to a maximum of 10 percent of the system's volume. Permitting authorities will also be in a better position than EPA to account for site-specific treatment technologies and their configurations already installed or being installed to comp0ly with the CCR rule and other regulations which could accommodate the volumes of, and successfully treat, any discharges of wastewater from a high recycle rate system associated with the proposed allowance.

EPA is not identifying surface impoundments as BAT for BA transport water because surface impoundments are not as effective at removing dissolved metals as available and achievable technologies, such as high recycle rate systems. Furthermore, the record since the 2015 rule shows that plants have continued to convert away from surface impoundments to the types of technologies described above, either voluntarily or due to the CCR rule, and in 2018, the U.S. Court of Appeals for the District of Columbia vacated that portion of the 2015 CCR rule that allowed both unlined and clay-lined surface impoundments to continue operating. *USWAG* v. *EPA,* No. 15–1219 (D.C. Cir. 2018). Since very few CCR surface impoundments are composite-lined, the practical effect of this ruling is that many plants with operating impoundments likely will cease sluicing waste to these impoundments in the near future. In the 2015 CCR rule, EPA estimated that it would be less costly for plants to install under-EGU or remote

[84] While this could include a purge of zero percent, EPA believes that such a determination could only occur in those cases where the system is designed to function, and is demonstrated to successfully perform, as a zero discharge system.

[85] EPA's pollutant loading analyses provided in Section IX.B of this preamble and described in detail in the BCA Report and Supplemental TDD, were based on an assumed 10 percent purge at each affected plant, and therefore overestimates pollutant discharges associated with the BAT for BA transport water.

[86] For example, rainfall exceeding a 10 year, 24-hour event would only be expected to occur twice during the 20-year lifetime of the equipment.

drag chain systems and send BA to landfills rather than continue to wet sluice BA and replace unlined impoundments with composite lined impoundments. This supports the suggestion that surface impoundments are not BAT for all plants; however, EPA is identifying surface impoundments as BAT for two subcategories, as discussed later in this section. In addition, EPA is defining a new wastestream, BA purge water, which is a more accurate term than the proposed ''maintenance purge water.'' BA purge water consists of the water permissibly purged from a high recycle rate system. This wastestream is no longer defined as BA transport water; therefore EPA is making conforming changes to the BPT regulations to make clear that the BPT limitations based on surface impoundments for TSS and oil and grease, which are applicable to BA transport water, also continue to be applicable to BA purge water. Effluent limitations for BA purge water are to be established by the permitting authority based on BPJ.

3. Voluntary Incentives Program (VIP)

The final rule includes a VIP that provides the certainty of more time (until December 31, 2028, instead of a date determined by the permitting authority that is as soon as possible beginning October 13, 2021) for plants to implement new BAT limitations if they adopt additional process changes and controls that achieve limitations on mercury, arsenic, selenium, nitrate-nitrite, bromide, and TDS in FGD wastewater, based on membrane plus pretreatment technology. The 2015 rule included a similar VIP that was based on thermal evaporation technology and that would extend the compliance deadline for VIP participants by five years. See Section VIII(C)(13) of the 2015 rule preamble for a more complete description of the selection of the thermal technology basis, chemical precipitation (with softening) followed by a falling film evaporator. As in the 2015 rule, EPA expects the additional time to achieve compliance, combined with other factors (such as the possibility that a plant's NPDES permit may need more stringent limitations to meet applicable water quality standards), may lead some plants to choose this option for future implementation by incorporating the VIP limitations into their permit when applying.

Some commenters argued that EPA lacks authority under the CWA to establish a VIP with compliance deadlines beyond three years from the date of promulgation of the final rule. EPA disagrees. The VIP program established in the 2015 rule was not challenged in court (and also not challenged by these particular commenters who challenged other aspects of the 2015 rule). The statute is silent with respect to BAT effluent limitations established after 1989. As the U.S. Court of Appeals for the Fifth Circuit recently held, the CWA's requirement in 33 U.S.C. 1311(b)(2)(C), (D), and (F) that effluent limitations be met no later than three years after promulgation plainly applies only to initial BAT limitations, not revisions of such effluent limitations. *Clean Water Action* v. *Pruitt,* 936 F.3d 308, 316 (5th Cir. 2018). The compliance deadlines in Sections 301(b)(2)(C), (D), and (F) of the CWA only apply to effluent limitation guidelines that were established prior to the outside dates specified in those provisions. They do not apply to effluent limitations guidelines established in 2020. For further discussion, see DCN SE08615.

New information in several utilities' internal analyses and contractor reports provided to EPA since the 2015 rule, as well as information EPA gathered in meetings with utilities, EPC firms, and vendors, indicates that plant decisions to install the more expensive thermal systems both prior to and following the 2015 rule were driven by water-quality-based effluent limitations imposed by the NPDES permitting authority. These documents and meetings also revealed that several plants considered installing membrane filtration technologies under the 2015 rule VIP as well, and EPA is aware of one company, GenOn, that has plants that opted into the 2015 VIP with plans to use membrane filtration technologies to meet the VIP limitations. Despite membrane filters not being available nationwide and not being appropriate for all facilities, due to electric utilities' continued interest in this technology, EPA evaluated membrane filtration as an alternative basis for the VIP limitations.

Under the final rule, EPA establishes VIP limitations based on membrane filtration, replacing the 2015 rule VIP limitations based on thermal technology, because EPA estimates that membrane filtration systems are less costly than thermal systems and have comparable pollutant removal performance. Membrane filtration achieves pollutant removals comparable to thermal systems in situations where the thermal system would discharge, which the VIP in the 2015 authorized. Due to the significantly higher costs of thermal systems compared to chemical precipitation followed by LRTR, EPA does not expect that many plants would install a new thermal system under a VIP program as the least cost technology, though some might install it to comply with water quality-based effluent limitations established by their permitting authority.[87] As authorized by section 304(b) of the CWA, which allows EPA to consider costs, EPA is selecting membrane filtration as the technology basis for the VIP limitations, with limitations for mercury, arsenic, selenium, nitrate-nitrite, bromide, and TDS.[88]

Also, as authorized by section 304(b) of the CWA, which allows EPA to consider process changes and non-water quality environmental impacts, EPA is revising the compliance date for the VIP limitations to December 31, 2028. That is the date EPA has determined that the membrane filtration technology will likely be available for full-scale implementation at those plants that choose to adopt it. EPA proposed to conclude that membrane technology would be nationally available in 2028. Some commenters asserted that it is inappropriate for EPA to predict a date in the future when a technology will become nationally available for CWA purposes. EPA agrees with these commenters and in the final rule concludes only that membrane technology will likely be available by 2028 on a site-specific basis. Although EPA will continue investigating the availability and economic achievability of this technology, EPA cannot predict with certainty that the technology will be nationally available in 2028.

The 2028 time frame is based on the time necessary to pilot, design, procure, and install both the membrane filtration systems and the brine management systems, including disposal capacity. Additional time is also often necessary to complete the permitting process. This time frame should also be adequate for alternative VIP-compliant technologies, such as thermal systems. Because EPA establishes BAT effluent limitations based on a specific technology's performance, but does not require a specific technology for compliance, thermal systems would still be allowable under the final rule VIP program, as would alternative non-membrane technologies that meet the limitations.

Some commenters argued that the 2028 deadline for the VIP is too long, citing shorter construction time frames and an email from one electric utility

[87] See, *e.g., https://www.powermag.com/how-low-temperature-evaporation-treats-fgd-wastewater/ (DCN SE09091).*

[88] Note that the 2015 rule VIP did not include limitations for nitrate/nitrite or bromide.

suggesting a VIP deadline of 2026 would be feasible.[89] While EPA agrees that some plants opting into the VIP may be able to install the technology sooner, part of the incentive for the program, which is expected to result in substantial additional pollutant removals from plants opting in, is the extra time provided to achieve compliance. Finally, EPA notes that this time frame is also similar to the eight-year period between promulgation of the 2015 rule and the 2023 deadline for the 2015 rule's VIP. For a further discussion of VIP timing in public comments and responses, see DCN SE08615.

EPA finds that using membrane filtration as the technology basis for the VIP does not result in the same non-water quality environmental impacts that informed the Agency's decision not to select membranes as BAT for the entire industry. First, participation in the VIP is voluntary and EPA would expect it to be selected only by plants for which it presents the least cost option, accounting for particular FA production, use, disposal and market availability. Where plants have limited FA markets and already dispose of their ash, they could dispose of the brine using encapsulation or ash conditioning without reducing beneficial use of FA. EPA understands that this is the case at Duke's Mayo Plant. Other plants may have sufficient external sources of FA and landfill space to dispose of an encapsulated material. EPA understands that this is the case at GenOn's two remaining Maryland plants. Of course, brine disposal options are not the only considerations for plants deciding whether to participate in the VIP. As noted above, GenOn indicated that final plans for treatment technology for both units will depend on the standards of this final rule, and for one of its units, changing electricity demand.

Finally, forthcoming changes in membrane filtration brine disposal options may reduce the non-water quality environmental impacts associated with encapsulation, as discussed in Section VII(b)(i) above. Through discussions with several utilities and EPRI, EPA learned that a developing ''paste'' technology may allow plants to mix the brine with lower quantities of FA and lime and pump the resulting paste via pipes to an onsite landfill where the paste would self-level prior to setting as an encapsulated material. According to these discussions, such a process may be less costly than current brine disposal alternatives. This process could also reduce non-water quality environmental impacts by reducing the amount of FA used, decreasing air emissions and fuel use associated with trucking and spreading, and, where FA is already being disposed of, reduce the volumes and pollutant concentrations in leachate.[90] [91] EPA is aware that part of Plant Scherer's current, long-term pilot study is intended to evaluate this very process.

Two additional challenges were identified for the membrane filtration technology or the paste technology described above. The first challenge regarding the paste alternative is developing approaches to manage wastes (*e.g.,* flush water) from periodic cleaning of the paste transportation piping, where such piping is used.[92] Consistent with the proposal, and as authorized by section 304(b) of the CWA, which allows EPA to consider the process employed, EPA is finalizing a modification of the definition of FGD wastewater and ash transport water to explicitly exclude water used to clean FGD paste piping. This enables plants using paste piping for brine encapsulation and disposal in an on-site landfill to clean residual paste from pipes and other equipment more easily.

The second challenge is that some plants that might want to re-use the first stage, membrane-treated FGD wastewater without a polishing RO stage as EGU makeup water could be discouraged from doing so. As discussed in Section VII(B)(1) above, RO is the standard treatment for source water (*e.g.,* groundwater and surface water) used in the EGU to generate steam. These existing systems must ensure sufficiently low levels of pollutants (such as TDS) to prevent corrosion, fouling, foaming, scale deposits, and loss of heat transfer efficiency within the EGU. This extremely clean water is turned into steam at the EGU and is used to turn the blades of the turbine to generate electricity before being condensed back into water at the cooling towers and returned to the EGU. Some plants that participate in the VIP and install a membrane filtration system to treat their FGD wastewater by the 2028 compliance date might find it advantageous to direct their partially treated FGD wastewater through their EGU makeup water RO system, instead of employing a second stage RO treatment to meet the membrane filtration-based limitations in this rule. In these cases, it is unlikely that the FGD wastewater treated using the first stage of the membrane filtration treatment system alone would meet the final membrane-based limitations (*i.e.,* an internal limitation could not be met), and after mixing with other source water (*e.g.,* river water or groundwater) at the EGU makeup water RO treatment system, it could be infeasible to demonstrate compliance based on existing methods.[93] Small amounts of EGU water are handled as EGU blowdown, which is sent to flash tanks where most will turn to steam. While some of the rest can be recycled, at times it is necessary to discharge this water, subject to existing limitations for low volume waste (as the existing regulatory definition of low volume wastes includes EGU blowdown). This could occur where the EGU is emptied for maintenance (*e.g.,* to repair tube leaks) or shut down (*e.g.,* during outages). Reduced water withdrawals are a non-water quality environmental impact that not only saves plants money to withdraw and treat significant volumes of water, but would also reduce impingement and entrainment. EPA projects that the final rule VIP will result in 292,000 gallons per day of reduced water withdrawals at eight plants. While some of these reduced water withdrawals may be due to increased recycling within the FGD system, at least a portion of these reduced withdrawals would be expected where a plant used the permeate as EGU makeup water. Therefore, to encourage this practice where EGU makeup water is ultimately discharged as EGU blowdown, the EPA is making a change from proposal by clarifying that membrane permeate and thermal

[89] This company appears to be retiring its coal-fired EGUs from service, and therefore EPA does not project that it would use the VIP whether the deadline is 2026 or 2028.

[90] Sniderman, Debbie. 2017. From Power Plant to Landfill: Encapsulation. Innovative Technology Offers Elegant Solution for Disposing of Multiple Types of Waste. *EPRI Journal.* September 19. Available online at: *http://eprijournal.com/from-power-plant-to-landfill-encapsulation/ (DCN SE09092).*

[91] Although EPA is not establishing BAT for leachate in the current rulemaking, the vacatur and remand of BAT for leachate in *Southwestern Electric Power Co., et al.* v. *EPA* means that decreasing volumes of leachate and the concentration of pollutants in that leachate might make more technologies available in a future BAT rulemaking.

[92] Utilities described this process as water pushing a ball through the paste piping when not in use, based on cleaning done of concrete pipes at construction sites. While the ball would clean out the majority of the paste, water would still contact incidental amounts of ash and FGD materials, thus potentially subjecting it to regulations for those wastewaters.

[93] As discussed in Section XIII of this preamble, the data points used for developing limitations of three constituents in the VIP included too many non-detect values to develop a monthly limit, and these data points did not include dilution water, as would be the case here.

distillate used as EGU makeup water is not considered FGD wastewater, and is thus removing them from the definition of FGD wastewater at 423.11(n).

A compliance date of December 31, 2028 for the VIP allows time for further development of this paste technology, increasing its availability to plants, and giving plants more time to acquire any necessary permits for landfill cells for brine encapsulated with FA and lime if needed; allowing plants time to conduct pilot testing, demonstrations, and further analyses to identify and implement process changes associated with membrane filtration; and assessing the long-term performance of the technology for treatment of FGD wastewaster.

Taken together, EPA's final VIP gives plants greater flexibility when choosing a technology to achieve the established VIP pollutant limitations, resulting in pollutant reductions beyond the BAT limitations that are generally applicable to the industry. Under the proposal, EPA estimated that 18 plants may opt into the VIP program. Based on public comments and cost estimate revisions, under the final rule, EPA now estimates that eight plants (13 percent of plants estimated to incur FGD compliance costs) may opt into the VIP program.

EPA is not finalizing the VIP for PSES for several reasons. First, the CWA dictates that plants subject to PSES comply within three years after the limitations are promulgated. Thus, the statute does not allow for additional time to implement VIP limitations. Second, there are only two plants with indirect discharges of FGD wastewater. One of these plants has announced its retirement, and EPA expects that plant to participate in the subcategory for EGUs permanently ceasing the combustion of coal. The other plant has a water quality-based effluent limitation that would already call for the use of a technology that could meet the VIP limitations. Since a PSES VIP would not grant any additional time or flexibility, EPA determines that such a provision is not justified.

C. Additional Subcategories

In the 2015 rule, EPA established subcategories for small EGUs (less than or equal to 50 MW nameplate capacity) and oil-fired units. EPA subcategorized small EGUs due to disproportionate costs when compared to the rest of the industry and subcategorized oil-fired units both because they generated substantially fewer pollutants and are generally older [94] (and more susceptible to early retirement). In the 2015 rule, EPA stated:

> ''If these units shut down, EPA is concerned about resulting reductions in the flexibility that grid operators have during peak demand due to less reserve generating capacity to draw upon. But, more importantly, maintaining a diverse fleet of generating units that includes a variety of fuel sources is important to the nation's energy security. Because the supply/delivery network for oil is different from other fuel sources, maintaining the existence of oil-fired generating units helps ensure reliable electric power generation, as commenters confirmed.'' [95]

For these subcategorized units in the 2015 rule, EPA established differentiated limitations based on surface impoundments (*i.e.,* setting BAT limitations equal to BPT limitations on TSS).

EPA did not propose, and is not changing in this final rule, the 2015 rule subcategorization of small EGUs and oil-fired units. The final rule does, however, incorporate and expand on EPA's previous analysis of characteristics and differences within the industry. EPA has authority in a national rulemaking to establish different limits for different plants after considering the statutory factors listed in section 304(b). *See Texas Oil & Gas Ass'n* v. *EPA,* 161 F.3d 923, 938 (5th Cir. 1998) (''We find nothing in the text of the CWA indicating that Congress intended to prohibit the promulgation of different effluent limits within a single subcategory of point sources . . . . The fact that EPA must promulgate rules for classes of polluters rather than individual polluters does not mean that EPA is required to treat all polluters within each class identically. The phrases 'for categories and classes' and 'within such categories or classes' simply do not, by their terms, exclude a rule allowing less than perfect uniformity within a category or subcategory.). The final rule includes subcategories applicable to FGD wastewater and BA transport water for EGUs with low utilization and EGUs permanently ceasing the combustion of coal. In addition, the final rule includes a subcategory applicable to FGD wastewater for power plants with high FGD flows. These subcategories are discussed below.

1. Plants With High FGD Flows

Consistent with the proposal, EPA is finalizing a subcategory for plants with high FGD flows based on the statutory factor of cost. Specifically, this subcategory faces a disproportionately higher capital cost than other plants in the industry. The 2015 rule discussed the ability of high flow plants to recycle FGD wastewater back into the air pollution control system to decrease FGD wastewater flows and treatment costs. After the 2015 rule, the Tennessee Valley Authority (TVA) submitted a request seeking a fundamentally different factors (FDF) variance for its Cumberland power plant.[96] This variance request relied primarily on two facts. First, TVA stated that Cumberland's FGD wastewater flow volumes are several million gallons per day,[97] approximately an order of magnitude higher than many other plants with comparable generation capacity, and millions of gallons per day higher than the next highest flow rate in the entire industry.[98] TVA further stated that the FGD system at Cumberland is constructed of a steel alloy that is susceptible to chloride corrosion. Based on the typical chloride concentrations in the FGD scrubber, the plant would be able to recycle little, if any, of the wastewater back to the scrubber as a means for reducing the flow volume sent to a treatment system.[99] Second, as a result of the inability to recycle these high FGD flows, TVA stated that the cost of a biological treatment system would be high.

The final rule subcategorizes plants with FGD purge flows of greater than four million gallons per day, after accounting for that plant's ability to recycle the wastewater to the maximum limitations for the FGD system materials of construction, to avoid placing a disproportionate cost on such plants. Such a flow reflects the reasonably predictable flow associated with actual and expected FGD operations.

According to TVA's analysis, chemical precipitation plus biological treatment at that high flow plant would result in a capital cost of $171 million,

[94] Age is a statutory factor for BAT. CWA section 304(b), 33 U.S.C. 1304(b).

[95] 80 FR 67856 (November 3, 2015).

[96] Tennessee Valley Authority (TVA)—*Cumberland Fossil Plant—NPDES Permit No. TN0005789—TVA Request for Alternative Effluent Limitations for Wet FGD System Discharges Based on Fundamentally Different Factors Pursuant to 33 U.S.C. 1311(n).* April 28, 2016.

[97] In the FDF variance, TVA cites to a hypothetical maximum flow of 9 MGD; however, based on survey responses and discussions with TVA staff, the company has never approached this flow rate and does not expect to.

[98] Cumberland accounts for approximately one-seventh to one-sixth of all industry FGD wastewater flows.

[99] Reducing the volume purged from the FGD system or recycling FGD wastewater back to the FGD system can be used to reduce the volume of wastewater requiring treatment, and thus reduce the cost of treating the wastes. However, reducing the flow sent to treatment also has the effect of increasing the concentration of chlorides in the wastewater, and FGD system metallurgy can impose constraints on the degree of recycle that is possible.

and an O&M cost of approximately $20 million per year.[100] EPA's cost estimates are higher than TVA's, a $235 million dollar capital cost plus $21 million per year in O&M. EPA proposed to find that these costs are disproportionate, and thus proposed to subcategorize the Cumberland plant and any other plant with similarly high flows.

Some commenters argued that EPA cannot legally create a subcategory of one plant. These commenters suggest that EPA must issue a fundamentally different factors (FDF) variance rather than create a subcategory. Other commenters argued that EPA cannot create a subcategory based on costs alone and that EPA had overestimated costs. Finally, commenters claimed that EPA reversed previous findings about the ability to recycle within the Cumberland FGD system without sufficient explanation.

With respect to subcategory size, EPA does not agree that the CWA prohibits the creation of the subcategory for plants with high flows, and EPA discussed its CWA authority earlier in this section. Here, EPA has determined that plants that have particularly high FGD flows are different from other plants in the industry with respect to the compliance costs they would incur if they were expected to achieve the otherwise applicable limits based on CP+LRTR. While EPA is currently aware of only one plant that operates with flows at this high level, any plant in the industry that operates with these flow levels would qualify for the different limitations established in this subcategory.

With respect to FDF variances, EPA does not agree that CWA section 301(n) somehow restricts EPA's authority to establish subcategories. Rather, section 301(n) provides an ''acceptable alternative to subcategorizing an industry to account for plant-specific characteristics.'' *Chem. Mfrs. Ass'n* v. *EPA,* 870 F.2d 177, 221 (5th Cir. 1989) (citation omitted). While EPA is ''not required to establish separate subcategories for single plants,'' *Chem. Mfrs. Ass'n* v. *EPA,* 870 F.2d at 239, it is not prohibited from doing so. Furthermore, FDFs are different from subcategories in important ways because they typically are based on information that EPA did not have a chance to consider in the national rulemaking. *See* 40 CFR 125.31(a)(2) (a request for establishment of effluent limitations based on fundamentally different factors shall be approved only if the factors are ''fundamentally different from those considered by EPA in establishing the national limitations'').

With respect to establishing a subcategory based on costs, EPA is required to consider ''cost'' under the statute, and that includes consideration of costs for a subcategory. *See Chem. Mfrs. Ass'n* v. *EPA,* 870 F.2d 177, 239 (5th Cir. 1989). EPA has broad discretion in deciding how to account for the consideration factors and the weight to be accorded to each factor. *See Weyerhaeuser Co.* v. *Costle,* 590 F.2d 1011, 1045 (D.C. Cir. 1978); *Chem. Mfrs. Ass'n* v. *EPA,* 870 F.2d at 214; *Texas Oil & Gas Ass'n* v. *EPA,* 161 F.3d 923, 928 (5th Cir. 1998). Here, EPA has determined that total capital costs are a reasonable way to consider cost in this scenario because they demonstrate the significant up-front disparity created just to install the system. EPA acknowledges that the capital cost estimates developed by the Agency at proposal were, and continue to be for the final rule, higher than TVA's estimates, but notes that the O&M costs are nearly identical. EPA's estimated capital costs for Cumberland amount to one quarter of the total capital costs to the entire industry for treating FGD wastewater with CP+LRTR, but they would still amount to approximately one fifth if TVA's estimated capital costs were used. Both instances represent disproportionately high costs, as compared to the rest of the industry. Furthermore, while the baseline IPM run discussed below used costs of the 2015 rule (*i.e.,* CP+HRTR), which are somewhat higher than those for this final rule, these costs were projected to result in reduction of Cumberland's operations by 96 percent and partial retirement of the plant in order to meet the 2015 rule requirements.

With respect to recycling within the FGD scrubber system, EPA has not reversed any previous findings. At proposal, EPA found that, based on the maximum chlorides concentrations allowable in ''once through'' FGD systems, many of these systems could still employ some recycling of FGD water within the scrubber. For plants like Cumberland, this was true in 2015 and is true today. The amount of recycling EPA estimated for Cumberland, however, is small relative to its flows. This recycling is explicitly accounted for in the 2019 proposal, and now in the final rule analysis of O&M costs. For further public comments and responses on the propriety of this subcategory, see DCN SE08615.

As authorized by section 304(b) of the CWA, which allows EPA to consider costs, EPA is finalizing a new subcategory for FGD wastewater based on these unacceptable disparate costs. EPA finds that chemical precipitation does not impose the same unacceptable disparate costs. Therefore, the subcategory BAT is based on chemical precipitation, with effluent limitations for mercury and arsenic.

2. Low Utilization EGUs

EPA is establishing a new subcategory for EGUs with low utilization (*i.e.,* peaking EGUs) based on the statutory factors of cost, non-water quality environmental impacts (including energy requirements), and other factors the Administrator deems appropriate (*i.e.,* harmonization with Clean Air Act and CWA regulations which apply to electric utilities). Low natural gas prices and other factors have led to a decline in capacity utilization for the majority of coal-fired EGUs. According to EIA 923 data,[101] overall coal-fired production for 2017–2018 was approximately one-third lower than in 2009, with the majority of EGUs decreasing utilization, some of them significantly. While the majority of EGUs were base load in 2009, coal-fired EGUs today often operate as cycling or peaking EGUs, responding to changes in load demand.[102]

In light of these industry changes, EPA examined the costs of the 2019 proposed BAT limitations and pretreatment standards for FGD wastewater and BA transport water on the basis of MWh produced, rather than the nameplate capacity (which was used to subcategorize EGUs with 50 MW capacity or less in the 2015 rule). Specifically, the Agency proposed a subcategorization for plants producing less than 876,000 MWh per year on a rolling two-year basis. EPA received many comments on this subcategory, including some that suggested different MWh utilization thresholds or tiering with different limitations for different thresholds. Some commenters argued that the proposed cutoff was not based on utilization at all, and that it could apply to very high utilization EGUs that just happened to have a smaller nameplate capacity, or recommended that EPA consider other utilization measures such as the eight percent CUR threshold used in the 2012 Mercury and Air Toxics Standards rule (77 FR 9304, February 16, 2012). EPA agrees with the latter comments and has made changes

[100] Email to Anna Wildeman. November 13, 2018.

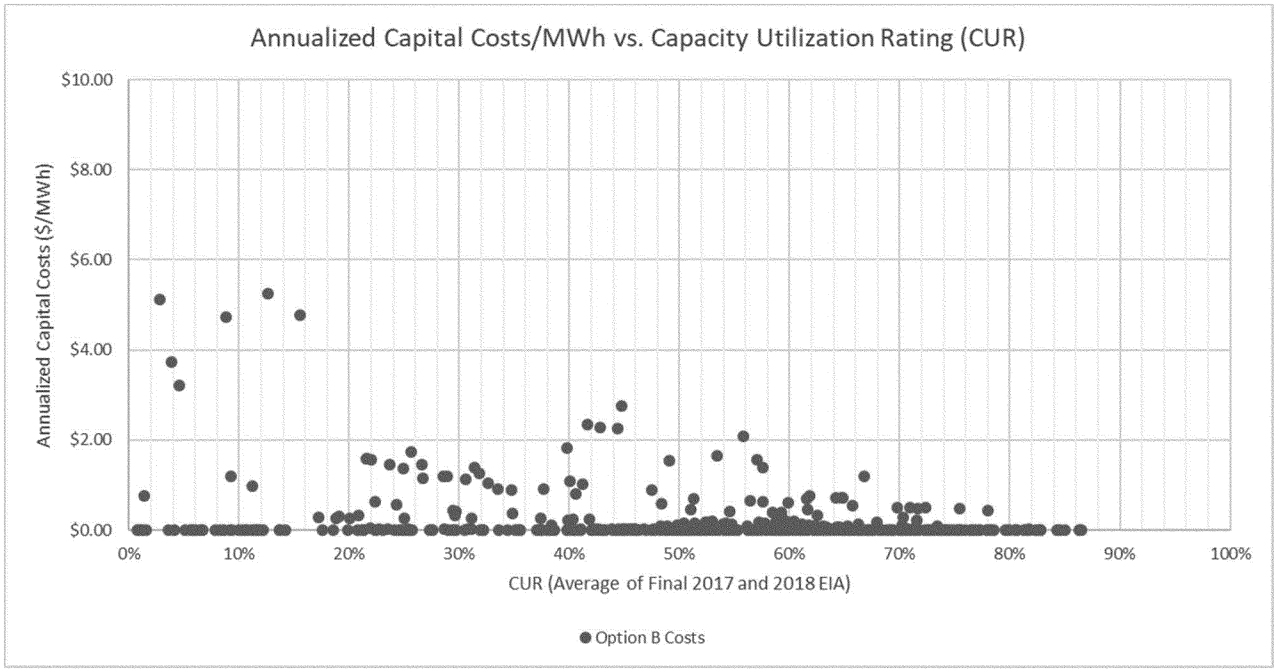
[101] *https://www.eia.gov/electricity/data/eia923/*

[102] In meetings and conference calls with electric utilities and trade organizations, several examples were provided of former base load plants that have since modified operations to be load-following, or that no longer produce at all except for peak days in summer or winter. These discussions tracked closely with changes in production reported in the EIA 923 data.

in the final rule to ensure that this subcategory is focused on low utilization EGUs and better reflect the intent of this subcategory, which its name makes apparent. Specifically, EPA has changed how it determines low utilization from a method which was based on MWh/yr (a production metric) to one based on utilization as measured by CUR.

Similar to EPA's finding regarding small units in the 2015 rule, the record indicates that disparate costs to meet the proposed FGD wastewater and BA transport water BAT limitations and pretreatment standards are imposed on EGUs with low capacity utilization. Specifically, EPA focused its analysis on annualized capital costs as opposed to O&M costs because O&M costs are often tied to CUR, a measure of how frequently and to what extent an EGU is generating electricity: The more an EGU runs, the higher the CUR, and the more residuals it generates and must pay to dispose of.[103] In contrast to O&M costs which correlate to how much an EGU is operating, capital costs do not vary with generation as they correspond to the original design of a system that can handle the maximum FGD scrubber purge flow and ash generation rate such that the system can handle a high-end/peaking power demand scenario (typically the EGU's nameplate capacity which would result in a CUR of 100%) and still meet the limitations. Thus, as utilization decreases, O&M costs are expected to decrease proportionally, while capital costs are not.

Of the EGUs which EPA estimates have production lower than the proposed rule's 876,000 MWh/yr threshold, nearly two-thirds have a CUR over 25 percent. This confirms that the subcategory as proposed was more indicative of low production rather than low utilization. Thus, to properly evaluate low utilization, EPA compared costs on a CUR basis. Figure VIII–1 below presents annualized capital costs per MWh produced versus CUR. These are the costs of Option B (*i.e.,* no subcategorization) as measured against the status quo, rather than against the 2015 rule baseline. This figure shows that four to six EGUs with a CUR between 0 percent and 16 percent have disparately higher capital costs per MWh produced than facilities with a higher CUR.



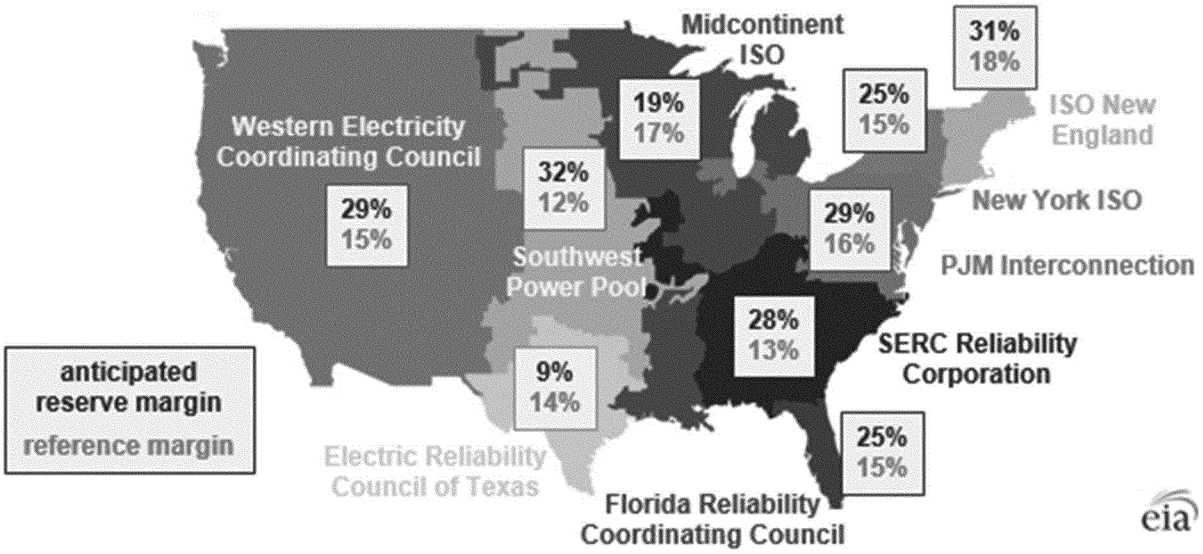
Some commenters argued that the CWA does not allow subcategorization based on costs. Some commenters also argued that costs should properly be compared on a plant basis, and that costs are not disparate on a plant basis. EPA disagrees with these comments. See the discussion in the introduction of this subcategorization section. EPA also notes that it subcategorized units with a 50 MW nameplate capacity or less based on disparate costs alone in the 2015 rule, and that provision of the 2015 rule was not challenged. With respect to commenters' arguments that the relevant metric is plant costs rather than unit costs, EPA finds that many decisions to retire, repower, or upgrade treatment are made at the EGU level, and many other EPA regulations are tied to EGUs, as discussed below. Thus, an EGU-level comparison is appropriate when examining disparate costs of this rule.

In addition to disparate costs, EPA considered non-water quality environmental impacts (including energy requirements). Because CUR is a reflection of the frequency and extent of an EGU's generation, LUEGUs necessarily operate much less frequently, delivering electricity only during peak loading. For example, EGUs operating for approximately one month out of the year would have a CUR just over eight percent, but their continued operation is useful, if not necessary, for ensuring electricity reliability in the near term. Some commenters disagreed that electricity reliability is a concern, and they pointed to excess reserve margins in some regions of the country. EPA acknowledges that electricity reliability may not be a concern everywhere in the U.S., nor will it be a concern in all seasons. For instance, the most recent NERC winter reliability assessment states, ''Anticipated

[103] Unlike residuals, wastewater volumes need not always vary directly with utilization due to flexibility in how the system is operated and timing of the generation of wastewater.

resources in all assessment areas meet or exceed their respective Reference Margin Levels for the upcoming winter period.'' [104] In contrast, Figure VIII–2 below presents the most recent (summer 2019) anticipated reserve margins as well as the reference margin designed to ensure electric reliability. As seen in that figure, the most recent summer assessment showed one region (ERCOT) that was not anticipated to meet its reference margin, and another (MISO) which was anticipated to be very close to its reference margin (19 percent vs.17 percent).

Summer 2019 reference margins and anticipated reserve margins in select NERC regions



The figure above also does not present NERC sub-regions or local distribution, which may present additional reliability challenges. For example, one trade association commenter provided an example in Southeast Michigan where a natural gas distribution system caught fire during the winter of 2019. The temporary shortage caused by the fire and cold temperatures caused local auto and semiconductor manufacturers to shut down or cut production and put Michigan residents at risk of service interruptions.[105] To the extent that LUEGUs are able to remain in service, they would be available to help alleviate these types of short-term localized shortages and outages.

Finally, EPA considered an ''other factor[ ]'' the Administrator deems appropriate,[106] which is the harmonization of regulations. DOE/EIA does not define what a peaking unit is, nor do the CAA or CWA. Nevertheless, EPA has grappled with this issue in previous regulations under these two statutes. A discussion of these regulatory examples is provided in *Steam Electric Effluent Guidelines Reconsideration—Evaluation of Final Rule Subcategories* (DCN SE09071). These regulations have in some cases specified a 10 percent CUR, an eight percent CUR, or have allowed for consideration of CUR in site-specific decisions. This provides some flexibility in implementing these rules, including reduced monitoring, different recordkeeping, and alternative compliance technologies for units meeting the relevant CUR threshold. As is clear in these examples, EPA has long considered certain low CUR EGUs as important to local reliability and resiliency of the power grid. Various definitions of low CUR have been used by EPA programs to identify where regulatory requirements should be different. While in all of these example regulations EPA concluded that additional flexibility was warranted for EGUs based on CUR, EPA did not define peaking EGUs, nor is the Agency defining peaking EGUs in this final ELG.

EPA has consistently given more flexibility to EGUs operating at the margins of the electric grid. While EPA has not consistently implemented the same CUR for all of its regulations, in practice the difference between eight percent and 10 percent CUR is minor, approximately one week of operations. Furthermore, while the subcategory is not limited to EGUs that already operate at these levels, EPA estimates that only one EGU that will incur costs under this final rule falls between eight and 10 percent CUR, based on EIA data from 2017–2018. In light of the range of CURs over which there appear to be disparate costs, the potential to contribute to reserve margins or provide local flexibility in case of unexpected capacity disruption, and the desire to harmonize with the range of CURs that have been provided additional flexibilities in other EPA rules, the final rule establishes a subcategory for LUEGUs with an average annual CUR of less than 10 percent per year averaged over 24 months. For further public comments and responses on the propriety of this subcategory, see DCN SE08615.

Consistent with the proposal, for this low utilization subcategory, EPA selected chemical precipitation as the technology basis for BAT limitations and PSES for FGD wastewater, with effluent limitations for mercury and arsenic. Also, for this subcategory EPA selected composite lined surface impoundments as the BAT technology basis for BA transport water and established limitations for TSS based on surface impoundments in combination with a BMP plan under section 304(e) of the CWA. For example, surface impoundments that meet the

[104] NERC (North America Electric Reliability Corporation). 2019. *2019–2020 Winter Reliability Assessment.* November. Available online at: *https://www.nerc.com/pa/RAPA/ra/Reliability%20Assessments%20DL/NERC%20WRA%202019_2020.pdf* (DCN SE09093).

[105] U.S. News. 2019. Bitter Cold and Natural Gas Shortages Shutter Auto Plants. DCN SE08655A081.

[106] 33 U.S.C. 1314(b)(1)(B).

engineering and design requirements in 40 CFR 257.71 would comply with this requirement. While EPA projects that some plants in this subcategory with unlined surface impoundments are likely to meet these TSS limitations using technologies other than surface impoundments once they have closed any unlined surface impoundments under the CCR rule, EPA projects that two plants will continue to operate lined surface impoundments.[107]

As authorized by section 304(b) of the CWA, which allows EPA to consider costs, non-water quality environmental impacts (including energy requirements), and other factors the Administrator deems appropriate, EPA explicitly finds that additional technologies are not BAT for this subcategory. Some commenters argued that the technologies identified for this subcategory do not represent the single best plant within the subcategory. To an extent, commenters were correct in identifying more advanced technologies (*e.g.,* biological treatment) in use within the LUEGU subcategory as it was proposed. However, those technologies were typically installed when the EGU had been operated at a much higher utilization rate. Thus, it is not appropriate to draw conclusions about what BAT for LUEGUs is today based on what might have been available and economically achievable when these EGUs operated at greater capacity utilization rates (and would therefore not have qualified as LUEGUs). In addition, the LUEGU subcategory in the final rule is narrower than the subcategory EPA proposed, with fewer plants eligible and fewer plants with advanced technologies in place.

Other commenters took a different view, suggesting that, for LUEGUs, BAT should be set equal to BPT. EPA disagrees with these commenters and declines to set BAT equal to BPT. In this final rule, EPA finds that chemical precipitation for treatment of FGD wastewater, by itself, does not impose on LUEGUs the same disproportionate costs as CP + LRTR and that chemical precipitation is technologically available and economically achievable. Similarly, the requirement of a BMP plan to recycle what water can be recycled in a BA transport water system does not impose on LUEGUs the same disproportionate costs as installation of a high recycle rate system and is technologically available and economically achievable. Plants that can achieve some level of recycle, but not 90 percent, are required to do just that. While this may still be significant due to changes occurring under the CCR rule, the fact that significant reductions might occur at little cost does not make the BMP requirement so burdensome as to warrant defaulting to BPT.

In light of the foregoing discussion, EPA finds that chemical precipitation for FGD wastewater and surface impoundments for BA transport water, along with a requirement to prepare and implement a BMP plan under section 304(e) of the Act to reduce pollutant discharges from BA transport water, are the only technologies that would not impose disproportionate costs or cause unacceptable non-water quality environmental impacts for this subcategory. While the Fifth Circuit in *Southwestern Electric Power Company* v. *EPA,* 920 F.3d 999, 1018 n.20 (5th Cir. 2019), found EPA's use of surface impoundments as the technology basis for effluent limitations on legacy wastewater to be arbitrary and capricious, the Court left open the possibility that surface impoundments could be used as the basis for BAT effluent limitations so long as the Agency identifies a statutory factor, such as cost, in its rationale for selecting surface impoundments.

Finally, EPA rejects setting BAT limitations for BA transport water in this subcategory on a case-by-case basis using BPJ because the technologies a permitting authority would necessarily consider are the same dry handling and high recycle rate systems that result in unacceptable disproportionate costs per MWh and unacceptable non-water quality environmental impacts, according to EPA's analysis above. For further public comments and responses on the appropriate BAT for this subcategory, see DCN SE08615.

3. EGUs Permanently Ceasing Coal Combustion by 2028

Under the final rule, EPA establishes a subcategory for EGUs permanently ceasing the combustion of coal by 2028, based on the statutory factors of cost, the age of the equipment and plants involved, non-water quality environmental impacts (including energy requirements), and other factors as the Administrator deems appropriate (harmonization with the CCR rule alternative closure provisions).

Some commenters argued that EPA does not have authority to establish a subcategory for EGUs that are projected to retire because the CWA does not give it authority to establish a subcategory to ''avoid premature closures'' of plants. EPA disagrees that it lacks authority to establish the subcategory for EGUs that will cease combustion of coal by 2028. While it may be true, as commenters suggested, that Congress contemplated that marginal plants may close under a BAT standard, it required that EPA consider specific factors in devising a nationally applicable ELG rule: ''Factors relating to the assessment of best available technology shall take into account the age of equipment and facilities involved, the process employed, the engineering aspects of the application of various types of control techniques, process changes, the cost of achieving such effluent reduction, non-water quality environmental impact (including energy requirements), and such other factors as the Administrator deems appropriate.'' 33 U.S.C. 1314(b)(2)(B)). And, as stated previously in this preamble, EPA has considerable discretion in deciding how to account for the statutory factors and the weight to be accorded to each factor. *See Weyerhaeuser Co.* v. *Costle,* 590 F.2d 1011, 1045 (D.C. Cir. 1978); *Chem. Mfrs. Ass'n* v. *EPA,* 870 F.2d at 214; *Texas Oil & Gas Ass'n* v. *EPA,* 161 F.3d 923, 928 (5th Cir. 1998). Based on the consideration of the statutory factors presented below, EPA is within its statutory authority to establish different limitations for such plants to help avoid unacceptable impacts.[108]

EPA proposed to include only retiring EGUs in this subcategory but solicited comment on the inclusion of repowering EGUs. Electric utility commenters across the board suggested that EPA include all EGUs that would cease the combustion of coal, and thus the generation of the wastewaters regulated under this final rule. EPA agrees with these comments. EGUs that are repowering cease generation of BA transport water and FGD wastewater, just as retiring EGUs do. Furthermore, inclusion of repowering EGUs will enhance harmonization of the rules

[107] Furthermore, EPA notes that plants may choose to retrofit a surface impoundment or construct a new lined surface impoundment under the CCR rule.

[108] It is of no moment that, in 2015, EPA declined to establish different limits for plants that might soon retire. EPA is free to change its mind as a matter of policy, so long as it explains its decision. *FCC* v. *Fox Television Stations, Inc.,* 556 U.S. 502, 515 (2009); *Motor Vehicle Mfrs. Ass'n* v. *State Farm Mutual Auto. Ins. Co.,* 463 U.S. 29, 42 (1983). That one EPA Administrator may weigh the statutory consideration factors differently from a previous one does not make the decision arbitrary, particularly where courts have long held that the Administrator has considerable discretion in weighing the factors. *See also Nat'l Ass'n of Home Builders* v. *EPA,* 682 F.3d 1032, 1038 & 1043 (D.C. Cir. 2012) (a revised rulemaking based ''on a reevaluation of which policy would be better in light of the facts'' is ''well within an agency's discretion,'' and '' '[a] change in administration brought about by the people casting their votes is a perfectly reasonable basis for an executive agency's reappraisal' '' of its policy choices) (citations omitted).

applicable to this industry and give greater clarity to the regulated community. As discussed in the CCR Part A final rule, the alternative closure provisions for surface impoundments where there is ''permanent cessation of the coal fired boiler'' in Section 257.103(f)(2) includes surface impoundments at EGUs that convert to natural gas or other fuels. The final subcategory in this ELG final rule adopts nearly identical terminology as the language in Section 257.103(f)(2) of CCR Part A. EPA believes the phrase used in § 423.11(w) of this rule ''permanent cessation of coal combustion'' will avoid confusion over the intent to include repowering EGUs, and is intended to parallel the EGUs that would be able to satisfy Section 257.103 of the CCR rule. Thus, adopting the same approach for these ELGs will create consistency and certainty for the regulated community. Furthermore, not treating repowering as equivalent to closure could create an unfavorable incentive for a plant that desires to continue operating to, instead of repowering, retire and construct a new EGU on a greenfield, rather than use existing infrastructure. It would be better environmentally for the plant to use existing transmission and distribution infrastructure where possible to limit potential new impacts from greenfield project development. Therefore, as described below, this subcategory includes repowering EGUs.

EPA has continued to gather information about plant and EGU retirements, deactivations, and fuel conversions since the 2015 rule from company announcements, industry public comments, and government databases as discussed in *Changes to Industry Profile for Coal-Fired Generating Units for the Steam Electric Effluent Guidelines Final Rule memorandum* (DCN SE08688). In the 2019 proposed rule, EPA identified 107 plants which had announced, commenced or completed such actions since the development of the 2015 rule record, the most frequently stated reason in these public statements or filings being market forces, such as the continued low price of natural gas (49 plants).[109] This was followed by other reasons (46),[110] [111] environmental regulations (33),[112] and consent decrees (10). The fact that environmental regulations were listed in these public statements or filings by nearly one-third of these plants and that ELGs were specifically listed by some respondents suggests that additional flexibility may help to avoid premature closures of some plants and/or EGUs. As presented in Figure VIII–2 and section VII.C.2 of the preamble above, the most recent summer assessment showed one region (ERCOT) that was not anticipated to meet its reference margin, and another (MISO) which was anticipated to be very close to its reference margin (19 percent vs.17 percent). Thus, EPA concludes that premature closure of some plants and/or EGUs is an unacceptable non-water quality environmental impact because it could impact reliability. Therefore the avoidance of these premature closures weighs in favor of subcategorization.

Some commenters took issue with EPA's analysis of a hypothetical plant (see 84 FR 64640, November 22, 2019) and suggested that EPA should have evaluated the costs and pollutant loadings of EGUs that fall into this subcategory. EPA agrees with the latter suggestion, and the final rule thus includes in the baseline all EGUs retiring and repowering after 2023 (the latest compliance deadlines in the 2015 rule). For those EGUs that would be subcategorized as permanently ceasing coal combustion by 2028, EPA evaluated the changes in costs and pollutant loads under regulatory Option A.

As noted above, EPA gathered readily available information from publicly available sources, company announcements, industry public comments, and government databases to identify EGUs. A list of EGUs EPA believes to be retiring or repowering between 2024 and 2028 is presented in *Changes to Industry Profile for Coal-Fired Generating Units for the Steam Electric Effluent Guidelines Final Rule memorandum* (DCN SE08688). Twenty-three EGUs at 12 plants may incur costs under the final rule absent a subcategory for units ceasing coal combustion by 2028.[113] Under Option B, these EGUs combined have estimated capital costs of $209 million and estimated O&M costs of $21 million per year, leading to combined annualized costs as high as $63 million per year.[114] When compared to the costs per MWh for EGUs not ceasing coal combustion by 2028, the shorter amortization periods for these LUEGUs lead to much higher costs per MWh in some cases. For example, while Winyah Unit 2 and Will County Unit 4 have approximate costs of $6/MWh under a normal 20-year amortization period, over the shortened amortization period these costs jump to over $10/MWh. These costs would both be among the highest, if not the highest, costs absent a subcategory for units ceasing coal combustion by 2028.

EPA received comments that the compliance deadline for this subcategory should be different. Commenters suggesting a longer time frame proposed site-specific extensions past 2028, or later dates for LUEGUs. Some commenters also suggested that this time frame was too long for a variety of reasons. With respect to comments that the time frame should be shortened, EPA received comments presenting the time frame for building replacement capacity. One example provided by Southern Company demonstrated a real-world case where the construction of the natural gas replacement EGUs took eight years from the initial coal EGU retirement decision.[115] Furthermore, as presented above, EPA has demonstrated that costs are disparate over these shorter time frames. Even if commenters disagree with EPA's characterization of these time frames as short, compressing cost recovery into these smaller amortization periods does result in disproportionate costs. Responding to comments that the time frame should be lengthened, EPA further examined the 24 EGUs that have announced retirement or fuel conversion after 2028 presented in *Steam Electric Effluent Guidelines Reconsideration—Evaluation of Final Rule Subcategories* (DCN SE09071). Of these 24 EGUs, only four EGUs at two plants are projected to incur costs under a final ELG rule. These EGUs will continue burning coal until 2033 and 2035, meaning that they will be able to

[109] This is consistent with recent analyses of the costs of coal-fired electric power generation versus other sources. Examples include: (1) *https://www.bloomberg.com/news/articles/2018-03-26/half-of-all-u-s-coal-plants-would-lose-money-without-regulation;* (DCN SE09094). (2) *https://insideclimatenews.org/news/25032019/coal-energy-costs-analysis-wind-solar-power-cheaper-ohio-valley-southeast-colorado* (DCN SE09095).

[110] Announcements for some power plants cited several rationales, hence the numbers do not add to 107.

[111] ''Other'' includes age, reliability of the plant, emission reduction goals, decreased local electricity demand, plant site limitations, and company goals to invest in clean/renewable energy.

[112] Approximately 31 percent of the facilities identified specific environmental regulations affecting their decision-making. Specific environmental regulations, when mentioned, included CPP, MATS, ELGs, CCR Rule, and Regional Haze Rules.

[113] Three EGUs at two plants are expected to retire or cease burning coal between permit renewal and the no later than compliance date.

[114] This upper bound assumes costs are all incurred between 2021 and the announced year of closure or conversion to a different fuel source.

[115] While replacement capacity may not be necessary in all cases, the Agency believes that it should not tie the hands of electric utilities by foreclosing the possibility.

amortize their costs over a time frame closer to the estimated 20-year amortization period used for the industry as a whole. Unlike the EGUs ceasing coal combustion by 2028, the costs per MWh of these four EGUs do not increase significantly when evaluated with a shortened amortization period, and appear to fall in the range of the rest of the industry. Thus, changes to the latest year for permanent cessation of coal combustion is not justified based on disparate costs.[116] Finally, with respect to both sets of comments suggesting longer and shorter time frames, changing the time frames would eliminate harmonization with the CCR rule. The CCR Part A rule finalized alternative closure provisions under 257.103(f) for coal-fired EGUs that permanently cease by 2028. For EPA to have requirements with that date under the CCR rule and a different date (earlier or later) for requirements under the ELGs would introduce unnecessary confusion and potentially limit the flexibilities deliberately afforded to the regulated community under one or both regulations. In meetings with EPA, utilities expressed two other concerns related to retiring or repowering units which would support this subcategory and the associated time frames. First, several utilities discussed the possibility that public utility commissions (PUC) would not allow cost recovery for equipment purchased near the end of a plant's useful life, resulting in stranded assets. Although the utilities indicated that PUCs have historically allowed for cost recovery even after the retirement of an EGU, they provided recent examples of PUCs rejecting cost recovery, which makes the prospect of continued recovery after retirement less certain. Second, utilities expressed the need for sufficient time to plan, construct, and obtain necessary permits and approvals for replacement generating capacity. In discussions of example Integrated Resource Plans (IRPs) and the associated process, utilities suggested timelines that would extend for five to eight years or longer.[117]

Finally, the North American Electric Reliability Corporation (NERC) recently conducted an aggressive stress test scenario identifying the reliability risks if large baseload coal and nuclear plants were to bring their projected retirement dates forward.[118] That report found that if retirements happen faster than the system can respond (by constructing new base load, *e.g.*), significant reliability problems could occur. NERC cautions that, though this stress test is not a predictive forecast,[119] the findings are consistent with the concern that electric utilities conveyed to EPA, viz., that the well-planned construction of new generation capacity and orderly retirement of older plants are vital to ensuring electricity reliability. While EPA received comments that the scenarios that EPA evaluated at proposal did not result in the same level of retirements as the NERC stress test, any retirements caused by EPA, including under this regulation, could contribute to such a scenario. Furthermore, as presented in the discussion of LUEGUs above, inadequate reserve margins in some regions and commenter-provided examples of electricity upsets support EPA's view that marginal plants should not be forced into retirement while they still have a useful role to play in ensuring electric reliability.

In light of the information discussed above, and EPA's authority under section 304(b) to consider cost, the age of equipment and plants involved, non-water quality environmental impacts (including energy requirements), and other factors that the Administrator deems appropriate, EPA is establishing a new subcategory for EGUs that plan to permanently cease combustion of coal no later than December 31, 2028, subject to a certification requirement (described in Section XIV). For this subcategory, EPA is establishing BAT limitations for TSS for both FGD wastewater and BA transport water based on surface impoundments as the selected technology basis.[120] Some commenters disputed EPA's selected technology basis for EGUs in this subcategory. Comments argued that EPA cannot legally select surface impoundments for this subcategory, failed to base BAT on the best performing plant in the subcategory, and failed to consider that units in this subcategory could lease rather than purchase equipment to help meet the final limitations. As mentioned above, the Fifth Circuit's decision in *Southwestern Electric Power Company* v. *EPA* left open the possibility that surface impoundments could be used as the basis for BAT effluent limitations, so long as the Agency identifies a statutory factor, such as cost, in its rationale for selecting surface impoundments. For further public comments and responses on this subcategory, see DCN SE08615.

Next EPA examined the treatment technologies employed at plants that have units that qualify for this subcategory. Four of the 12 plants retiring or repowering between 2024 and 2028 are projected to incur FGD wastewater costs. Of these, two have chemical precipitation, one has chemical precipitation plus biological treatment, and the remaining plant has physical settling via surface impoundments. The one plant with biological treatment is Duke Energy's Allen Steam Station, which installed an HRTR system more than 10 years ago. Thus, unlike other plants with no current treatment, this plant has had sufficient time to amortize its costs. The fact that a plant could absorb the costs of an advanced wastewater treatment technology a decade ago when it operated at a much higher utilization does not demonstrate that, moving forward, plants already planning to retire could absorb such costs. For BA transport water, nine of the 12 plants will incur BA transport water costs under this final rule. Four of these plants already operate high recycle rate systems, while the remaining five plants only have wet sluice of their ash to surface impoundments. Again, the fact that a plant could easily absorb the costs of such systems previously, does not indicate that such systems are BAT moving forward.

Finally, although EPA agrees with commenters that a wide variety of

[116] While it is possible additional plants might choose to retire or repower soon after 2028 and have not yet announced their intent to do so, it is not possible to predict such possibilities.

[117] Utilities also shared instances of very quick turnaround in some cases.

[118] North American Electric Reliability Corporation (NERC). 2018. *Special Reliability Assessment: Generation Retirement Scenario.* Atlanta, GA 30326. December 18. Available online at: *https://www.nerc.com/pa/RAPA/ra/Reliability%20Assessments%20DL/NERC_Retirements_Report_2018_Final.pdf.* (DCN SE09096)

[119] ''NERC's stress-test scenario is not a prediction of future generation retirements nor does it evaluate how states, provinces, or market operators are managing this transition. Instead, the scenario constitutes an extreme stress-test to allow for the analysis and understanding of potential future reliability risks that could arise from an unmanaged or poorly managed transition.''

[120] EPA is not specifying that the BAT technology basis is composite lined impoundments here, as it did for the low utilization subcategory, because under the CCR rule, plants must cease receiving waste in their unlined surface impoundments by April 11, 2020, but plants that need additional time to develop alternate capacity to manage their wastestreams may continue to use their unlined surface impoundments under the alternative closure provisions of 40 CFR257.103(f)(1) or (2). Units falling within the alternative closure provision of (f)(2) must both complete closure of their unlined surface impoundments and permanently cease combustion of coal by 2023 or 2028 (depending on size of the impoundment). Thus, use of unlined surface impoundments under the ELG up to that date would be compatible with the CCR rule, and nothing in this final ELG would authorize the use of an unlined surface impoundment outside of these CCR Part A rule flexibilities.

wastewater treatment systems are available to lease, availability alone does not eliminate the issues already identified. Commenters provided information that systems were available for lease but did not provide information that leasing a treatment system would be less costly than the alternative. In contrast, during one of the conference calls identified above, EPA learned that one utility had conducted an evaluation of leasing equipment for one of its plants. At that plant, the leasing option was not less costly than purchasing and installing the same equipment. Data in the record regarding costs of leasing FGD wastewater treatment systems is limited. EPA had meetings or conference calls with several vendors and plants regarding leasing treatment equipment, but only obtained specific cost data for a single plant. EPA used the information provided about this plant to evaluate leasing in Cost to Lease Flue Gas Desulfurization Wastewater Treatment memorandum (DCN SE08633). For further public comments and responses on the issue of costs associated with leasing FGD wastewater treatment systems, see DCN SE08615.

After considering the information above, EPA finds that additional technologies such as chemical precipitation, CP+LRTR, CP+HRTR, membrane filtration, or thermal technologies for FGD wastewater, and the dry handling/closed-loop technologies or high recycle rate BA transport water technologies are not BAT for this subcategory due to the unacceptable disproportionate costs they would impose; the potential of such costs to accelerate retirements of EGUs at this age of their useful life; the resulting increase in the risk of electricity reliability problems due to those accelerated retirements; and the harmonization with the CCR rule. EPA finds that surface impoundments are the only technology that would not impose such disproportionate costs on this subcategory of EGUs. Establishing surface impoundments as BAT for this subcategory alleviates the choice for these plants to either pass on disparately high capital costs over a shorter useful life or risk the possibility that post-retirement rate recovery would be denied for the significant capital and operating costs associated with the final rule. This subcategory also allows electric utilities to continue the organized phasing out of EGUs that are no longer economical, in favor of more efficient, newly constructed generating stations, and helps prevent the scenario described in the NERC stress test. Additionally, it ensures that plants could make better use of the CCR rule's alternative closure provision, by which an unlined surface impoundment could continue to receive waste and complete closure by 2028.[121] EPA notes that, in order to complete closure by 2028, plants may have to cease receiving waste well in advance of that date; however, a 2028 date ensures that the final rule does not restrict the use of this alternative closure provision regardless of when a plant ultimately ceases receipt of waste. Furthermore, EPA rejects setting BAT limitations for either FGD wastewater or BA transport water in this subcategory on a case-by-case basis, using BPJ because the technologies an NPDES permitting authority would necessarily consider are the same systems that result in unacceptable disproportionate costs and unacceptable non-water quality environmental impacts according to EPA's analysis (described above). Because these EGUs are already nearing the end of their useful lives as coal-fired units, and are susceptible to early retirement or fuel conversion, losing the use of surface impoundments for wastewater before currently planned closure dates would undermine the flexibility of the CCR alternative closure provisions. This could hasten the retirement of units in a manner more closely resembling the reliability stress test discussed above, which is an unacceptable non-water quality environmental impact (including energy requirements) of compromised electric reliability. For further public comments and responses on the issue of the appropriate BAT technology for this subcategory, see DCN SE08615.

D. Availability Timing of New Requirements

Where BAT limitations in the 2015 rule are more stringent than previously established BPT limitations for FGD wastewater and BA transport water, those BAT limitations, under the compliance dates as amended by the 2017 postponement rule, do not apply until a date determined by the permitting authority that is ''as soon as possible'' beginning November 1, 2020.[122] The 2015 rule also specifies the factors that the permitting authority must consider in determining the ''as soon as possible'' date.[123] In addition, the 2017 postponement rule did not revise the 2015 rule's ''no later than'' date of December 31, 2023, for implementation because, as public commenters pointed out, without such a date, implementation could be substantially delayed, and a firm ''no later than'' date creates a more level playing field across the industry. Like the 2015 rule, as part of the consideration of the technological availability and economic achievability of the BAT limitations in this proposal, EPA considered the magnitude and complexity of process changes and new equipment installations that would be required at plants to meet the final rule's limitations and standards. Where such limitations and standards justified a different ''no later than'' date, EPA has changed this date, as detailed below. However, where EPA continued to project that technologies would be available by the existing ''no later than'' deadlines, those deadlines have been considered appropriate and retained.

In the 2015 rule, and as amended by the 2017 postponement rule, EPA selected the time frames described above to enable many plants to raise needed capital, plan and design systems, procure equipment, and then construct and test systems. The time frames also allow for consideration of plant changes being made in response to other Agency rules affecting the steam electric power generating industry (*e.g.,* the CCR rule). EPA understands that some plants may have already installed, or are now installing, technologies that could comply with the final limitations. While these plants could therefore potentially meet the standards of the final rule by the earliest date on which the limitations may become applicable, EPA received comments asking that EPA not select November 1, 2020 for the ''as soon as possible'' date, and further pointed out that this November 1, 2020 date was chosen to allow for sufficient time to conduct this rulemaking rather than with respect to when plants could meet the final limitations in this rule. As the Agency explained in the 2017 postponement rule, the November 1, 2020 date was selected based on the time frame for finalizing a new rule (*i.e.,* this final rule).

For this final rule, EPA concluded that the earliest date the industry can achieve compliance with these new,

[121] 40 CFR 257.103(b).

[122] 40 CFR 423.11(t).

[123] These factors are: (a) Time to expeditiously plan (including to raise capital), design, procure, and install equipment to comply with the requirements of the final rule; (b) changes being made or planned at the plant in response to greenhouse gas regulations for new or existing fossil fuel-fired power plants under the Clean Air Act, as well as regulations for the disposal of coal combustion residuals under subtitle D of the Resource Conservation and Recovery Act; (c) for FGD wastewater requirements only, an initial commissioning period to optimize the installed equipment; and (d) other factors as appropriate. 40 CFR 423.11(t)

more stringent limitations is October 13, 2021. EPA notes that, while the limitations being finalized today are in some cases more flexible than those of the 2015 rule, in other cases they are more stringent. For instance, mercury limitations for FGD wastewater in the final rule are several times more stringent than those in the 2015 rule. Even a plant that might have a fully installed and operational biological treatment system to meet the 2015 rule might have to modify its physical/chemical pretreatment system or install post-treatment to ensure meeting these lower mercury limitations. Thus, even plants with treatment systems may need additional time to evaluate those systems against the new limitations, make modifications, and optimize performance. These changes might be minor in some cases; in other cases they could require procurement and installation of additional equipment. For example, Duke Energy has recently procured ultrafilters for its HRTR systems.

At the same time as these plants may have to procure and install additional equipment, the global pandemic related to COVID–19 has disrupted normal supply chains and forced companies to rethink how construction is conducted, in many cases putting in place additional protocols such as distancing. In conversations since the proposal with staff at Platte River Power Authority, Duke Energy, Georgia Power, and GenOn, each company indicated that it had made changes to construction projects or experienced delays. For example, GenOn had on-site contractors mobilized at some plants in February, but due to restrictions imposed in March, those contractors left the sites and GenOn was forced to seek out an alternate vendor. This led to a six-month delay on that project.[124] Several companies also indicated that they have had to postpone outages. Since these outages are necessary to perform final hookups to newly installed wastewater treatment systems, delays will directly impact the time frames over which plants could meet any limitations. Furthermore, any additional time short of one year from the publication date of this rule would be insufficient for plants in many areas of the country because the construction season would already be over. Instead, EPA finds that setting the earliest applicability dates for both bottom ash transport water and FGD wastewater as October 13, 2021, which also happens to be toward the end of the 2021 construction season, would allow companies time to analyze the final rule, make plans, and construct any necessary treatment system upgrades under COVID–19 construction protocols. In addition to the considerations above, allowing a full year after publication will allow plants time to adjust to changed electricity demand due to the pandemic and the subsequent phases of reopening;[125] build in evaluations with the most recent utilization rates; and evaluate whether participation in either the LUEGU or permanent cessation of coal combustion subcategories would be appropriate for any EGUs.

With respect to the latest compliance dates, EPA collected updated information regarding the technical availability of the proposed FGD and BA BAT technology bases and the VIP alternative. Based on the engineering dependency charts, bids, and other analytical documents in the current record, individual plants may need two to three years from the effective date of any rule to install and begin operating a treatment system to achieve the BAT limitations for FGD wastewater. Information in EPA's rulemaking record indicates a typical time frame of 26 to 34 months to raise capital, plan and design systems (including any necessary pilot testing), procure equipment, and construct and then test systems (including a commissioning period for FGD wastewater treatment systems).[126] For BA transport water, the record at proposal indicated a typical time frame of 15 to 23 months to raise capital, plan and design systems, procure equipment, and construct a dry handling or closed loop or high recycle rate BA system. Nothing in the comments received by EPA leads the Agency to a different conclusion.

EPA received comments that the record did not support longer compliance time frames for FGD wastewater, based on the typical installation time frames. EPA disagrees with these comments. While the time frames above may be appropriate for an individual plant, several utilities and EPC firms pointed out difficulties in retrofitting biological treatment systems on a company-wide or industry-wide basis. Moreover, the same engineers, vendors, and construction companies are often used across plants. These same issues do not arise for chemical precipitation systems, which are substantially more prevalent in the industry, and in many cases would likely be installed to meet the cease-receipt-of-waste deadlines in the CCR Part A rule. That CCR rule finalized April 11, 2021 as the cease-receipt-of-waste date, with a site-specific alternative closure extension provision in 257.103(f) that allows a plant to get extensions up to as late as 2023 or 2024, depending on whether the plant was already required to close prior to the *USWAG* mandate. To stop receiving waste in an unlined surface impoundment, a plant would need to construct a treatment system to meet applicable ELGs, such as a tank-based system that meets the BPT limitations. However, biological treatment is not necessary to remove TSS, and therefore more time for implementation of the final BAT limitations will help to accommodate the process changes necessitated by combining chemical precipitation and LRTR and alleviate competition for resources. Considering all the factors described above, EPA is extending the ''no later than'' date for meeting FGD wastewater BAT limitations based on CP+LRTR to December 31, 2025. Thus, for FGD wastewater, BAT limitations based on CP+LRTR do not apply until a date determined by the permitting authority that is as soon as possible beginning October 13, 2021, but no later than December 31, 2025.

With respect to BA transport water, commenters expressed several concerns, including: A concern that 2023 was not a sufficient time to plan for and meet new limitations, nor a sufficient time to conduct a BPJ analysis for the BA purge water and install any appropriate technology; a concern that these dates should be harmonized with the final CCR Part A rule, and that these dates were not harmonized with the time frames proposed for FGD wastewater (including the FGD makeup water exemption).[127] EPA agrees with some comments, disagrees with others, and concludes that extension of the 2023 date as proposed is warranted, for the reasons discussed below.

[124] DCN SE08621.

[125] Peer reviewed research from Imperial College in March 2020 suggested that some form of mitigation measures (*e.g.,* social distancing) might be required for 18 months or longer which would correspond to September 2021. Available online at: *www.imperial.ac.uk/media/imperial-college/medicine/sph/ide/gida-fellowships/Imperial-College-COVID19-NPI-modelling-16-03–2020.pdf.* (DCN SE09097)

[126] Many plants have already completed initial steps of this process, having evaluated water balances and conducted pilot testing to prepare for implementing the 2015 rule.

[127] Commenters also stated that these time frames would be insufficient for installation of dry CSC systems. While dry handling is no longer considered part of the technology basis, EPA acknowledges that dry handling would be an alternative means for meeting the final limits, and agrees that based on information provided in the Rawhide conference call as well as the CCR rule docket, CSC systems may require a longer time frame for installation.

EPA disagrees that specific facts asserted by commenters warrant extending the time beyond 2023. First, EPA concludes that many plants could meet the 2023 date as proposed. As described at proposal, the industry continues to shift away from the use of surface impoundments for handling BA due to the CCR rule which has requirements to cease receipt of waste by a date certain. The CCR Part A final rule establishes a cease receipt of waste date of April 11, 2021 for many of these impoundments; however, other provisions of the 2015 CCR rule have cease receipt of waste dates which have already passed. With respect to the concerns related to BPJ analysis timing and FGD wastewater exemption, EPA responds that these timing issues can be addressed with flexibilities for the respective provisions, rather than extending the ''no later than'' dates. For BPJ, plants can work with their permitting authority to develop reasonable compliance time frames to meet whatever BPJ is selected for BA purge water. EPA has clarified in the regulatory text that BA transport water sent to the FGD system for use as FGD makeup water becomes FGD wastewater. Thus, whatever limitations apply to FGD wastewater at the time, also apply to the BA transport water used in the FGD systems as FGD makeup water. Where the compliance date for FGD wastewater limitations occurs after the compliance date for BA transport water limitations, plants would continue to meet the BPT limitations for the BA transport water used in the FGD system as FGD makeup water until the former compliance date.

However, EPA agrees that other facts presented by commenters and in EPA's rulemaking record do warrant extending the latest compliance dates for BA transport water beyond 2023. First, the CCR Part A rule alternate closure provision in 257.103(f)(1) now allows a subset of surface impoundments to receive waste as late as 2024. Harmonizing compliance time frames to at least 2024 would allow plants to make use of the CCR Part A rule's additional flexibility. Second, EPA acknowledges that deadlines were harmonized across wastestreams in the 2015 rule, providing plants an opportunity to plan for any upgrades in a more integrated fashion. Harmonization of FGD wastewater and BA transport water ''no later than'' dates would be consistent with that approach.

Considering all the factors described above, EPA is extending the ''no later than'' date for compliance with the generally applicable BA transport water BAT limitations to December 31, 2025. While harmonization with other wastestreams' compliance dates could support either a 2023 or 2025 ''no later than'' date for the BA transport water limitations in this rule, the 2023 date would frustrate the flexibilities provided for impoundments until 2024 to close under the final CCR Part A rule and lead to disjointed plant planning across the two wastestreams. The more holistic approach is to select the 2025 date, thereby harmonizing the dates applicable to the two wastestreams being finalized in this rule. Thus, for BA transport water, BAT limitations based on high recycle rate systems do not apply until a date determined by the NPDES permitting authority that is as soon as possible beginning October 13, 2021, but no later than December 31, 2025.

Importantly, for both FGD and BA, EPA distinguishes the ''no later than'' date from the ''as soon as possible'' date, determined by the permitting authority in accordance with the factors in 40 CFR 423.11(t). While EPA is postponing the ''no later than'' dates in this final rule, where plants can comply with these final limitations sooner, NPDES permitting authorities are already required to incorporate those earlier permit dates, as specified in 423.11(t). Thus, this change to the ''no later than'' dates to December 31, 2025 will not change the dates included in every NPDES permit.

In addition, as discussed earlier, EPA is giving plants that opt into the VIP until December 31, 2028, to meet the VIP FGD wastewater limitations, which are based on membrane filtration technology. That is the date on which EPA finds that the membrane filtration technologies may be available, on a site-specific basis, to plants that might choose to participate in the VIP and be bound by those limitations. The final rule gives plants sufficient time to work out operational issues related to being the first plants in the U.S. to treat FGD wastewater using membrane filtration at full scale, as well as to conduct engineering studies on the encapsulation mix appropriate at that site for the disposal of the resulting brine. As previously explained, both of these issues contributed to EPA's decision that membrane filtration is not appropriate as a nationwide BAT. EPA also believes that a compliance deadline of December 2028 is an effective incentive for plants to opt into a program that can achieve significant pollutant reductions.

E. Additional Rationale for the Final PSES

EPA is continuing to rely on the pass-through analysis as the basis of the limitations and standards in the 2015 rule. With respect to FGD wastewater, as discussed above, the long-term averages for LRTR biological treatment are comparable to those achieved with HRTR biological systems. On this basis, EPA concludes that mercury, arsenic, selenium, and nitrate/nitrite pass-through POTWs, as it concluded in the 2015 rule.

With respect to BA transport water, EPA projects that plants converting to dry handling or recycling all of their BA transport water would continue to perform as the zero discharge systems EPA used in its 2015 rule pass-through analysis. As explained in Section VII.b.ii, for those plants using high recycle rate systems, the final rule allows the NPDES permitting authority to establish, on a case-by-case basis, the volume of discharge (with a maximum of 10 percent of the system volume per day, on a 30-day rolling average) and to determine the BAT limitations for that discharge based on BPJ. For indirect dischargers, control authorities can establish local limitations on a BPJ basis.

Thus, like BAT, the final rule establishes PSES based on Option A: PSES for FGD wastewater based on CP+LRTR, and PSES for BA transport water based on high recycle rate systems. EPA is establishing these technologies as the bases for PSES for the same reasons that the final rule selects these technologies as the bases for BAT. Moreover, the final rule establishes the same subcategories for PSES as it does for BAT limitations, for the same reasons described earlier.[128]

As with the final BAT effluent limitations, in considering the availability and achievability of the final PSES, EPA concluded that existing indirect dischargers need some time to achieve the final standards, in part to avoid forced outages (see Section VIII.C.7). However, in contrast to CWA section 301(b), which does not specify a compliance date for BAT limitations promulgated after 1989, CWA section 307(b)(1) requires that pretreatment standards shall specify a time for compliance not to exceed three years from the date of promulgation. Therefore, the PSES compliance dates established by this rule are three years

[128] Where the final rule establishes any subcategory that identifies BAT based on surface impoundments, with a restriction on TSS, there is no such parallel restriction for the analogous PSES subcategory because POTWs effectively treat TSS.

from promulgation of this rule. Unlike limitations on direct discharges, limitations on indirect discharges are not implemented through an NPDES permit and are directly enforceable. EPA has determined that all existing indirect dischargers can meet the standards within three years of the effective date of this final rule.

F. Summary of Economic Achievability

As EPA did for the 2015 rule, the Agency performed cost and economic impact assessments using the Integrated Planning Model (IPM) to determine the effect of the proposed ELGs, using a baseline that incorporates impacts from other relevant environmental regulations (see Chapter 5 in the RIA). At the time of the 2015 rule, the IPM model showed a total incremental closure of 843 MW of coal-fired electric power generation as a result of the ELGs, corresponding to a net effect of two EGU closures.[129] However, since then, natural gas prices have remained low, additional coal plants have retired or refueled, and changes that have been proposed to several environmental regulations have been included in those model runs. Owing to these changes, EPA ran an updated version of IPM (see Section VIII.C.2 for additional discussion of these updates).

EPA also ran IPM to analyze the effect of the final rule. As of run year 2030, IPM estimates a total net increase of 1.3 GW in coal-fired electric generating capacity compared to the baseline IPM run (compliance with the 2015 rule), reflecting full compliance by all plants with the final rule. This change represents a net increase in capacity; however, due to increased capacity utilization of several plants in one region, IPM results show a net increase of one additional early closure. These IPM results indicate that the final rule is economically achievable for the steam electric power generating industry as a whole, as required by CWA section 301(b)(2)(A).

EPA's economic achievability analysis for this and other options is described in Section VIII, below.

G. Summary of Non-Water Quality Environmental Impacts

For the 2015 rule, EPA performed an assessment of non-water quality environmental impacts, including energy requirements, air impacts, solid waste impacts, and changes in water use and found them to be acceptable. Some commenters stated that consideration of air pollution changes suggest a more stringent option is warranted. EPA reevaluated these impacts in light of the changed industry profile, as well as the requirements of the final rule. Based on the results of these analyses EPA determines that the final rule has acceptable non-water quality impacts, including those air pollution impacts raised by commenters. *See* additional information in Section 7 of the Supplemental TDD, as well as Section X of this preamble.

H. Summary of Impacts on Residential Electricity Prices and Low-Income and Minority Populations

As EPA did for the 2015 rule, the Agency examined the effects of the final rule on consumers as an additional factor that might be appropriate when considering what level of control represents BAT. If all annualized compliance cost savings were passed on to residential consumers of electricity, instead of being borne by the operators and owners of plants, the average per houshold cost savings under the final rule is $0.49 per year, as compared to the 2015 rule.

EPA similarly evaluated the effect of the final rule on minority and low-income populations. As explained in Section XII, EPA used demographic data for populations potentially impacted by steam electric power plant discharges due to their proximity (*i.e.,* within 50 miles) to one or more plants. For those populations, EPA evaluated both recreational and subsistence fisher populations. The analysis described in Section XII indicates that absolute changes in human health impacts are smaller than the overall impacts resulting from the 2015 rule. However, low-income and minority populations are potentially affected to a greater degree than the general population by discharges from steam electric power plants and are expected to accrue the benefits or drawbacks of the final rule to a greater degree than the general population.

VIII. Costs, Economic Achievability, and Other Economic Impacts

EPA evaluated the costs and associated impacts of the final rule on EGUs at steam electric power plants. These costs were analyzed within the context of compounding regulations and industry trends that have affected steam electric power plants' profitability and power generation. These include the effects of current environmental regulations (*e.g.,* final ACE rule, and final CCR Part A rule), as well as other market conditions, described in Section V.B. This section provides an overview of the methodology EPA used to assess the costs and the economic impacts and summarizes the results of these analyses. See the RIA in the docket for additional details, including results for other regulatory options EPA considered.

Neither the cost estimates, nor the pollutant loading estimates (see section IX of the preamble), prepared by EPA for the purpose of evaluating various regulatory options, are designed to reflect changes to an industry with exact precision. *See BP Exploration & Oil, Inc.* v. *EPA,* 66 F.3d 784, 800 (6th Cir. 1995) (" 'The CWA does not require a precise calculation of BAT and NSPS costs.' ") (quoting *NRDC, Inc.* v. *EPA,* 863 F.2d 1420, 1426 (9th Cir. 1988)); *Chem. Mfrs. Ass'n* v. *EPA,* 870 F.2d 177, 237–38 (5th Cir. 1989) ("The Act requires the EPA to 'take into account' the costs of BAT; it does not require a precise calculation. The EPA 'need make only a reasonable cost estimate in setting BAT'; it is sufficient if the EPA develops 'a rough idea of the costs the industry would incur.' ") (internal quotations and citations omitted); *see also Texas Oil & Gas Ass'n* v. *EPA,* 161 F.3d 923, 936 (5th Cir. 1998) (EPA's effluent reduction estimates were performed "only to satisfy the CWA's unrelated requirement that the EPA 'identify' in its regulations the degree of effluent reduction attainable through the application of BAT . . . As such, even serious flaws in the effluent reduction estimates could not provide grounds for remanding the zero discharge limit.") (citing 33 U.S.C. 1314(b)(2)(A)).

In developing ELGs, and as required by CWA section 301(b)(2)(A), EPA evaluates economic achievability to assess the impacts of applying the limitations and standards on the industry as a whole, which typically includes an assessment of incremental plant closures attributable to a regulatory option. As described in more detail below, the final rule is expected to provide cost savings when compared to the baseline. Like the prior analysis of the 2015 rule and the analysis of the 2019 proposal, the cost and economic impact analysis for the final rule focuses on understanding the magnitude and distribution of compliance cost savings across the industry, and the broader market impacts.

EPA used specific indicators to assess the impacts of the regulatory options on the steam electric power generating industry as a whole. These indicators are consistent with those used to assess the economic achievability of the 2015 rule (80 FR 67838, November 3, 2015);

[129] In meetings with EPA since the 2015 rule, electric utilities have expressed concerns that IPM underpredicts closures by not accounting for the ability of plants in regulated states to cost recover even if they would otherwise lose money or are not economical to operate.

however, for the final rule, EPA compared the values to a baseline that reflects implementation of existing environmental regulations (as of this action), including the 2015 rule. In the 2015 rule analysis, the costs of achieving the 2015 rule requirements were reflected in the policy cases analyzed rather than the baseline. Here, the baseline appropriately includes costs for achieving the 2015 rule limitations and standards, and the policy cases show the impacts of changes to those 2015 limitations and standards. More specifically, EPA compared the estimated baseline costs to the total cost to industry, and the change in the numbers and capacities of specific EGUs and plants expected to close under the regulatory options (including the final rule, Option A). As a screening tool, EPA also analyzed the ratio of compliance costs to revenue to see how the regulatory options change the number of plants (and their owning entities) that exceed thresholds indicative of financial strain.

In addition to the analyses supporting the economic achievability of the final rule, EPA conducted other analyses to: (1) Characterize other estimated effects of the final rule (*e.g.,* on electricity rates) and (2) meet the requirements of Executive Orders or other statutes (*e.g.,* Executive Order 12866, Regulatory Flexibility Act, Unfunded Mandates Reform Act).

A. Plant-Specific and Industry Total Costs

EPA estimated plant-specific costs to control FGD wastewater and BA transport water discharged at existing EGUs at steam electric power plants to which the ELGs apply.[130] EPA assessed the operations and treatment system components currently in place at a given unit (or expected to be in place as a result of other existing environmental regulations), identified equipment and process changes that plants would likely make to meet the 2015 rule (for baseline) and the final rule, and estimated the cost to implement those changes. As explained in the Supplemental TDD, the baseline also accounts for announced unit retirements, conversions, and other relevant operational changes that have occurred since EPA promulgated the 2015 rule. EPA thus derived plant-level capital and O&M costs for controlling FGD wastewater and BA transport water using the technologies that form the bases of the 2015 rule, and for the final rule. See Section 5 of the Supplemental TDD for a more detailed description of the methodology EPA used to estimate plant-level costs.

Following the same methodology used for the 2015 rule analysis and 2019 proposal, and consistent with OMB guidance, EPA used a discount rate of seven percent to annualize one-time costs and costs recurring on other than an annual basis over a specific useful life, implementation period, and/or event recurrence period. For capital costs and initial one-time costs, EPA used 20 years. For O&M costs incurred at intervals longer than one year, EPA used the interval as the annualization period (3 years, 5 years, 6 years, 10 years). EPA added annualized capital costs, initial one-time costs, and the non-annual portion of O&M costs to annual O&M costs to derive total annualized plant costs. EPA then calculated total industry costs by summing plant-specific annualized costs. To assess industry costs, EPA considered both pre-tax and after-tax costs. Pre-tax annualized costs provide insight on the total expenditure as incurred, while after-tax annualized costs are a more meaningful measure of impact on privately owned for-profit entities and incorporate approximate capital depreciation and other relevant tax treatments in the analysis. EPA uses pre- and/or after-tax costs in different analyses, depending on the concept appropriate to each analysis (*e.g.,* social costs are calculated using pre-tax costs whereas cost-to-revenue screening-level analyses are conducted using after-tax costs).

EPA estimated that the final rule will provide cost savings (negative incremental costs) as compared to the costs that the industry would incur under the 2015 rule of $175 million on a pre-tax basis, and $140 million on an after-tax basis. The savings are attributable to less expensive high recycle rate BA systems, lower cost FGD wastewater treatment systems (chemical precipitation and LRTR), and the subcategorization of LUEGUs, high-FGD flow plants, and EGUs permanently ceasing the combustion of coal by December 31, 2028. Additional cost savings are due to the changes in compliance time frames discussed above in Section VII.D.

B. Social Costs

Social costs are the costs of the final rule from the viewpoint of society as a whole, rather than the viewpoint of regulated plants (which are private costs). In calculating social costs, EPA tabulated the pre-tax costs in the year when they are estimated to be incurred. As described in Section VII.D of this preamble, the compliance deadlines and therefore the expected technology implementation years vary across plants. EPA performed the social cost analysis over a 27-year period (2021–2047), which combines the length of the period during which plants are anticipated to install the control technologies (which could be as late as 2028) and the useful life of the longest-lived technology installed at any plant (20 years). EPA calculated the social cost of the final rule using both a three percent discount rate and an alternative discount rate of seven percent. For plants that have EGUs permanently ceasing coal combustion during the period of analysis, EPA zeroed out O&M costs in the years following the cessation of coal combustion.

Social costs include costs incurred by both private entities and the government (*e.g.,* in implementing the regulation). As described further in Chapter 10 of the RIA, EPA did not quantify the incremental increase in the cost to state governments to evaluate and incorporate BPJ into NPDES permits.[131] Consequently, the only category of costs used to calculate social costs are those pre-tax costs estimated for steam electric power plants. Note that the annualized social costs for the seven percent discount rate differ from comparable pre-tax industry compliance costs. The pre-tax industry compliance costs represent the annualized costs of the final rule if they were incurred today (*i.e.,* in 2020), and thus these costs are discounted into social costs which are estimated based on the stream of future costs starting in the year that individual plants are projected to actually comply with the requirements of the final rule under the availability timing proposed in Section VII.D, and as described above, account for changes to costs to reflect EGUs permanently ceasing the combustion of coal during the period of analysis.

EPA estimated that the final rule will provide total annualized social cost savings (as opposed to industry cost savings, as presented above), of $153 million using a seven percent discount rate, and $127 million using a three percent discount rate.

C. Economic Impacts

EPA assessed the economic impacts of the final rule in two ways: (1) A screening-level assessment of the cost impacts on existing EGUs at steam

[130] EPA did not estimate costs for other wastestreams not affected by this final rule.

[131] The sensitivity analysis presented in *Response to Public Comments for Revisions to the Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category* (DCN SE08615) estimated that BPJ could increase costs by up to $0.5 million per year.

electric power plants and the entities that own those plants, based on comparison of costs to revenue; and (2) an assessment of the impact of the final rule within the context of the broader electricity market, which includes an assessment of changes in predicted plant closures attributable to the final rule. The following sections summarize the results of these analyses. The RIA discusses the methods and results in greater detail, including results for other regulatory options EPA considered.

The first set of cost and economic impact analyses—at both the plant and parent company levels—provide screening-level indicators of the impacts of costs for FGD wastewater and BA transport water controls, relative to historical operating characteristics of steam electric power plants incurring those costs (*i.e.,* level of electricity generation and revenue). EPA conducted these analyses for the baseline and the final rule, and then compared these effects to understand the incremental effects of the final rule. The second set of analyses look at broader electricity market impacts, considering the interconnection of regional and national electricity markets. It also looks at the distribution of impacts at the plant and EGU level. This second set of analyses provides insight on the impacts of the final rule on steam electric power plants, as well as the electricity market as a whole, including changes in generation capacity, generation, and wholesale electricity prices. The market analysis compares model predictions for the final rule to a base case that includes the predicted and observed economic and market effects of the 2015 rule and other existing regulations. EPA used results from the screening analysis of plant- and entity-level impacts, together with changes in projected capacity closure from the market model, to understand the impacts of the final rule relative to the baseline.

1. Screening-Level Assessment

EPA conducted a screening-level analysis of the final rule's estimated impact to existing EGUs at steam electric power plants and parent entities based on cost-to-revenue ratios. Although this is a cost savings rule, for analytic convenience and as a worst-case scenario, the Agency assumed that all of the compliance costs in the baseline, and lower compliance costs in the final rule, would be absorbed by the steam electric power plants and their parent entities (and none passed on to consumers). This assumption may overstate the impacts of compliance expenditures in the baseline to the extent that steam electric power plants operating in a regulated market may in fact be able to pass on increases in production costs to consumers through changes in electricity prices. It is, however, an appropriate assumption for a screening-level estimate of the potential cost and savings impacts.

a. Plant-Level Cost-to-Revenue Analysis

EPA developed revenue estimates for this analysis using EIA data, then calculated the change in the annualized after-tax costs of the final rule as a percent of baseline annual revenues. See Chapter 4 of the RIA for a more detailed discussion of the methodology used for the plant-level cost-to-revenue analysis, as well as results for other regulatory options EPA considered.

Cost-to-revenue ratios are used to describe impacts to entities because they provide screening-level indicators of potential economic impacts. Just as for the plants owned by small entities under guidance in U.S. EPA (2006),[132] the full range of plants incurring costs below one percent of revenue are unlikely to face economic impacts, while plants with costs between one percent and three percent of revenue have a higher chance of facing economic impacts, and plants incurring costs above three percent of revenue have a still higher probability of facing economic impacts.

Under the baseline scenario, which includes the 2015 rule, EPA estimated that 12 plants would incur costs greater than or equal to one percent of revenue, including four plants that would have costs greater than or equal to three percent of revenue, and an additional 96 plants would incur costs that are less than one percent of revenue. For the final rule, EPA estimated that nine plants incur costs greater than or equal to one percent of revenue, including three plants that have costs greater than or equal to three percent of revenue; an additional 100 plants incur costs that are less than one percent of revenue.

b. Parent Entity-Level Cost-to-Revenue Analysis

EPA also assessed the economic impact of the final rule on parent entities. The screening-level cost-to-revenue analysis at the parent entity level provides insight on the impact on those entities that own existing electric generating units at steam electric power plants. In this analysis, the domestic parent entity associated with a given plant is defined as that entity with the largest ownership share in the plant. For each parent entity, EPA compared the incremental change in the total annualized after-tax costs and the total revenue for the entity under the final rule compared with the baseline (*see* Chapter 4 of the RIA for details). Following the methodology employed in the analyses for the 2015 rule and 2019 proposal (80 FR 67838, 84 FR 64620), EPA developed a range of estimates for the number of entities currently owning an EGU at a steam electric power plant, accounting for partial information available for steam electric power plants that are not expected to incur compliance costs to meet the final rule BAT limitations and pretreatment standards.

Similar to the plant-level analysis above, cost-to-revenue ratios provide screening-level indicators of potential economic impacts to the owning entities; higher ratios suggest a higher probability of economic impacts. EPA estimated that the number of entities currently owning EGUs at steam electric power plants ranges from 231 to 459, depending on the assumed ownership structure of plants not incurring costs under the final rule and not explicitly analyzed. EPA estimates that, in the baseline, 225 to 452 parent entities, respectively, would either incur no costs or incur costs that are less than one percent of their revenues (annualized) to meet the 2015 rule BAT limitations and pretreatment standards. Six entities would have costs exceeding 1 percent of revenue, and none of the entities would have costs exceeding three percent of revenue.

Compared to the baseline, the final rule reduces the impacts on the small number of entities incurring costs. Specifically, there are two fewer entities in the one to three percent of revenue category under the final rule that were not in this category at proposal.

2. Electricity Market Impacts

In analyzing the impacts of regulatory actions affecting the electric power sector, EPA used IPM, a comprehensive electricity market optimization model that can evaluate such impacts within the context of regional and national electricity markets. The model is designed to evaluate the effects of changes in EGU-level electric generation costs on the total cost of electricity supply, subject to specified demand and emissions constraints. Use of a comprehensive, market analysis system is important in assessing the potential

[132] U.S. EPA (Environmental Protection Agency). 2006. EPA's Action Development Process: Final Guidance for EPA Rulewriters: Regulatory Flexibility Act as amended by the Small Business Regulatory Enforcement Fairness Act. November 2006. Available online at: *https://www.epa.gov/reg-flex/epas-action-development-process-final-guidance-epa-rulewriters-regulatory-flexibility-act.* (DCN SE09098)

impact of any power plant regulation because of the interdependence of electric EGUs in supplying power to the electric transmission grid. Changes in electricity production costs at some EGUs can have a range of broader market impacts affecting other EGUs, including the likelihood that various units are dispatched. The analysis also provides important insight on steam electric capacity closures (*e.g.,* retirements of EGUs that become uneconomical relative to others), or avoided closures, based on a more detailed analysis of market factors than in the screening-level analyses above. The results further inform EPA's understanding of the potential impacts of the final rule. For the current analyses, EPA used version 6 (v6) of IPM to analyze the impacts of the final rule. IPM v6 is based on an inventory of U.S. utility- and non-utility-owned EGUs and generators that provide power to the integrated electric transmission grid, including plants to which the ELGs apply. IPM v6 embeds an energy demand forecast that is derived from DOE's ''Annual Energy Outlook 2018'' (AEO 2018). IPM v6 also incorporates the expected compliance response to current regulatory requirements affecting the power sector (*e.g.,* Cross-State Air Pollution Rule (CSAPR) and CSAPR Update Rule, Mercury and Air Toxics Rule (MATS), the 2014 CWA section 316(b) Cooling Water Intake Structure (CWIS) rule, and 2015 CCR and 2020 CCR Part A rules, the final ACE rule, as well as the 2015 ELG rule).

In contrast to the screening-level analyses, which do not account for interdependence of electric EGUs in supplying power to the transmission grid, IPM v6 accounts for potential changes in the generation profile of steam electric and other EGUs and consequent changes in market-level generation costs, as the electric power market responds to changes in generation costs due to the final rule. Additionally, in contrast to the screening-level analyses, in which EPA assumed no cost pass through of ELG compliance costs, IPM v6 depicts production activity in wholesale electricity markets where the specific increases in electricity prices for individual markets would result in some recovery of compliance costs for plants in those markets.

In analyzing the final rule, EPA estimated changes in the fixed and variable costs for the steam electric power plants and EGUs already incurring costs in the baseline to instead incur costs (or avoid incurring costs) to comply with the final rule. Because IPM is not designed to endogenously model the selection of wastewater treatment technologies as a function of electricity generation, effluent flows, and pollutant discharge, EPA estimated these costs exogenously for each EGU and input these costs into the IPM model as fixed and variable O&M cost adders. In other words, since the IPM code does not include wastewater treatment cost minimization equations, wastewater treatment costs must be calculated outside the model and input separately to be considered during the model run. EPA then ran IPM v6 including these new cost estimates to determine the dispatch of electric EGUs that would meet projected demand at the lowest cost, subject to the same constraints as in the baseline analysis. The estimated changes in plant- and EGU-specific production levels and costs—and, in turn, changes in total electric power sector costs and production profile—are key data elements in evaluating the expected national and regional effects of the final rule, including closures or avoided closures of steam electric EGUs and plants.

EPA considered impact metrics of interest at three levels of aggregation: (1) Impact on national and regional electricity markets (all electric power generation, including steam and non-steam electric power plants); (2) impact on steam electric power plants as a group, and (3) impact on individual steam electric power plants incurring costs. Chapter 5 of the RIA discusses the first analysis; the sections below summarize the last two, which are also further described in Chapter 5 of the RIA. All results presented below are representative of post-compliance modeled market conditions in the years 2028–2033.

a. Impacts on Existing Steam Electric Power Plants

EPA used IPM v6 results for 2030 [133] to assess the potential impact of the final rule on current EGUs at steam electric power plants. The purpose of this analysis is to assess any fleetwide changes from baseline impacts on EGUs at steam electric power plants. Table VIII–3 reports estimated results for current EGUs at steam electric power plants, as a group. EPA looked at the following metrics: (1) Incremental (and avoided) early retirements and capacity closures, calculated as the difference between capacity under the regulatory option and capacity under the baseline; (2) incremental capacity closures as a percentage of baseline capacity; (3) change in electricity generation from plants regulated by ELGs; (4) changes in variable production costs per MWh, calculated as the sum of total fuel and variable O&M costs divided by net generation; and (5) changes in annual costs (fuel, variable O&M, fixed O&M, and capital). Note that changes in electricity generation presented in Table VIII–3 are attributable both to changes in retirements, as well as to changes in capacity utilization at EGUs and plants whose retirement status does not change.

TABLE VIII–3—ESTIMATED IMPACT OF THE FINAL RULE ON STEAM ELECTRIC POWER PLANTS AS A GROUP AT THE YEAR 2030 COMPARED TO BASELINE

Metric	Baseline value	Change in value from baseline attributable to the final rule	
		Value	Percent
Total capacity (MW)	314,952	800	0.3%
Early retirements or closures [a] (MW)	68,959	−800	−1.2%
Early retirements or closures [a] (number of plants)	62	1	1.6%
Total generation (GWh)	1,475,819	4,160	0.3%
Variable production cost (2018$/MWh)	$25.92	$0.03	0.1%

[133] IPM model year 2030 represents years 2028–2033.

TABLE VIII–3—ESTIMATED IMPACT OF THE FINAL RULE ON STEAM ELECTRIC POWER PLANTS AS A GROUP AT THE YEAR 2030 COMPARED TO BASELINE—Continued

Metric	Baseline value	Change in value from baseline attributable to the final rule	
		Value	Percent
Annual costs (million 2018$)	$57,620	$109	0.2%

[a] Baseline values for early retirements or closures reflect changes from current operations considering the effects of all current regulations and market trends, not solely the 2015 rule. Values for incremental early retirements or closures represent change relative to the baseline, and thus reflect only changes resulting from the cost savings of this final rule. IPM may show partial (unit) or full plant early retirements (closures). It may also show avoided closures (negative closure values) in which an EGU or plant that is projected to close in the baseline is estimated to continue operating in the policy case.

Under the final rule, generation at steam electric power plants is projected to increase by 4,160 GWh (0.3 percent) nationally, when compared to the baseline. IPM v6 projects a net increase in total steam electric capacity by 800 MW or approximately 0.3 percent of total baseline capacity, and one net plant retirement, which results from increased steam electric generation at several other coal-fired power plants in one region (an overall net increase in steam electric generation). See Section 5.2.2.2 in the RIA for details.

These findings suggest that the final rule can be expected to have small economic consequences for the steam electric power plants as a group. For further discussion of closures and related distributional impacts, see Chapter 5 of the RIA.

b. Impacts on Individual Plants Incurring Costs

EPA also analyzed plant-specific changes attributable to the final rule for the following metrics: (1) Capacity utilization (defined as annual generation (in MWh) divided by [capacity (MW) times 8,760 hours]) (2) electricity generation, and (3) variable production costs per MWh, defined as variable O&M costs plus fuel cost divided by net generation. The analysis of changes in individual plants is detailed in Chapter 5 of the RIA.

The results generally show no change, or less than a one percent reduction or one percent increase for steam electric power plants projected to incur compliance costs under the final rule. Consistent with lower estimated compliance costs under the final rule than the costs the plants would incur under the 2015 rule, a greater number of plants see improving operating conditions under the final rule (*i.e.,* higher capacity utilization or generation, lower variable production costs) than deteriorating conditions when compared to the baseline. Thus, the results for the subset of plants incurring compliance costs further support the conclusion that the effects of the final rule on the steam electric power generating industry will be less than those of the 2015 rule.

IX. Pollutant Loadings

In developing ELGs, EPA typically evaluates the pollutant loading reductions of regulatory options under CWA section 304(b)(1)(A)(BPT), 304(b)(2)(A)(BAT) and 304 (b)(4)(A)(BCT). In estimating pollutant reductions associated with the final rule, EPA took the same approach as described above for plant-specific costs. That is, EPA compared the values to a baseline that reflects implementation of current environmental regulations, including the 2015 rule. In the 2015 rule, the baseline did not reflect pollutant loading reductions for meeting the 2015 rule requirements, as that effluent reduction is what EPA analyzed to support the 2015 rule. Here, the baseline appropriately includes pollutant loading reductions for achieving the 2015 rule requirements as EPA is analyzing the impact resulting from any changes to those requirements. More specifically, EPA considered the change in the pollutant loading reductions associated with the final rule to those projected under the baseline.

The general methodology that EPA used to calculate pollutant loadings is the same as that described in the 2015 rule. EPA used data collected for the 2015 rule, as well as the data described in Section VI, to characterize pollutant concentrations for FGD wastewater and BA transport water. EPA evaluated these data sources to identify analytical data that meet EPA's acceptance criteria for inclusion in analyses for characterizing discharges of FGD wastewater and BA transport water.[134] For each plant discharging FGD wastewater or BA transport water, EPA used data from the 2009 survey and/or industry-submitted data to determine the discharge flow rates of those wastewaters. To determine the pollutant loadings of the baseline, EPA adjusted the discharge flow rates used in the pollutant loadings estimates to account for retirements, fuel conversions, and other changes in operations scheduled to occur by December 31, 2023, described in Section 6 of the Supplemental TDD, that will eliminate or alter the discharge of an applicable wastestream. Finally, the Agency adjusted the discharge flow rates to account for changes in plant operations to optimize FGD wastewater flows and to comply with the 2015 CCR rule and 2020 CCR Part A rule. For further discussion of these adjustments, see Sections 6.2.2 and 6.3.2 of the Supplemental TDD, respectively.

EPA first estimated—on an annual, per plant basis—the pollutant discharge load for FGD wastewater and BA transport water associated with the technology basis evaluated for plants to comply with the 2015 rule requirements relative to the conditions currently present or planned at each plant. EPA similarly estimated plant-specific post-compliance pollutant loadings associated with the technology basis for plants to meet the effluent limitations of the final rule. EPA then calculated the changes in pollutant loadings at a particular plant as the sum of the differences between the estimated baseline and post-compliance discharge loadings for each applicable wastestream.

For those plants that discharge indirectly to POTWs, EPA adjusted the baseline loadings and the loadings associated with the final rule to account for pollutant removals expected from POTWs. These adjusted pollutant loadings for indirect dischargers therefore approximate the resulting discharges to receiving waters. For additional details on the methodology EPA used to calculate pollutant loading reductions, including for the other regulatory options, see Section 6 of the Supplemental TDD.

A. FGD Wastewater

For FGD wastewater, EPA used the average pollutant effluent concentration

[134] Acceptance criteria are presented in Section 6.1 of the Supplemental TDD.

and plant-specific discharge flow rates to estimate the mass pollutant discharge per plant for baseline and for the final rule. EPA used data compiled for the 2015 rule as the initial basis for estimating discharge flow rates and updated the data to reflect retirements or other relevant changes in operation. For example, EPA reviewed state and EIA data to identify flow rates for new scrubbers that have come online since the 2015 rule. EPA also accounted for increased scrubber recycle rates, which would affect the discharge flow.

EPA assigned pollutant concentrations for each analyte based on the operation of a treatment system designed to comply with the baseline or the final rule. EPA used data compiled for the 2015 rule to characterize untreated FGD purge, chemical precipitation effluent, and CP+HRTR effluent. EPA used data provided by industry to characterize effluent quality for CP+LRTR and membrane filtration effluent under the VIP. In addition, EPA used data provided by industry and other stakeholders, as described in Section VI of this preamble, to quantify bromide in FGD wastewater under baseline conditions and for the final rule.

EPA received comments on potential errors in the bromide loadings calculations used for the 2019 proposal. EPA agrees with comments identifying conversion errors, as well as comments suggesting updated bromide addition rates and has, therefore, updated its bromide loadings estimates to reflect these changes. Some commenters also expressed preferences for addressing or not addressing iodine as presented in Section XIV(C) below. EPA's rulemaking record contains very limited information about iodine, and publicly available data is more limited and uncertain than data on bromide. However, in response to comments, EPA conducted a mass balance to estimate iodine loadings based on the limited available data. For a more complete discussion of these changes, see Section 6 of the Supplemental TDD.

B. BA Transport Water

EPA estimated baseline and post-compliance loadings for the final rule in Table VII–1 using pollutant concentrations for BA transport water and plant-specific flow rates. EPA used data compiled for the 2015 rule as the basis for estimating BA transport water discharge flows and updated the data set to reflect retirements and other relevant changes in operation (*e.g.,* ash handling conversions, fuel conversions) that occurred after the 2015 rule data were collected. For the high recycle rate technology option, EPA also estimated discharge flows associated with the purge from remote MDS operation, based on the EGU capacity and the volume of the remote MDS. Under the baseline, which reflects the 2015 rule limitation of zero discharge, EPA estimated a flow rate of zero.

For the final rule, in response to the administrative petitions discussed in Section IV of this preamble, EPA used a revised set of the 2015 rule analytical data to characterize BA transport water effluent from steam electric power plants. As an example, EPA re-evaluated and revised, as appropriate, its data sets in light of questions petitioners raised about the inclusion and validity of certain data due, in part, to what the petitioners assert are flaws in data acceptance criteria, obsolete analytical methods, and the treatment of non-detect analytical results, which petitioners believed resulted in an overestimation of pollutant loadings resulting from current practices for BA transport water, in turn resulting in an overestimation of pollutant removals under the 2015 rule. EPA also updated the data set and incorporated BA transport water sampling data submitted by industry during the final months of the 2015 rulemaking and as part of a voluntary sampling program described in Section VI of this preamble. For a detailed discussion, including for other regulatory options, see Section 6 of the Supplemental TDD.

C. Summary of Incremental Changes of Pollutant Loadings From Final Rule

Compared to the 2015 rule, the final rule is estimated to result in further reductions of approximately 972,000 pounds of pollutants per year. Reductions under the final rule would be realized to the extent that plants choose to meet the limitations based on membrane filtration under the VIP for FGD wastewater. The EPA estimated that, under the final rule, eight plants (13 percent of plants estimated to incur FGD compliance costs) would opt into the VIP program.

X. Non-Water Quality Environmental Impacts

The elimination or reduction of one form of pollution may create or aggravate other environmental problems. Therefore, sections 304(b) and 306 of the Act require EPA to consider non-water quality environmental impacts (including energy impacts) associated with ELGs. Accordingly, EPA has considered the potential impact of the final rule on air emissions, solid waste generation, and energy consumption. For the reasons described in Section IX of this preamble, the baseline for these analyses appropriately includes non-water quality environmental impacts associated with meeting the 2015 rule requirements, and EPA has analyzed the incremental impacts resulting from the final rule compared to those projected under the 2015 Rule baseline. In general, EPA used the same methodology to conduct the current analysis (with updated data as applicable) as it did for the analysis supporting the 2015 rule and the 2019 proposal. The following summarizes the methodology and results. See Section 7 of the Supplemental TDD for additional details, including analysis of the other regulatory options that EPA considered.

A. Energy Requirements

Steam electric power plants use energy when transporting ash and other solids on or off site, transporting brine off site, operating wastewater treatment systems (*e.g.,* chemical precipitation, biological treatment), or operating ash handling systems. For the final rule, EPA considered whether there would be an associated change in the incremental energy requirements compared to baseline. Therefore, as applicable, EPA estimated the increase in energy usage in megawatt hours (MWh) for equipment added to the plant systems or in consumed fuel (gallons) for transportation/operating equipment for the baseline and final rule. EPA summed the plant-specific estimates to calculate the net overall difference in energy requirements between baseline and the final rule. This section discusses plant-specific energy requirements and does not address electricity reliability of the electric grid. See Section VII.C for discussion of electricity reliability with respect to LUEGUs and EGUs permanently ceasing coal combustion.

EPA estimated the amount of energy needed to operate wastewater treatment systems and ash handling systems based on the horsepower rating of the pumps and other equipment. EPA also estimated the fuel consumption associated with the changes in transportation needed to landfill solid waste and combustion residuals (*e.g.,* ash) of steam electric power plants (on site or off site) and send concentrated brine off site to a centralized waste treatment (CWT) plant. The frequency and distance of transport depend on a plant's location, operation, and configuration; specifically, the volume of waste generated and the availability of either an on-site or off-site non-hazardous landfill and its distance from the plant. Table X–1 shows the net

change in annual electrical energy usage associated with the final rule compared to 2015 rule baseline, as well as the net change in annual fuel consumption requirements associated with the final rule compared to baseline.

TABLE X–1—ESTIMATED INCREMENTAL CHANGE IN ENERGY REQUIREMENTS ASSOCIATED WITH THE FINAL RULE COMPARED TO 2015 RULE BASELINE

Non-water quality impact	Energy use [a]
Electrical Energy Used (MWh)	−37,200
Fuel Used (Thousand Gallons Per Year)	−1,062,000

[a] Negative values represent a decrease in energy use under the final rule compared to baseline.

B. Air Pollution

The final rule is expected to affect air pollution through three main mechanisms: (1) Changes in auxiliary electricity use by steam electric power plants to operate wastewater treatment, ash handling, and other systems needed to meet regulatory standards; (2) changes to transportation-related emissions due to the trucking of CCR waste to landfills; and (3) the change in the profile of electricity generation due to any regulatory requirements. This section discusses air emission changes associated with the first two mechanisms and presents the corresponding estimated net change in air emissions. See Section XII of this preamble for additional discussion of the third mechanism.

Steam electric power plants generate air emissions by operating transport vehicles, such as dump trucks, which release criteria air pollutants and greenhouse gases. A decrease in energy use or vehicle operation would result in decreased air pollution from those sources.

To estimate the net air emissions associated with changes in electrical energy use projected under the final rule compared to the 2015 rule baseline, EPA combined the energy usage estimates with air emission factors associated with electricity production to calculate air emissions associated with the incremental energy requirements. EPA used emission factors projected by IPM v6 (ton/MWh) for nitrogen oxides, sulfur dioxide, and carbon dioxide to generate estimates of the changes in air emissions associated with changes in energy production for the final rule compared to baseline.

To estimate net air emissions associated with the change in operation of transport vehicles, EPA used the MOVES2014b model to identify air emission factors (grams per mile) for the relevant air pollutants. EPA estimated the annual number of miles that dump trucks moving ash or wastewater treatment solids to on- or off-site landfills would travel under the regulatory options. EPA used these estimates to calculate the net change in air emissions for the final rule compared to the 2015 rule baseline. Table X–2 presents EPA's estimated net change in air emissions associated with auxiliary electricity and transportation.

TABLE X–2—ESTIMATED NET CHANGE IN INDUSTRY-LEVEL AIR EMISSIONS ASSOCIATED WITH AUXILIARY ELECTRICITY AND TRANSPORTATION FOR THE FINAL RULE COMPARED TO THE 2015 RULE BASELINE [a]

Non-water quality impact	Change in emissions (tons/year)
NO_X	−21.9
SO_2	−16.8
CO_2	−33,300

[a] Negative values represent a decrease in energy use compared to 2015 Rule baseline.

The modeled output from IPM v6 predicts changes in electricity generation due to compliance costs attributable to the final rule compared to the 2015 rule baseline. These changes in electricity generation are, in turn, predicted to affect the amount of NO_X, SO_2, and CO_2 emissions from steam electric power plants. A summary of the net change in annual air emissions under the final rule for all three mechanisms is shown in Table X–3. To provide some perspective on the estimated changes in annual air emissions, EPA compared the estimated change in air emissions to the net amount of air emissions generated in a year by all steam electric power plants throughout the United States. For more details on the sources of air emission changes, see Section 7 of the Supplemental TDD.

TABLE X–3—ESTIMATED NET CHANGE IN INDUSTRY-LEVEL AIR EMISSIONS ASSOCIATED WITH CHANGES IN ELECTRICITY GENERATION FOR THE FINAL RULE COMPARED TO THE 2015 RULE BASELINE

Non-water quality impact	Change in emissions (million tons)	2018 emissions by electric power generating industry (million tons)
NO_X	0.00067	1.29
SO_2	0.0016	1.41
CO_2	2.67	1,970

C. Solid Waste Generation and Beneficial Use

Steam electric power plants generate solid waste associated with sludge from wastewater treatment systems (*e.g.,* chemical precipitation, biological treatment). EPA estimated the change in the amount of solids generated under the final rule in comparison to the 2015 Rule baseline. For FGD wastewater treatment, the final rule results in an increase in the amount of solid waste generated compared to baseline due to projected implementation of the VIP at eight plants. While BA solids are also generated at steam electric power plants, all of the BA solids accounted for in the waste volumes disposed of in the 2015 rule analysis were suspended solids from combustion, and, therefore, the final rule does not alter the amount of BA or other combustion residuals generated. EPA estimates that plants impacted by the final rule would generate 30,800 more tons of waste per year than plants in the baseline scenario. However, EPA finds that these additional non-water quality environmental impacts are acceptable, as these volumes represent much less than a one percent increase in total waste generation by these plants.

EPA also evaluated the potential impacts of diverting FA from current beneficial uses to encapsulate brine (from membrane filtration) for disposal

in landfills. According to the latest American Coal Ash Association (ACAA) survey,[135] most beneficially used FA is replacing Portland cement used to make concrete. As seen by FA sales data in the 2018 EIA–923 Schedule 8A, plants currently discharging FGD wastewater on average sell 34 percent of their FA for beneficial use.[136] Summary statistics of the FA beneficial use percentage for these plants are displayed in Table X–5 below.

TABLE X–5—PERCENT OF FA SOLD FOR BENEFICIAL USE BY PLANTS DISCHARGING FGD WASTEWATER

Statistic	Percent of FA sold for beneficial use
Min	0%
25th percentile	0
Median	13
Mean	34
75th percentile	79
Max	100

In EPA's CCR disposal rule,[137] EPA noted that FA replacing Portland cement in concrete would result in significant avoided environmental impacts to energy use, water use, greenhouse gas emissions, air emissions, and waterborne wastes. Although EPA cannot, with available data, tie specific plants selling their FA to this specific beneficial use, the ACAA data indicate that more than half of the FA beneficially used currently replaces Portland cement in concrete. Therefore, where sale for this particular beneficial use occurs by plants that may otherwise use their FA to encapsulate membrane filtration brine under Option C, EPA finds that would result in unacceptable air and other non-water quality environmental impacts, as detailed in Section VII(B)(1).

D. Changes in Water Use

Steam electric power plants generally use water for handling solid waste, including ash, and for operating wet FGD scrubbers. The BA transport technologies associated with baseline and the final rule for BA transport water eliminate or reduce the volume of water used by wet sluicing BA operating systems. The 2015 rule baseline required zero discharge of pollutants in BA transport water, and because the use of other wastewater could significantly increase the necessary purge flow to maintain water chemistry, EPA estimated the increase in water use for BA handling associated with the final rule compared to baseline as equal to the BA purge flow.

The technology basis for FGD wastewater in the final rule, CP+LRTR, is not expected to reduce or increase the volume of water used. Plants that install a membrane filtration system for FGD wastewater treatment as part of the VIP option are assumed to decrease their water use compared to baseline by recycling all permeate back into the FGD system, which would avoid costs of pumping or treating new makeup water. Therefore, EPA estimated the reduction in water use resulting from membrane filtration treatment as equal to the estimated volume of the permeate stream from the membrane filtration system. EPA estimates that plants impacted by the final rule will increase their water use by 3.94 million gallons per day compared to baseline. EPA finds this impact to be acceptable because it represents less than a one percent increase in water use at these plants.

XI. Environmental Assessment

A. Introduction

EPA conducted an environmental assessment for the final rule. The Agency reviewed available literature on the documented environmental and human health effects of the pollutants discharged in steam electric power plant FGD wastewater and BA transport water. EPA conducted modeling to determine the impacts of pollution from the universe of plants to which the final rule applies. For the reasons described in Section VIII of this preamble, the baseline for these analyses appropriately consists of the environmental and human health results of achieving the 2015 rule requirements (the same baseline EPA used to evaluate costs). This assessment compares the potential environmental impacts of the 2015 rule with those of the final rule.

Information from EPA's review of the scientific literature and documented cases of impacts of pollutants discharged in steam electric power plant FGD wastewater and BA transport water on human health and the environment, as well as a description of EPA's modeling methodology and results, are provided in the Supplemental Environmental Assessment (Supplemental EA). The Supplemental EA contains information on literature that EPA has reviewed since the 2015 rule, updates to the modeling methodology and modeling results supporting the analysis for the final rule. The 2015 EA provides information from EPA's earlier review of the scientific literature and documented cases of the full spectrum of impacts associated with the wider range of steam electric power plant wastewater discharges addressed in the 2015 rule on human health and the environment, as well as a full description of EPA's modeling methodology.

Current scientific literature indicates that untreated steam electric power plant wastewaters, such as FGD wastewater and BA transport water, contain large amounts of a wide range of pollutants, some of which are toxic and bioaccumulative and cause detrimental environmental and human health impacts. For additional information, see Section 2 of the Supplemental EA. EPA also considered environmental and human health effects associated with changes in air emissions, solid waste generation, and water withdrawals. Sections X and XII of this preamble discuss these effects.

B. Updates to the Environmental Assessment Methodology

The environmental assessment modeling for this final rule consisted of the steady-state, national-scale immediate receiving water (IRW) model that EPA used to evaluate the direct and indirect discharges from steam electric power plants for the 2019 proposal, the 2015 rule and 2015 CCR rule.[138] The model focused on impacts within the immediate surface waters where the discharges occurred (the closest segments of approximately 0.25 miles to 5 miles long). EPA also modeled receiving water concentrations downstream from steam electric power plant discharges using a downstream fate and transport model (see Section XII of this preamble).

The environmental assessment also incorporates changes to the industry profile outlined in Section V of this preamble. Additionally, EPA retained the updates and improvements to several input parameters for the IRW model from the 2019 proposal, including receiving water boundaries and volumetric flow data from the National Hydrography Dataset Plus (NHDPlus) Version 2, updated national recommended water quality criteria (NRWQC) for cadmium and selenium, updated benchmarks for ecological impacts in benthic sediment, and an updated bioconcentration factor for cadmium.

[135] Available online at: *https://www.acaa-usa.org/Portals/9/Files/PDFs/2018-Survey-Results.pdf* (DCN SE09099).

[136] Available online at: *https://www.eia.gov/electricity/data/eia923/.*

[137] Available online at: *http://www.regulations.gov Docket ID:* EPA–HQ–RCRA–2009–0640.

[138] These rules modeled the same waterbodies for which the model was peer reviewed in 2008.

C. Outputs From the Environmental Assessment

EPA estimates small environmental and ecological changes associated with changes in pollutant loadings for the final rule as compared to the baseline, including small changes in impacts to wildlife and humans. More specifically, in addition to other unquantified environmental changes, the environmental assessment evaluated changes in: (1) Surface water quality, (2) impacts to wildlife, (3) number of receiving waters with potential human health cancer risks, (4) number of receiving waters with potential to cause non-cancer human health effects, and (5) nutrient impacts.

As described in the Supplemental EA, EPA focused its quantitative analyses on the changes in environmental and human health impacts associated with exposure to toxic bioaccumulative pollutants via the surface water pathway. EPA modeled changes in discharged toxic, bioaccumulative pollutants from both FGD wastewater and BA transport water into rivers and streams and lakes, including reservoirs. EPA also addressed environmental impacts from nutrients in the Supplemental EA, as well as in a separate analysis discussed in Section XII of this preamble.

The environmental assessment concentrates on impacts to aquatic life based on changes in surface water quality; impacts to aquatic life based on changes in sediment quality within surface waters; impacts to wildlife from consumption of contaminated aquatic organisms; and impacts to human health from consumption of contaminated fish and water. The Supplemental EA discusses, with quantified results, the estimated environmental changes projected within the immediate receiving waters due to the estimated pollutant loading changes associated with today's final rule compared to the 2015 rule. All of the modeled changes relative to the baseline are small.

XII. Benefits Analysis

This section summarizes EPA's national estimates of the changes in social benefits expected to result from estimated changes in steam electric power plant wastewater discharges described in Section IX of this preamble and the resultant environmental effects summarized in Section XI of this preamble. The Benefit Cost Analysis (BCA) report provides additional details on the benefits, methodologies, and analyses, including uncertainties and limitations. The analysis methodology for quantified benefits is generally the same as that used by EPA for the 2015 rule and the 2019 proposal, but with revised inputs and assumptions that reflect updated data. For the final rule, EPA used the same methodology developed for the Affordable Clean Energy (ACE) rule (84 FR 32520, July 8, 2019) to estimate human health effects due to changes in pollutant air emissions relative to the baseline.

A. Categories of Benefits Analyzed

Table XII–1 summarizes benefit categories associated with the final rule and notes which categories EPA was able to quantify and monetize. Analyzed benefits fall into five broad categories: Human health benefits from surface water quality improvements; ecological conditions and effects on recreational use from surface water quality changes; market and productivity benefits, air-related effects, and changes in water withdrawal. Within these broad categories, EPA was able to assess changes in the benefits projected for today's final rule with varying degrees of completeness and rigor. Where possible, EPA quantified the expected changes in effects and estimated monetary values. However, data limitations, modeling limitations, and gaps in the understanding of how society values certain environmental changes prevent EPA from quantifying and/or monetizing some benefit categories. In the following discussion, positive benefit values represent improvements in environmental conditions and negative values represent forgone benefits of the final rule relative to the baseline.

TABLE XII–1—SUMMARY OF BENEFITS CATEGORIES ASSOCIATED WITH FINAL RULE

Benefit category	Quantified and monetized	Quantified, but not monetized	Neither quantified nor monetized
Human Health Effects From Surface Water Quality Changes			
Changes in halogen levels in drinking water treatment plant source waters		✓	
Changes in human health effects (*e.g.,* bladder cancer) associated with halogenated disinfection byproduct exposure via drinking water			✓
Changes in incidence of cancer from arsenic exposure via fish consumption	✓		
Changes in incidence of cardiovascular disease from lead exposure via fish consumption			✓
Changes in incidence of other cancer and non-cancer adverse health effects (*e.g.,* reproductive, immunological, neurological, circulatory, or respiratory) due to exposure to arsenic, lead, cadmium, and other toxics via fish consumption or drinking water			✓
Changes in IQ loss in children from lead exposure via fish consumption	✓		
Changes in need for specialized education for children from lead exposure via fish consumption	✓		
Changes in *in utero* mercury exposure via maternal fish consumption	✓		
Changes in health hazards from exposure to pollutants in waters used recreationally (*e.g.,* swimming)			✓
Ecological Condition and Recreational Use Effects From Surface Water Quality Changes			
Benefits from changes in surface water quality, including: Aquatic and wildlife habitat; water-based recreation, including fishing, swimming, boating, and nearwater activities; aesthetic benefits, such as enhancement of adjoining site amenities (*e.g.,* residing, working, traveling, and owning property near water;[a] and non-use value (existence, option, and bequest value from improved ecosystem health).[a]	✓		
Changes in protection of threatened and endangered species		✓	
Changes in sediment contamination			✓

TABLE XII–1—SUMMARY OF BENEFITS CATEGORIES ASSOCIATED WITH FINAL RULE—Continued

Benefit category	Quantified and monetized	Quantified, but not monetized	Neither quantified nor monetized
Market and Productivity Effects			
Changes in water treatment costs for municipal drinking water, irrigation water, and industrial process water			✓
Changes in commercial fisheries yields			✓
Changes in tourism and participation in water-based recreation			✓
Changes in property values from water quality changes			✓
Changes in ability to market coal combustion byproducts			✓
Changes in maintenance dredging of navigational waterways and reservoirs due to changes in sediment discharges	✓		
Air Quality-Related Effects			
Changes in human morbidity and mortality from changes in exposure to NO_X, SO_2, O_3, and particulate matter ($PM_{2.5}$)	✓		
Changes in ecosystem effects; visibility impairment; and human health effects from direct exposure to NO_2, SO_2, and HAP			✓
Changes in climate change impacts from CO_2 emissions	✓		
Changes in Water Withdrawal			
Changes in the availability of groundwater resources	✓		
Changes in the availability of surface water resources			✓
Changes in impingement and entrainment of aquatic organisms			✓

[a] These values are implicit in the total willingness-to-pay (WTP) for water quality improvements.

The following section summarizes EPA's analysis of the benefit categories that the Agency was able to quantify and/or monetize (identified in the first and second columns of Table XII–1). Benefits are a function of the changes in pollutant loadings under the final rule and the timing of the rule's implementation. The final rule would also affect additional benefit categories that the Agency was not able to quantify or monetize. The BCA report further describes additional qualitative and nonmonetized benefits.

B. Quantification and Monetization of Benefits

1. Changes in Human Health Effects From Surface Water Quality Changes

Changes in pollutant discharges from steam electric power plants affect human health in multiple ways. Exposure to pollutants in steam electric power plant discharges via consumption of fish from affected waters can cause a wide variety of adverse health effects, including cancer, kidney damage, nervous system damage, liver damage, circulatory damage, vomiting, diarrhea, brain damage, IQ loss, fatigue, irritability, and many others. Exposure to drinking water containing halogenated disinfection byproducts could cause adverse health effects such as cancer and reproductive and fetal development issues. Because the final rule is expected to change discharges of steam electric pollutants into surface waters, it may alter incidence of associated health effects, even if by small amounts. EPA's analyses of human health effects, detailed in Chapters 4 and 5 of the BCA report, find that the incremental changes in exposure between the baseline and the final rule are minimal compared to the estimates of absolute changes in exposure for those same pollutants under the 2015 rule.

Due to data limitations and uncertainties, EPA is able to monetize only a subset of the changes in health effects associated with changes in pollutant discharges under the final rule relative to the baseline. EPA's analysis first estimated the changes in the expected number of individuals experiencing adverse health effects in the populations affected by exposure to discharged pollutants under the final rule relative to the baseline. EPA then estimated the value of these changes by using different monetization methods for different health benefit endpoints.

EPA estimated changes in health risks from the consumption of contaminated fish from waterbodies within 50 miles of households. EPA used Census Block Group population data and state-specific average fishing participation rates to estimate the exposed population. EPA used population cohort-specific fish consumption rates and waterbody-specific fish tissue concentration estimates to calculate potential exposure to pollutants from steam electric power plants. Cohorts were defined by age, gender, race/ethnicity, and fishing mode (recreational or subsistence). EPA used these data to quantify and monetize changes in the following four categories of human health effects, which are further detailed in the BCA report:

- Changes in IQ loss in children aged zero to seven from lead exposure via fish consumption.
- Changes in need for specialized education for children from lead exposure via fish consumption.
- Changes in *in utero* mercury exposure via maternal fish consumption and associated IQ loss.
- Changes in incidence of cancer from arsenic exposure via fish consumption.

Table XII–2 summarizes the monetary value of changes in quantified and monetized health outcomes associated with consumption of contaminated fish tissue under the final rule relative to the baseline. In addition, EPA estimates no changes in cancer incidence due to arsenic exposure via fish consumption under the final rule relative to the baseline. Accordingly, EPA estimates no change in social benefits for this health endpoint. Chapter 5 of the BCA report provides additional detail on EPA's methodologies.

TABLE XII–2—ESTIMATED MONETARY VALUES OF CHANGES IN HUMAN HEALTH EFFECTS UNDER THE FINAL RULE COMPARED TO BASELINE

[Millions of 2018$, annualized][a]

Human health benefits	3% Discount rate	7% Discount rate
Reduced Lead Exposure for Children	−$0.02	[b] <$0.00
Reduced Mercury Exposure for Children	−$0.32	−$0.11
Total Monetized Benefits	−$0.34	−$0.11

[a] Negative values represent forgone benefits.
[b] "<$0.00" indicates that monetary values are greater than −$0.01 million but less than $0.00 million.

There is evidence of linkages between adverse human health effects, including bladder cancer, and exposure to halogenated disinfection byproducts in drinking water. Reductions in halogen levels in source waters for drinking water treatment plants can contribute to reductions in halogenated disinfection byproduct levels in drinking water. EPA analyzed the populations served by drinking water treatment plants with intakes on surface waters to which steam electric power plants discharge. EPA used Safe Drinking Water Information System (SDWIS) and U.S. Census data to estimate the exposed population. EPA estimated reductions in source water halogen concentrations under this final rule relative to the baseline. EPA estimates that following implementation of wastewater treatment upgrades to meet the revised ELGs (*i.e.,* starting in 2029), 323 drinking water treatment plants serving a total population of 7.3 million people will experience a reduction in source water halogen concentrations under the final rule relative to baseline. These halogen reduction benefits derive from projected plant participation in the VIP.[139] Additional details on this analysis, including a discussion of uncertainties, are provided in Chapter 4 of the BCA report.

2. Ecological Condition and Recreational Use Effects From Changes in Surface Water Quality

EPA evaluated whether the final rule would alter aquatic habitats and human welfare by changing concentrations of harmful pollutants such as arsenic, cadmium, chromium, copper, lead, mercury, nickel, selenium, zinc, nitrogen, phosphorus, and suspended sediment relative to the baseline. As a result, the usability of some of the waters for recreation relative to baseline conditions could change under the final rule, thereby affecting recreational users. Changes in pollutant loadings can also change the attractiveness of waters usable for recreation by making recreational trips more or less enjoyable. The final rule may also change nonuse values stemming from bequest, altruism, and existence motivations. Individuals may value water quality maintenance, ecosystem protection, and healthy species populations independent of any use of those attributes.

EPA uses a water quality index (WQI) to translate water quality measurements, gathered for multiple parameters that are indicative of various aspects of water quality, into a single numerical indicator that reflects water quality suitable for certain uses. The WQI includes seven parameters: Dissolved oxygen, biochemical oxygen demand, fecal coliform, total nitrogen, total phosphorus, suspended solids, and an aggregate subindex for toxics. For the purposes of this analysis, EPA modeled changes in four of these parameters, and held the remaining parameters (dissolved oxygen, biochemical oxygen demand, and fecal coliform) constant. Relative to baseline, EPA estimates that the final rule will result in small reductions in water quality during the period being analyzed. During the 2021 though 2028 time period, the change in WQI is uniformly negative or zero, with surface water segment-level changes ranging from −5.8 to 0.0 (median change is -3.8×10^{-4}). From 2029 through 2047, the change in WQI is positive in some segments, and segment level WQI changes overall range from −0.7 to 1.5 (median change is -8.1×10^{-5}). The positive changes in WQI in some reaches derive from projected plant participation in the VIP.

EPA estimated the change in monetized benefit values using an updated version of the meta-regressions of surface water valuation studies used in the benefit analysis for the 2015 rule and 2019 proposal. The meta-regressions quantify average household willingness to pay (WTP) for incremental improvements in surface water quality. This WTP is the maximum amount of money a person is willing to give up for a given improvement in water quality. Chapter 6 of the BCA report provides additional detail on the valuation methodology. Overall, the final rule is estimated to result in small reductions in water quality relative to baseline, which is reflected in negative average annual household WTP values ranging from −$0.40 to −$0.20 (central estimate −$0.31).

Table XII–3 presents annualized total WTP values for water quality changes associated with modified toxic pollutant (arsenic, cadmium, chromium, copper, lead, mercury, selenium, zinc, and nickel), nutrient pollutant (phosphorus and nitrogen), and sediment pollutant discharges to approximately 10,610 reach miles affected by the final rule. An estimated 82.4 million households reside in census block groups within 100 miles of affected reaches. The central tendency estimates of the total annualized benefits of water quality changes for the final rule range from −$12.5 million (7 percent discount rate) to −$11.8 million (3 percent discount rate).

[139] Estimated halogen concentrations increase relative to baseline for some drinking water treatment plants due to BA requirements under this final rule, but the magnitude of these increases is generally much smaller than the magnitude of decreases at plants experiencing reductions.

TABLE XII–3—ESTIMATED TOTAL WILLINGNESS-TO-PAY FOR WATER QUALITY CHANGES UNDER THE FINAL RULE COMPARED TO BASELINE [a]

[Millions of 2018$; annualized]

Number of affected households (millions)	Total willingness-to-pay for water quality changes					
	3% discount rate			7% discount rate		
	Low	Central	High	Low	Central	High
82.4	−$15.3	−$11.8	−$7.4	−$16.4	−$12.5	−$8.0

[a] Negative values represent forgone benefits.

3. Effects on Threatened and Endangered Species

EPA assessed the potential for impacts on threatened and endangered (T&E) species, both aquatic and terrestrial, relative to the baseline, by analyzing the overlap between waters expected to change their wildlife national recommended water quality criteria (NRWQC) exceedance status under the final rule and the known habitat ranges of T&E species listed under the Endangered Species Act. EPA examined the life history traits of potentially affected T&E species and categorized them by potential for population impacts due to surface water quality changes. EPA estimated that there are 194 species whose known habitat range overlaps with surface waters that receive discharges from steam electric power plants. Five of the 194 T&E species have habitat ranges that intersect with waters that EPA estimates have changes in NRWQC exceedances under the final rule relative to the baseline, four of which correspond to estimated increases in NRWQC exceedances during the 2021–2028 period, and one of which corresponds to an estimated reduction in NRWQC exceedances starting in 2029 following implementation of wastewater treatment technologies to achieve the revised limitations. Principal sources of uncertainty in this analysis include the specifics of how the final rule could impact T&E species (*e.g.,* exposure levels, species reactions to exposure levels), exact species spatial distributions, and additional species that were not considered. Chapter 7 of the BCA report provides additional details on EPA's methodology.

4. Changes in Ability to Market Coal Combustion Byproducts

The final rule could affect the ability of steam electric power plants to market coal combustion byproducts for beneficial use by converting from wet to dry handling of BA. In particular, EPA evaluated the potential effects of changes in marketability of BA as a substitute for sand and gravel in fill applications. EPA estimates that the final rule will affect the quantity of BA handled wet relative to the baseline. The estimated increase in BA handled wet is small (total of 246,871 tons per year at five plants). Given the small magnitude of these changes and the uncertainty associated with projecting plant-specific changes in marketed ash, EPA did not to monetize this benefit category in the final rule analysis. See Chapter 2 in the BCA report for additional details.

5. Changes in Dredging Costs

The final rule would affect discharge of multiple pollutants, including sediment, thereby changing the rate of sediment deposition in affected waterbodies, including navigable waterways and reservoirs that require dredging for maintenance.

Navigable waterways, including rivers, lakes, bays, shipping channels and harbors, are an integral part of the United States transportation network. They are liable to reduced functionality due to sediment buildup, which can reduce the navigable depth and width of the waterway. In many cases, costly periodic dredging is necessary to keep them passable. Reservoirs serve many functions, including storage of drinking and irrigation water, flood control, hydropower supply, and recreation. Streams and rivers can carry sediment into reservoirs, where it can settle and cause buildup of sediment layers. Sedimentation reduces reservoir capacity and useful life unless measures such as dredging are taken to reclaim capacity. Chapter 10 of the BCA report provides additional details on EPA's methodology for this benefit category.

EPA estimates that sediment deposition in navigable waterways and reservoirs will increase under the final rule relative to baseline, increasing maintenance dredging costs by less than $0.01 million (3 or 7 percent discount rates).

6. Changes in Air Quality-Related Effects

EPA expects the final rule will affect air pollution through three main mechanisms: (1) Changes in auxiliary electricity use by steam electric power plants to operate wastewater treatment, ash handling, and other systems that EPA predicts plants would use under the final rule; (2) changes in transportation-related air emissions due to changes in trucking of CCR waste to landfills; and (3) changes in the profile of electricity generation due to changes in costs to generate electricity at steam electric power plants affected by the final rule.

Changes in the electricity generation profile can increase or decrease air pollutant emissions because emission factors vary for different types of electric EGUs. For this analysis, the changes in air emissions relative to the baseline are based on the change in dispatch of generation units as projected by IPM v6 given the overlaying of costs for complying with the final rule onto steam electric EGUs' production costs. As discussed in Section VIII of this preamble, the IPM v6 analysis accounts for the effects of other regulations on the electric power sector.

EPA evaluated potential effects resulting from net changes in air emissions of three pollutants: NO_X, SO_2, primary $PM_{2.5}$, and CO_2. NO_X and SO_X are precursors to fine particles sized 2.5 microns and smaller ($PM_{2.5}$) and NO_X is an ozone precursor. These air pollutants cause a variety of adverse health effects including premature death, non-fatal heart attacks, hospital admissions, emergency department visits, upper and lower respiratory symptoms, acute bronchitis, aggravated asthma, lost work and school days, and acute respiratory symptoms.[140] CO_2 is a key greenhouse

[140] U.S. EPA. Integrated Science Assessment (ISA) for Particulate Matter (Final Report, 2009). U.S. Environmental Protection Agency, Washington, DC, EPA/600/R–08/139F, 2009; U.S. EPA. Integrated Science Assessment for Particulate Matter (Final Report, 2019), U.S. Environmental Protection Agency, Washington, DC, EPA/600/R–19/188; U.S. EPA. Integrated Science Assessment for Ozone and

gas linked to a wide range of domestic effects. Other than mercury (Hg) and hydrogen chloride (HCl) emissions, EPA did not estimate changes in any other air pollutants (*e.g.,* carbon monoxide) emissions that may occur as a result of the final rule due to methodology and resource limitations.

Table XII–4 shows the changes in emissions of CO_2, NO_X, SO_2, and primary $PM_{2.5}$ based on the estimated changes in the profile of electricity generation, including increased generation from coal-fired EGUs (see Table VIII–3) under the final rule relative to baseline.

EPA estimated the monetized value of human health benefits among populations exposed to changes in $PM_{2.5}$ and ozone. The final rule is expected to alter the emissions of primary $PM_{2.5}$, SO_2 and NO_X, which will in turn affect the level of $PM_{2.5}$ and ozone in the atmosphere. Using photochemical modeling, EPA predicted the change in the annual average $PM_{2.5}$ and summer season ozone across the U.S. EPA next quantified the human health impacts and economic value of these changes in air quality using the environmental Benefits Mapping and Analysis Program—Community Edition (BenMAP–CE). EPA quantified effects using concentration-response parameters which are consistent with those employed by the Agency in the PM NAAQS, Ozone NAAQS, and ACE RIAs (U.S. EPA, 2012; 2015; 2019).

To estimate the climate benefits associated with changes in CO_2 emissions, EPA applied a measure of the domestic social cost of carbon (SC–CO_2). The SC–CO_2 is a metric that estimates the monetary value of impacts associated with marginal changes in CO_2 emissions in a given year. The SC–CO_2 estimates used in the analysis for this final rule focus on the direct impacts of climate change that are anticipated to occur within U.S. borders.

Table XII–5 shows the total annualized monetary values associated with changes in emissions of primary $PM_{2.5}$, SO_2 and NO_X under the final rule. To give readers insight to the distribution of estimated benefits displayed in Table XII–5, EPA also reports the PM benefits according to alternative concentration cut-points and concentration-response parameters. EPA uses two long-term epidemiological studies to estimate risk, Krewski et al. (2009) [141] and Lepeule et al. (2012).[142] Small shares of avoided $PM_{2.5}$-related premature deaths occur above the annual mean $PM_{2.5}$ NAAQS of 12 mg/m^3, with percentages depending on the year and epidemiological studies. The shares range from less than 1 percent to up to 2 percent based on Lepeule et al. (2012) and from less than 1 percent to 3 percent based on Krewski et al. (2009).

Table XII–6 reports the combined human health benefits and domestic climate benefits attributable to changes in SO_2, NO_X, primary $PM_{2.5}$, and CO_2 emissions estimated with 3 percent and 7 percent discount rates. This table reports the air pollution effects calculated using $PM_{2.5}$ log-linear no threshold concentration-response functions that quantify risk associated with the full range of $PM_{2.5}$ exposures experienced by the population (U.S. EPA, 2009; [143] U.S. EPA, 2011; [144] NRC, 2002).[145]

In general, EPA is more confident in the size of the risks estimated from simulated $PM_{2.5}$ concentrations that coincide with the bulk of the observed PM concentrations in the epidemiological studies that are used to estimate the benefits. Likewise, EPA is less confident in the risk EPA estimates from simulated $PM_{2.5}$ concentrations that fall below the bulk of the observed data in these studies.[146] Furthermore, when setting the 2012 PM NAAQS, the former EPA Administrator also acknowledged greater uncertainty in specifying the ''magnitude and significance'' of PM-related health risks at PM concentrations below the NAAQS. As noted in the preamble to the 2012 PM NAAQS final rule, ''EPA concludes that it is not appropriate to place as much confidence in the magnitude and significance of the associations over the lower percentiles of the distribution in each study as at and around the long-term mean concentration.'' [147]

Estimates of monetized co-benefits shown here do not include several important benefit categories, such as direct exposure to SO_2, NO_X, and HAPs including mercury and hydrogen chloride. Although EPA does not have sufficient information or modeling available to provide monetized estimates of changes in exposure to these pollutants for the final rule, EPA includes a discussion of these unquantified benefits in the BCA. For more information on the benefits analysis, see Chapter 8 of the BCA Report.

TABLE XII–4—ESTIMATED CHANGES IN AIR POLLUTANT EMISSIONS FROM CHANGES IN ELECTRICITY GENERATION PROFILE UNDER THE FINAL RULE COMPARED TO BASELINE [a]

Year	CO_2 (million short tons/year)	NO_X (thousand short tons/year)	SO_2 (thousand short tons/year)	Primary $PM_{2.5}$ (thousand short tons/year)
2021	−0.079	−0.25	−1.4	−0.028
2023	2.9	3.0	−2.6	0.45
2025	2.2	1.6	−0.70	0.91
2030	2.7	0.69	1.7	0.48
2035	0.88	−0.57	1.8	0.81

Related Photochemical Oxidants (Final Report, 2013). U.S. Environmental Protection Agency, Washington, DC, EPA/600/R–10/076F; and U.S. EPA. Integrated Science Assessment for Ozone and Related Photochemical Oxidants (Final Report, 2020) U.S. Environmental Protection Agency, Washington, DC, EPA/600/R–20/012.

[141] Krewski, D., Jerrett, M., Burnett, R.T., Ma, R., Hughes, E., Shi, Y., Turner, M.C., Pope, C.A., Thurston, G., Calle, E.E., Thun, M.J., Beckerman, B., DeLuca, P., Finkelstein, N., Ito, K., Moore, D.K., Newbold, K.B., Ramsay, T., Ross, Z., Shin, H., Tempalski, B., 2009. Extended follow-up and spatial analysis of the American Cancer Society study linking particulate air pollution and mortality. Res. Rep. Health. Eff. Inst. 5–114–36.

[142] Lepeule, J., Laden, F., Dockery, D., Schwartz, J., 2012. Chronic exposure to fine particles and mortality: An extended follow-up of the Harvard Six Cities study from 1974 to 2009. Environ. Health Perspect. *https://doi.org/10.1289/ehp.1104660.*

[143] U.S. EPA, 2009. Integrated Science Assessment for Particulate Matter. U.S. Environmental Protection Agency, National Center for Environmental Assessment, Research Triangle Park, NC.

[144] U.S. EPA, 2011. Policy Assessment for the Review of the Particulate Matter National Ambient Air Quality Standards. Research Triangle Park, NC.

[145] NRC, 2002. Estimating the Public Health Benefits of Proposed Air Pollution Regulations. National Research Council. Washington, DC.

[146] The **Federal Register** notice for the 2012 PM NAAQS states, ''In considering this additional population level information, the Administrator recognizes that, in general, the confidence in the magnitude and significance of an association identified in a study is strongest at and around the long-term mean concentration for the air quality distribution, as this represents the part of the distribution in which the data in any given study are generally most concentrated. She also recognizes that the degree of confidence decreases as one moves towards the lower part of the distribution.'' See 78 FR 3159 (Jan. 15, 2013).

[147] *See* 78 FR 3154, January 15, 2013.

TABLE XII–4—ESTIMATED CHANGES IN AIR POLLUTANT EMISSIONS FROM CHANGES IN ELECTRICITY GENERATION PROFILE UNDER THE FINAL RULE COMPARED TO BASELINE [a]—Continued

Year	CO_2 (million short tons/year)	NO_X (thousand short tons/year)	SO_2 (thousand short tons/year)	Primary $PM_{2.5}$ (thousand short tons/year)
2040	1.0	−1.6	−2.9	−0.22
2045	2.8	0.15	0.92	0.44

[a] All values in this table are rounded to two significant figures. Negative values represent emission reductions and positive values represent emission increases.

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Table XII-5. Estimated Economic Value of Avoided $PM_{2.5}$ and Ozone-attributable Deaths and Illnesses for the Final Rule Compared to Baseline Using Alternative Approaches to Representing $PM_{2.5}$ Effects (Millions of 2018$)[a]

Discount Rate	Approach	Ozone Benefits plus $PM_{2.5}$ Benefits, Millions of 2018$ (95% Confidence Interval)														
		2025			2030			2035			2040			2045		
3%	No-threshold model[b]	$21 (-$29 to $86)	to	$33 (-$110 to $200)	-$41 (-$120 to $0.33)	to	-$91 (-$270 to $2.5)	-$120 (-$330 to -$4.4)	to	-$260 (-$760 to -$7.9)	$320 ($31 to $870)	to	$740 ($66 to $2100)	-$81 (-$250 to $19)	to	-$170 (-$570 to $64)
	Limited to above LML[c]	$34 (-$28 to $120)	to	-$49 (-$150 to $4.4)	-$0.4 (-$6.2 to $5.5)	to	-$110 (-$310 to $4.5)	-$96 (-$270 to -$2)	to	-$220 (-$630 to -$3)	$300 ($29 to $830)	to	$490 ($44 to $1400)	-$60 (-$190 to $22)	to	-$150 (-$500 to $69)
	Effects above NAAQS[d]	-$9.2 (-$32 to $4.9)	to	-$35 (-$110 to $5.6)	$0.43 (-$3.9 to $5.6)	to	$3.2 (-$3.7 to $14)	-$1.5 (-$9.9 to $6.7)	to	$1.6 (-$9.7 to $16)	$34 ($4.3 to $91)	to	$93 ($9 to $270)	$6.8 (-$7.1 to $28)	to	$25 (-$5.6 to $84)
7%	No-threshold model[b]	$18 (-$30 to $78)	to	$26 (-$110 to $180)	-$37 (-$100 to $0.72)	to	-$82 (-$240 to $3.3)	-$110 (-$290 to -$3.3)	to	-$240 (-$680 to -$5.6)	$290 ($28 to $790)	to	$670 ($60 to $1900)	-$73 (-$220 to $20)	to	-$150 (-$510 to $66)
	Limited to above LML[c]	$29 (-$29 to $110)	to	-$48 (-$150 to $4)	-$0.35 (-$5.9 to $5.4)	to	-$95 (-$280 to $5.1)	-$86 (-$240 to -$1.1)	to	-$190 (-$570 to -$1.1)	$280 ($27 to $750)	to	$450 ($41 to $1300)	-$53 (-$170 to $22)	to	-$130 (-$450 to $70)
	Effects above NAAQS[d]	-$9.3 (-$32 to $4.6)	to	-$35 (-$110 to $5.1)	$0.4 (-$3.9 to $5.4)	to	$3.2 (-$3.7 to $14)	-$1.4 (-$9.8 to $6.7)	to	$1.6 (-$9.6 to $16)	$33 ($4.3 to $90)	to	$92 ($8.9 to $270)	$6.8 (-$7 to $28)	to	$25 (-$5.6 to $84)

[a] All values in this table are rounded to two significant figures. Negative values represent forgone benefits and positive values represent realized benefits.

[b] $PM_{2.5}$ effects quantified using a no-threshold model. Low end of range reflects dollar value of effects quantified using concentration-response parameter from Krewski et al. (2009) and Smith et al. (2008) studies; upper end quantified using parameters from Lepeule et al. (2012) and Jerrett et al. (2009). Full range of ozone effects is included.

[c] $PM_{2.5}$ effects quantified at or above the Lowest Measured Level of each long-term epidemiological study. Low end of range reflects dollar value of effects quantified down to LML of Krewski et al. (2009) study (5.8 $\mu g/m^3$); high end of range reflects dollar value of effects quantified down to LML of Lepeule et al. (2012) study (8 $\mu g/m^3$). Full range of ozone effects is still included.

[d] $PM_{2.5}$ effects only quantified at or above the annual mean of 12 $\mu g/m^3$ to provide insight regarding the fraction of benefits occurring above the NAAQS. Range reflects effects quantified using concentration-response parameters from Smith et al. (2008) study at the low end and Jerrett et al. (2009) at the high end. Full range of ozone effects is still included.

TABLE XII–6—ESTIMATED MONETIZED BENEFITS FROM CHANGES IN AIR EMISSIONS FOR THE FINAL RULE COMPARED TO BASELINE [a]

[Millions 2018$; annualized]

Benefit category	3% Discount rate		7% Discount rate	
	Lower bound [b]	Upper bound [c]	Lower bound [b]	Upper bound [c]
Climate change	−$14		−2.3	
Human health	$28	$65	$25	$56
Total	14	51	23	54

[a] All values in this table are rounded to two significant figures. Negative values represent forgone benefits and positive values represent realized benefits. Climate benefits reflect the value of domestic impacts from CO_2 emissions changes. The human health benefits reflect the sum of the $PM_{2.5}$ and ozone benefits and reflect the range based on adult mortality functions. The health co-benefits do not account for direct exposure to NO_2, SO_2, and HAP; ecosystem effects; or visibility impairment.
[b] Lower bound is based on human health benefit point estimates using Krewski et al. (2009) for $PM_{2.5}$ and Smith et al (2009) for ozone.
[c] Upper bound is based on human health benefit point estimates using Lepeule et al. (2012) for $PM_{2.5}$ and Jerrett et al. (2009) for ozone.

7. Changes in Water Withdrawals

Steam electric power plants use water for handling BA and operating wet FGD scrubbers. By changing the use of water in sluicing operations or prompting the recycling of water in FGD wastewater treatment systems, the final rule may affect the amount of water withdrawn from surface waters or aquifers. Using the same methodology used for the 2015 rule, EPA estimated the monetary value of increased groundwater withdrawals based on increased costs of groundwater supply. The final rule is expected to increase water withdrawal from aquifers relative to baseline. EPA multiplied the increase in groundwater withdrawal (in gallons per year) by water costs of approximately $1,347 per acre-foot (326,000 gallons; 2018$). Chapter 9 of the BCA report provides the details of this analysis. EPA estimates the changes in annualized benefits of increased groundwater withdrawals are −$0.01 million (3 percent and 7 percent discount rates). Due to data limitations, EPA was not able to estimate the monetary value of changes in surface water withdrawals. Chapter 9 of the BCA report and Section 7 of the Supplemental TDD provide additional details on the estimated changes in surface water withdrawals.

C. Total Monetized Benefits

Using the analysis approach described above, EPA estimated the total monetary value of annualized benefits of the final rule for all monetized categories. Table XII–7 summarizes the total annualized monetary value of social welfare effects using 3 percent and 7 percent discount rates. The total monetary value of benefits under the final rule range from −$1.7 million to $43.3 million using a 3 percent discount rate and from $6.5 million to $45.9 million using a 7 percent discount rate.

TABLE XII–7—SUMMARY OF TOTAL ANNUALIZED BENEFITS OF THE FINAL RULE

[Millions of 2018$; annualized] [a]

Benefit category	3% Discount rate	7% Discount rate
Human Health	−$0.3	−$0.1
Changes in IQ losses in children from exposure to lead [b]	<$0.0	<$0.0
Changes in IQ losses in children from exposure to mercury	−$0.3	−$0.1
Ecological Conditions and Recreational Uses Changes	−$15.3 to −$7.4	−$16.4 to −$8.0
Use and nonuse values for water quality changes [c]	−$15.3 to −$7.4	−$16.4 to −$8.0
Market and Productivity	<$0.0	<$0.0
Changes in dredging costs [b]	<$0.0	<$0.0
Changes in water withdrawals [b]	<$0.0	<$0.0
Air Quality-related effects	$14 to $51	$23 to $54
Domestic climate benefits [d]	−$14	−$2.3
Health benefits [d e]	$28 to $65	$25 to $56
Total Monetized Benefits [f]	−$1.7 to $43.3	$6.5 to $45.9

[a] Negative values represent forgone benefits and positive values represent realized benefits.
[b] "<$0.0" indicates that monetary values are greater than −$0.1 million but less than $0.00 million.
[c] The range reflects the lower and upper bound willingness-to-pay estimates.
[d] Values for air-quality related effects are rounded to two significant figures.
[e] The range reflects the lower and upper bound estimates of human health effects from changes in $PM_{2.5}$ and ozone levels.
[f] Values for individual benefit categories may not sum to the totals due to independent rounding.

D. Unmonetized Benefits

The monetary value of the final rule's effects on social welfare does not account for all anticipated effects of the final rule because, as described above, EPA is unable to monetize certain benefit categories. Examples of effects not reflected in the monetary estimates include changes in bladder cancer

incidence and other human health effects associated with changes in drinking water disinfection byproduct levels; changes in ecosystem, visibility, and human health effects due to direct exposure to NO_X, HAP, and SO_2 air emissions; changes in certain non-cancer human health risks (*e.g.,* effects of cadmium on kidney functions and bone density); impacts of pollutant discharge changes on threatened and endangered species; and ash marketability changes. The BCA report discusses changes in these effects qualitatively and indicates their potential magnitude where possible.

XIII. Development of Effluent Limitations and Standards

A. FGD Wastewater

Consistent with the proposal, EPA is finalizing several sets of new, concentration-based, numeric effluent limitations and pretreatment standards that apply to discharged FGD wastewater from existing sources.[148] The specific limitations that apply to any particular plant are determined by whether it qualifies for one of the rule's subcategories or whether it chooses to participate in the VIP. EPA developed the numeric effluent limitations and pretreatment standards in this rule using long-term average effluent values and variability factors that account for variations in performance at well-operated plants that employ the technologies that constitute the bases for control. EPA's methodology for derivation of limitations in ELGs is longstanding and has been upheld in court. *See, e.g., Chem. Mfrs. Ass'n* v. *EPA,* 870 F.2d 177 (5th Cir. 1989); *Nat'l Wildlife Fed'n* v. *EPA,* 286 F.3d 554 (D.C. Cir. 2002). EPA establishes the final effluent limitations and standards as ''daily maximums'' and ''maximums for monthly averages.'' Definitions provided in 40 CFR 122.2 state that the daily maximum limitation is the ''highest allowable 'daily discharge' '' and the maximum for monthly average limitation is the ''highest allowable average of 'daily discharges' over a calendar month, calculated as the sum of all 'daily discharges' measured during a calendar month divided by the number of 'daily discharges' measured during that month.'' Daily discharges are defined as the '' 'discharge of a pollutant' measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling.''

1. Overview of the Limitations and Standards

EPA's objective in establishing daily maximum limitations is to restrict the discharges on a daily basis at a level that is achievable for a plant that designs and operates its treatment to achieve the long-term average performance that EPA's statistical analyses show the BAT/PSES technology can attain (*i.e.,* the mean of the underlying statistical distribution of daily effluent values). EPA recognizes that variability around the long-term average occurs during normal operations. This variability means that plants occasionally may discharge at a level that is higher than the long-term average, and at other times will discharge at a level that is lower than the long-term average. To allow for these possibly higher daily discharges and provide an upper bound for the allowable concentration of pollutants that may be discharged, while still targeting achievement of the long-term average, EPA has established the daily maximum limitation. A plant consistently discharging at a level near the daily maximum limitation would be symptomatic of a plant that is *not* operating its treatment to achieve the long-term average. Targeting treatment to achieve the daily limitation, rather than the long-term average, is not consistent with the capability of the BAT/PSES technology basis and may result in values that periodically exceed the limitations due to routine variability in treated effluent.

EPA's objective in establishing monthly average limitations is to provide an additional restriction to help ensure that plants target their average discharges to achieve the long-term average. The monthly average limitation requires dischargers to provide ongoing control that supplements controls imposed by the daily maximum limitation. In order to meet the monthly average limitation, a plant must counterbalance a value near the daily maximum limitation with one or more values well below the daily maximum limitation.

2. Criteria Used to Select Data

In developing effluent limitations guidelines and standards for any industry, EPA qualitatively reviews all the data related to effluent treatment to identify data that represent proper operation of the technology that forms the basis for the limitations. EPA typically uses four criteria to assess the data. The first criterion requires that the plants have the model treatment technology identified as the basis for effluent limitations (*e.g.,* CP + LRTR) and demonstrate consistently diligent and optimal operation. Application of this criterion typically eliminates any plant with treatment other than the model technology. EPA generally determines whether a plant meets this criterion based on site visits, discussions with plant management, and/or comparison to the characteristics, operation, and performance of treatment systems at other plants. EPA reviews available information to determine whether data submitted were representative of normal operating conditions for the plant and equipment. As a result of this review, EPA typically excludes the data from plants that have not optimized the performance of their treatment systems.

A second criterion generally requires that the influents and effluents from the treatment components represent typical wastewater from the industry, without incompatible wastewater from other sources. Application of this criterion results in EPA selecting those plants where the commingled wastewaters did not result in substantial dilution, unequalized slug loads resulting in frequent upsets and/or overloads, more concentrated wastewaters, or wastewaters with different types of pollutants than those generated by the wastestream for which EPA is establishing effluent limitations and pretreatment standards.

A third criterion typically ensures that the pollutants are present in the influent at sufficient concentrations to evaluate treatment effectiveness. If a data set for a pollutant shows that the pollutant was not present at a treatable concentration at sufficient frequency (*e.g.,* the pollutant was below the level of detection in all influent samples), EPA excludes the data for that pollutant at that plant when calculating the limitations.

A fourth criterion typically requires that the data are valid and appropriate for their intended use (*e.g.,* the data must be analyzed with a sufficiently sensitive analytical method). Also, EPA does not use data associated with periods of treatment upsets because these data would not reflect the performance from well-designed and well-operated treatment systems. In applying the fourth criterion, EPA may evaluate the pollutant concentrations, analytical methods and the associated quality control/quality assurance data, flow values, mass loading, plant logs, test reports, and other available information. As part of this evaluation, EPA reviews the process or treatment conditions that may have resulted in

[148] Effluent limitations for EGUs with nameplate capacity of 50 MW or smaller and for EGUs that will retire by December 31, 2028, are not discussed in this section. The proposed limitations for these generating units are based on the previously established BPT limitations on TSS.

extreme values (high and low). As a consequence of this review, EPA may exclude data associated with certain time periods or other data outliers that reflect poor performance or analytical anomalies by an otherwise well-operated site.

The fourth criterion also is applied in EPA's review of data from the initial commissioning period of treatment systems and startup periods of pilot test equipment. Most industries incur commissioning periods during which adjustments must be made to newly installed treatment systems. During this acclimation and optimization process, the effluent concentration values tend to be highly variable, with occasional extreme values (high and low). This occurs because the treatment system typically requires some ''tuning'' by the plant staff and equipment and chemical vendors. They work together to determine the optimum chemical addition locations and dosages, vessel hydraulic residence times, internal treatment system recycle flows (*e.g.,* filter backwash frequency, duration and flow rate, return flows between treatment system components), and other operational conditions, such as clarifier sludge wasting protocols. It may also take time for treatment system operators to gain expertise in operating the new treatment system, which also contributes to treatment system variability during the commissioning period. After this initial adjustment period, the systems should operate at steady state with relatively low variability around a long-term average over many years. Because commissioning periods typically reflect one-time operating conditions unique to the first time the treatment system begins operation, EPA generally excludes such data in developing the limitations.[149]

[149] Examples of conditions that are typically unique to the initial commissioning period include operator unfamiliarity or inexperience with the system and how to optimize its performance; wastewater flow rates that vary widely from engineering design, altering hydraulic residence times, chemical contact times, and/or clarifier overflow rates, and potentially causing large changes in planned chemical dosage rates or the need to substitute alternative chemical additives; equipment malfunctions; fluctuating wastewater flow rates or other dynamic conditions (*i.e.,* not steady state operation); and initial purging of contaminants associated with installation of the treatment system, such as initial leaching from coatings, adhesives, and susceptible metal components. These conditions differ from those associated with the restart of an already-commissioned treatment system, such as may occur from a treatment system that has undergone either short or extended duration shutdown.

3. Data Used To Calculate Limitations and Standards

The Supplemental TDD provides a description of the data and methodology used to develop long-term averages, variability factors, and limitations and standards for this rule. The effluent limitations and pretreatment standards for the low utilization subcategory and high FGD flow subcategory are based on chemical precipitation. The derivation of the limitations for these subcategories and the data used are described in section 13 of the 2015 TDD. The new limitations and pretreatment standards for plants not in those subcategories, and for the VIP, were derived from a statistical analysis of effluent data collected by plants during extended testing of the LRTR technology and membrane filtration technology, respectively. The duration of the test programs at these plants varied from approximately one month for membranes to more than a year for LRTR, enabling EPA to evaluate long-term performance of these technologies under conditions that can contribute to influent variability, including varying power demand, changes in coal suppliers, and changes in operation of the air pollution control system. The tests occurred over different seasons of the year and demonstrate that the technologies operate effectively under different climate conditions.

During the development of the final limitations and pretreatment standards, EPA identified certain data that warranted exclusion because: (1) The samples were analyzed using a method that is not sensitive enough to reliably quantify the pollutants present (*e.g.,* use of EPA Method 245.1 to measure the concentration of mercury in effluent samples); (2) the analytical results were identified as questionable due to quality control issues associated with the laboratory analysis or sample collection, or were analytical anomalies; (3) the samples were collected prior to steady-state operating conditions and do not represent BAT/PSES level of performance; (4) the samples were collected during a period where influent composition did not reflect the FGD wastewater (*e.g.,* untreated FGD wastewater was mixed with large volumes of non-FGD wastewater prior to entering the treatment system); (5) the treatment system was operating in a manner that does not represent BAT/PSES level of performance; or (6) the samples were collected from a location that is not representative of treated effluent.

4. Long-Term Averages and Effluent Limitations and Standards for FGD Wastewater

EPA received numerous comments on the development of the CP+LRTR limitations. First, the Agency received comments arguing that the limitations calculations should have included or excluded individual data points or data sets, for a number of reasons. For example, one commenter asserted that plant 2027's mercury data set used an improper method under EPA's criteria, another asserted that plant 2066 had unrepresentative influent pollutant concentrations, and another asserted that excluded data points from plant 2019 were actually representative of potential operating conditions. EPA also received comments that limitations should be developed with data from full-scale systems and that nitrate/nitrite limitations are unnecessary for a well-operated biological treatment system. Finally, EPA was aware of an additional data set which it discussed at proposal, and had requested, but which the Agency did not receive until after the comment period closed.

EPA agrees with comments that the mercury data set for Plant 2027 did not use an EPA-approved method and that the method used had an improper mercury detection limitation (not sufficiently sensitive). Accordingly, the Agency has excluded those mercury data from its calculation of the final mercury limitations. With respect to plant 2066, EPA compared this plant's data to other plants and found that it neither had the lowest influent concentrations nor met the test for statistical outliers.[150] In the absence of a valid statistical rationale for excluding these data, which meet all of the criteria detailed above, EPA used these data in its calculations of the final limitations. With respect to plant 2019, the data in question were excluded by the Agency because that data was collected during periods where the pilot study operators attempted to test the operating limitations of (*i.e.,* ''break'') the biological treatment system by spiking the influent with large quantities of constituents and/or drastically altering the flow. Contrary to the assertions by commenters that there could be operating conditions like these in the future, these pilot conditions were intentionally designed not to be representative of the BAT/PSES level of performance, and thus do not satisfy the selection criteria (specifically, criterion

[150] For example, this plant's data are well within the range of the Interquartile Range Rule. See Section 8 of the Supplemental TDD for more discussion.

5) above.[151] Remaining comments suggesting inclusion of individual data points were reasonable and adhered to sound engineering principles. Since EPA agrees with commenters that these are valid, representative data, EPA included them in the final limitations calculations.

The Agency agrees with commenters that full-scale system data is typically preferable to pilot study data. Nevertheless, EPA weighed the potential benefit of waiting for full-scale LRTR system data (which due to the recency of LRTR installations is only just being collected) versus the potential harm of delaying a final rule where the 2015 rule compliance dates are this year, and determined such a course of action is not warranted. The Agency has always maintained, and courts have upheld, its ability to establish limitations based on pilot data. *See Am. Iron & Steel Institute* v. *EPA,* 526 F.2d 1027, 1063 (3d Cir. 1975); *Weyerhaeuser* v. *Costle,* 590 F.2d 1011, 1054 n.70 (D.C. Cir. 1978). Furthermore, the Agency does not need to wait for better information when the information available is sufficient. *See Texas Oil and gas Ass'n* v. *EPA,* 161 F.3d 923, 935 (5th Cir. 1998) (''An agency's choice to proceed on the basis of 'imperfect information' is not arbitrary and capricious unless 'there is simply no rational relationship' between the means used to account for any imperfections and the situations to which those means are applied.'') (citation omitted). Here the Agency determined that the pilot data are sufficiently representative, and therefore the marginal adjustments in limitations that might result from full-scale system performance data do not warrant the delayed pollutant reductions of these limitations going into effect.

EPA also disagrees that nitrate/nitrite limitations are unnecessary. While commenters are correct that a properly operated and maintained biological treatment system will necessarily remove nitrate/nitrite prior to reduction of selenium, it is the nitrate/nitrite limitations themselves that in part ensure that the BAT technology or other comparable technology is used. In the absence of a nitrate/nitrite limit, two electric utilities described how the use of chemical precipitation-based systems might be used to treat selenium in the selenite form if the limitation is raised from the 2015 rule limit.[152] Another pilot of a ZVI system showed high selenium removal efficiency but did not consistently remove nitrogen (DCN SE05619). Neither the chemical-precipitation-based systems or ZVI systems would consistently treat nitrate/nitrite and thus, while they may be a more advanced technology than chemical precipitation alone and meet the limitations for mercury, arsenic, and selenium included in this final rule, neither would achieve full compliance.

Finally, EPA received an additional LRTR pilot data set conducted at the Kingston power plant. EPA had mentioned this pilot at proposal, but the full study and analysis of data were only completed in January 2020. While commenters did not have an ability to comment on the data per se, EPA continues to rely on the same criteria for selecting and including representative data, and the same methodology for analyzing those data in development of the long-term averages and limitations, and other data, all of which were subject to public comment. The data meet the criteria specified above, and EPA has determined these are valid, representative data. Therefore, EPA has supplemented the LRTR data used for development of the final limitations with the Kingston data set. *See BASF Wyandotte Corp.* v. *Costle,* 598 F.2d 637, 644–46 (1st Cir. 1979) (holding that EPA's use of new data in a final rule did not deprive the public of a fair opportunity to comment on the data). The outcome of the changes described above was generally to lower long-term averages but increase daily variability factors. This results in, for example, higher daily arsenic limitations while monthly arsenic limitations were lower.

EPA also received comments on the VIP limitations. As with the CP+LRTR limitations comments, commenters argued that EPA should not have excluded certain data points, and that such exclusions had made the limitations too stringent. Commenters also argued that EPA had relied too heavily on non-detects.

Commenters suggested that EPA include certain individual data points because the data were reasonable and adhered to sound engineering principles. EPA agrees with commenters that these are valid, representative data. EPA has included these data in the final VIP limitations calculations. The situation with non-detect data was more complicated. The same commenters who suggested that the monthly data sets relied too heavily on non-detect data also made very compelling arguments that EPA should have evaluated membrane filtration with pretreatment using chemical precipitation, as discussed with respect to updated costs in Section VIII above. In light of these compelling comments, and for consistency, EPA re-evaluated the data used to develop the proposed VIP limitations. The record indicates that one pilot plant incorporated microfiltration rather than chemical precipitation for a portion of its pilot data set, and therefore EPA decided that the microfiltration-only subset of data should be excluded as it is not representative of the BAT technology basis for the final rule (see Section VII(B)(1) above). As a result, EPA agrees that some of the monthly data sets relied heavily on non-detect data, and due to the inability to calculate monthly variability factors with the reduced data set, has not finalized a monthly limitation for selenium or bromide.[153] This also resulted in daily limitations for selenium and bromide that are just one-half and one-third of those proposed, respectively. In contrast, EPA found that monthly limitations for mercury, nitrate/nitrite, and TDS were still appropriately calculated from detected concentrations. Importantly, the Agency has not eliminated the daily maximum limitations for these constituents, and it finds that the very low monthly average TDS limitations ensure that VIP systems are obtaining sufficient pollutant removals at plants that do not eliminate their discharges completely (*e.g.,* by recycling permeate or distillate).

Table XIV–1 presents the final effluent limitations and standards for FGD wastewater. For comparison, the table also presents the long-term average treatment performance calculated for each parameter. Due to routine variability in treated effluent, a power plant that targets discharging its wastewater at a level near the values of the daily maximum limitation or the monthly average limitation may periodically experience values exceeding the limitations. For this reason, EPA recommends that plants design and operate their treatment system to achieve the long-term average for the model technology. A system that is designed and operated to achieve the long-term average BAT/PSES level of control would meet the limitations.

EPA expects that plants will be able to meet their effluent limitations or

[151] However, to the extent such artificial conditions could be representative of an upset, the Agency still finds that these data may be useful for plants to consider when designing their systems.

[152] TVA suggested that a sulfide analyzer would allow it to monitor ORP in the FGD to produce a higher fraction of selenite (a form of dissolved selenium which, with optimization, can be precipitated to a high degree, even without a biological treatment stage).

[153] Monthly average limits for arsenic were not calculated for the proposal, and thus this is not a change.

standards at all times. If an exceedance is caused by an upset condition, the plant would have an affirmative defense to an enforcement action if the requirements of 40 CFR 122.41(n) are met. Exceedances caused by a design or operational deficiency, however, are indications that the plant's performance does not represent the appropriate level of control. For the final limitations and pretreatment standards, EPA finds that such exceedances can be controlled by diligent operational practices for the process and wastewater treatment system, such as regular monitoring of influent and effluent wastewater characteristics and adjusting dosage rates for chemical additives to target effluent performance for regulated pollutants at the long-term average concentration for the BAT/PSES technology. Additionally, some plants may need to upgrade or replace existing treatment systems to ensure that the treatment system is designed to achieve performance that targets the effluent concentrations at the long-term average. This is consistent with EPA's costing approach and its engineering judgment, developed over years of evaluating wastewater treatment processes for steam electric power plants and other industrial sectors. EPA recognizes that some dischargers, including those that are currently operating technologies representing the technology basis for the final rule and VIP, may need to improve their treatment systems, process controls, and/or treatment system operations in order to consistently meet the final effluent limitations and pretreatment standards. This is consistent with the CWA, which requires that BAT/PSES discharge limitations and standards reflect the best available technology economically achievable.

See Section 8 of the Supplemental TDD for more information about the calculation of the limitations and pretreatment standards presented in the tables below.

TABLE XIV–1—LONG-TERM AVERAGES AND EFFLUENT LIMITATIONS AND PRETREATMENT STANDARDS FOR FGD WASTEWATER FOR EXISTING SOURCES (BAT/PSES)[a]

Subcategory	Pollutant	Long-Term average	Daily maximum limitation	Monthly average limitation
Requirements for all plants not in the VIP or subcategories specified below (BAT & PSES).	Arsenic (µg/L	4.98	18	8
	Mercury (ng/L)	13.48	103	34
	Nitrate/nitrite as N (mg/L).	2.14	4	3
	Selenium (µg/L)	15.87	70	29
Voluntary Incentives Program for FGD Wastewater (existing direct dischargers).	Arsenic (µg/L)	[b] 5.0	5	NA
	Mercury (ng/L)	5.44	23	10
	Nitrate/nitrite as N (mg/L).	0.89	2.0	1.2
	Selenium (µg/L)	7.35	10	NA
	Bromide (mg/L)	0.200	0.2	NA
	TDS (mg/L)	86.06	306	149
Low utilization subcategory-AND-High FGD flow subcategory (BAT & PSES).	Arsenic (µg/L)	5.98	11	8
	Mercury (ng/L)	159	788	356

[a] BAT effluent limitations for EGUs that will permanently cease the combustion of coal by December 31, 2028, are based on the previously established BPT limitations on TSS and are not shown in this table. The BAT effluent limitations for TSS for these EGUs are: Daily maximum of 100 mg/L; and monthly average of 30 mg/L.
[b] Long-term average is the arithmetic mean of the quantitation limitations because all observations were not detected.
[c] Limitation is set equal to the quantitation limit for the data evaluated.
[d] Monthly average limitation is not established when the daily maximum limitation is based on the quantitation limit.

EPA notes that some limitations are higher than corresponding limitations in the 2015 rule (or even the 2019 proposal), and in other cases limitations of additional pollutants or lower limitations for pollutants regulated in the 2015 rule have also been calculated.

B. BA Transport Water Limitations

1. Maximum 10 Percent 30-Day Rolling Average Purge Rate

In contrast to the concentration-based, numeric limitations estimated for specific pollutants above, EPA is finalizing a pollutant discharge allowance in the form of a site-specific percentage purge rate for BA transport water with a maximum cap. To develop this requirement, EPA first collected data on the discharge needs of the model treatment technology (high recycle rate systems) to maintain water chemistry or water balance.[154] EPRI (2016) presents discharge data from seven currently operating wet BA transport water systems at six plants. These plants were able to recycle most or all BA transport water from these seven systems, resulting in discharges of between zero and two percent of the system volume. EPA's goal in establishing the purge rate was to provide a requirement based on process needs, as reflected in the EPRI (2016) data, as well as infrequent precipitation and maintenance events. While EPRI (2016) noted that infrequent discharges happened at some plants, it did not include such events in its discharge calculations. As a result, EPA looked to EPRI (2018), which presents hypothetical maximum discharge volumes and the estimated frequencies of such infrequent events for currently operating wet BA systems.[155] For purposes of calculating the maximum allowance percentage associated with such infrequent events, EPA divided the discharge associated with an estimated maintenance and precipitation event by the volume of the system, and then

[154] Although the technology basis includes dry handling, the limitation is based on the necessary purge volumes of a wet, high recycle rate BA system.

[155] Although presented in EPRI (2018), EPA did not consider events such as pipe leaks, as these would not be reflective of proper system operation (*see* DCN SE06920).

averaged the resulting percent over 30 days.

Finally, EPA added each reported regular discharge percent from EPRI (2016) to the averaged infrequent discharge percent under four scenarios: (1) With no infrequent discharge event; (2) with only a precipitation-related discharge event; (3) with only a maintenance-related discharge event; and (4) with both a precipitation-related and maintenance-related discharge event. These potential discharge needs are reported in Table XIV–2 below. Consistent with the statistical approach used to develop effluent limitations and pretreatment standards for individual pollutants, EPA selected a 95th percentile of total system volume as representative of a 30-day rolling average, which results in a limitation of 10 percent of total system volume.[156]

TABLE XIV–2—30-DAY ROLLING AVERAGE DISCHARGE VOLUME AS A PERCENT OF SYSTEM VOLUME [a]

Infrequent discharge needs as estimated in EPRI (2018)		Regular discharge needs to maintain water chemistry and/or water balance as characterized in EPRI (2016)						
Type of infrequent discharge event	30-day rolling average	Plant A	Plant B	Plant C	Plant D	Plant E	Plant F-system 1	Plant F-system 2
		0.1%	0.0%	1.0%	0.0%	0.8%	2.0%	2.0%
Neither Event	0.0%	0.1%	0.0%	1.0%	0.0%	0.8%	2.0%	2.0%
Precipitation Only	5.4%	5.5%	5.4%	6.4%	5.4%	6.2%	7.4%	7.4%
Maintenance Only	3.3%	3.4%	3.3%	4.3%	3.3%	4.1%	5.3%	5.3%
Both Events	8.7%	8.8%	8.7%	9.7%	8.7%	9.5%	10.7%	10.7%

[a] These estimates sum actual, reported, plant-specific regular discharge needs with varying combinations of hypothetically estimated, infrequent discharge needs.

EPA received a significant range of comments on the calculation of this 10 percent purge. Many comments concerned the treatment of infrequent purges, especially those relating to precipitation. The range of comments demonstrates, among other things, that a nationwide limitation for precipitation-related purges can be too stringent in some geographic areas and not stringent enough in others. EPA, therefore, made modifications in the final rule that require the NPDES permitting authority to develop a site-specific purge percentage that is capped at 10 percent.[157] EPA recognizes that some plants may need to improve their equipment, process controls, and/or operations to consistently meet the limitations included in this final rule; however, this is consistent with the CWA, which requires that BAT/PSES discharge limitations and standards reflect the best available technology economically achievable.

The remainder of comments on the 10 percent purge calculation recommended additional circumstances in which EPA should allow a purge beyond 10 percent. EPA disagrees with these comments because the 10 percent purge cap that EPA estimated is reflective of properly operated and maintained high recycle rate systems, the technology that EPA selected as BAT. In the rare cases when precipitation-related events result in a purge of greater than 10 percent—100-year/24 hour storms, multiple large storms, etc.—EPA notes that the NPDES regulations contain flexibilities for upset and bypass. See 40 CFR 122.41(m) and (n).

2. Best Management Practices Plan

As described in Section VII of this preamble, the final rule requires a subcategory of plants discharging BA transport water and having a low CUR to develop and implement a BMP plan to recirculate BA transport water back to the BA handling system (see Section VII of this preamble for more details).

The final BMP provisions require subject plants to develop a plan to minimize the discharge of pollutants by recycling as much BA transport water as feasible back to the BA handling system.[158] After determining the amount of BA transport water that could be feasibly recycled and developing and implementing a plant-specific BMP plan, plants are required to review the plan annually and revise it as necessary.

XIV. Regulatory Implementation

A. Implementation of the Limitations and Standards

The limitations and standards in this rule apply to discharges from steam electric power plants through incorporation into NPDES permits issued by EPA or by authorized states under Section 402 of the CWA, and through local pretreatment programs under Section 307 of the CWA. NPDES permits or control mechanisms issued after this rule's effective date must incorporate the ELGs, as applicable. Where permits with the 2015 rule limitations have already been issued, EPA expects that the final rule requirements will be incorporated through permit modifications in most cases. Also, under CWA section 510, states can require effluent limitations under state law as long as they are no less stringent than the requirements of this rule. Finally, in addition to requiring application of the technology-based ELGs in this rule, CWA section 301(b)(1)(C) requires the permitting authority to impose more stringent effluent limitations, as necessary, to meet applicable water quality standards.

1. Timing

The direct discharge limitations in this rule apply only when implemented in an NPDES permit issued to a discharger. Under the CWA, the permitting authority must incorporate these ELGs into NPDES permits as a floor or a minimum level of control. The final rule provides the plant's permitting authority with certain discretion to determine the date when the new effluent limitations for FGD wastewater and BA transport water will apply to a given discharger. The rule specifies that the earliest date these new limitations can apply to a discharger is

[156] While there were further decimal points for the actual calculated 95th percentile, EPA notes that 10 percent is two significant digits, consistent with the limitations for FGD wastewater pollutants. Furthermore, a 10 percent volumetric limit will be easier for implementation by the permitting authority as it results in a simple decimal point movement for calculations.

[157] As discussed in Section VIII(b)(2) above, to the extent that a precipitation event such as a hurricane were to occur and result in a plant needing to discharge in excess of the established purge percent, upset provisions provide a potentially appropriate affirmative defense.

[158] Since the BMP plan requirements include periodic updates, a change in treatment technology (for instance due to the CCR rule) would be reflected automatically in the BMP plan.

October 13, 2021. Except for the limitations in certain subcategories, for any final effluent limitation that is specified to become applicable after October 13, 2021, the specified date must be as soon as possible after that date, but in no case later than December 31, 2025. Consistent with the proposal, for dischargers choosing to meet the VIP effluent limitations for FGD wastewater, the date for meeting those limitations is December 31, 2028.

For FGD wastewater and BA transport water from EGUs permanently ceasing the combustion of coal by 2028, the final BAT limitations for this subcategory apply on the date that an NPDES permit is issued to a discharger. The final rule does not build in an implementation period for meeting these limitations, as the BAT limitation on TSS is equal to the previously promulgated BPT limitation on TSS.

Consistent with the proposal, for FGD wastewater and BA transport water from low utilization EGUs and FGD wastewater from high FGD flow plants, the final BAT limitations for these subcategories would apply on or after October 13, 2021. The specified date must be as soon as possible after that date, but in no case later than December 31, 2023. EPA considered earlier and later dates than December 31, 2023. With respect to later dates, the limitations in these subcategories are less stringent than the limitations in the 2015 rule, which the Agency found were achievable by 2023. Nothing in the Agency's record since then would suggest otherwise. Thus, the Agency did not select a later date. With respect to earlier dates, EPA acknowledges that some of the limitations might be implemented sooner at some plants. Nevertheless, the Agency is retaining the December 31, 2023 date. For LUEGUs, the Agency is allowing demonstration of the required CUR by December 31, 2023, in response to comments, as discussed in Section XIV(A)(3) below. Since it would be inconsistent to require compliance with these limitations prior to demonstration that the LUEGU CUR requirements are met, setting a ''no later than date'' earlier than December 31, 2023, would not adequately support this modified requirement of the final rule. For high FGD flow plants, EPA is also retaining the outside compliance date of December 31, 2023. In an FDF variance request filed for the single known high flow plant, that plant indicated that it did not have chemical precipitation, and preliminary estimates were that chemical precipitation would take until 2023 to construct, commission, and optimize. The EPA does not have any information to suggest that a chemical precipitation system at a high flow plant could be installed any more quickly; however, to the extent that an earlier date is feasible at a high FGD flow plant, the permitting authority can already account for this under current 40 CFR 423.11(t).

Pretreatment standards, unlike effluent limitations, are directly enforceable and must be met three years after the effective date of any final rule. CWA section 307(b)(1). Under EPA's General Pretreatment Regulations for Existing and New Sources, POTWs with flows in excess of 5 Mgd must develop pretreatment programs meeting prescribed conditions, including the legal authority to require compliance with applicable general and categorical pretreatment standards and control the introduction of pollutants to the POTW through permits, orders or similar means, to ensure the contribution to the POTW by each industrial user is in compliance with applicable pretreatment standards and requirements. POTWs with approved pretreatment programs act as the control authorities for their industrial users. Among the responsibilities of the control authority are the development of the specific discharge limitations for the POTW's industrial users. Because pollutant discharge limitations in categorical pretreatment standards may be expressed either as concentrations or mass limitations, the control authority, in many cases, must convert the pretreatment standards to limitations applicable to a specific industrial user and then include these in POTW permits or another control instrument.

Regardless of when a plant's NPDES permit is ready for renewal, EPA recommends that each plant immediately begin evaluating how it intends to comply with the requirements of any final rule. In cases where significant changes in operation are appropriate, EPA recommends that the plant discuss such changes with its permitting authority and evaluate appropriate steps and a timeline for the changes as soon as a final rule is issued, even prior to the permit renewal process.

In cases where a plant's final NPDES permit was issued before these ELGs were finalized and includes limitations for BA transport water and/or FGD wastewater from the 2015 rule, the permitting authority may modify the permit based on promulgation of this rule pursuant to 40 CFR 122.62(a)(3). EPA recommends that the plant and permitting authority determine whether such a permit should be modified in light of this rule, and if so, that it be modified as soon as practicable and consistent with any new rule provisions.[159]

The ''as soon as possible'' date is October 13, 2021, unless the NPDES permitting authority determines another date after receiving relevant information submitted by the discharger.[160] The final rule does not revise the specified factors that the NPDES permitting authority must consider in determining the as soon as possible date under the 2015 rule. Assuming that the NPDES permitting authority receives relevant information from each discharger, in order to determine what date is ''as soon as possible'' within the implementation period, the factors established in the 2015 rule are:

(a) Time to expeditiously plan (including to raise capital), design, procure, and install equipment to comply with the requirements of the final rule.[161]

(b) Changes being made or planned at the plant in response to greenhouse gas regulations for new or existing fossil fuel-fired plants under the CAA, as well as regulations for the disposal of coal combustion residuals under subtitle D of the Resource Conservation and Recovery Act.

(c) For FGD wastewater requirements only, an initial commissioning period to optimize the installed equipment.

(d) Other factors as appropriate.

EPA proposed to clarify that the discharger must provide relevant, site-specific information for consideration of these factors by the permitting authority. However, commenters stated that in many cases, information developed to inform these decisions may reflect fleet-wide or company-wide operations, maintenance or financial information and may not be ''site-specific'' to a single plant or EGU. Thus, the key is that the information be demonstrated to be relevant to the plant in question, but need not be based on

[159] In some circumstances, if a permit cross-references or incorporates the regulation by reference, if state law allows, it is possible that the changes finalized today might be automatically incorporated. However, this is unlikely to be the case in many permits, and plants should carefully review their permits before drawing this conclusion.

[160] Information in the record indicates that most facilities should be able to complete all steps to implement changes needed to comply with proposed BA transport water requirements within 15–23 months, and the FGD wastewater requirements within 26 to 34 months.

[161] Cooperatives and municipalities presented information to EPA suggesting that obtaining financing for these projects can be more challenging than for investor-owned utilities. Under this factor, permitting authorities may consider whether the type and size of owner and difficulty in obtaining the expected financing might warrant additional flexibility up to the ''no later than'' date.

site-specific operations, maintenance or financial information. The Agency agrees with these comments, and thus the final rule does not include a requirement for unique, site-specific information.

As specified in factor (b), the permitting authority must also consider scheduling for installation of equipment, which includes a consideration of plant changes planned or being made to comply with certain other key rules that affect the steam electric power generating industry. As specified in factor (c), for the FGD wastewater requirements only, the permitting authority must consider whether it is appropriate to allow more time for implementation in order to ensure that the plant has appropriate time to optimize any relevant technologies.

The ''as soon as possible'' date determined by the permitting authority may or may not be different for each wastestream. The NPDES permitting authority should provide a well-documented justification of how it determined the ''as soon as possible'' date in the fact sheet or administrative record for the permit. If the permitting authority determines a date later than October 13, 2021, the justification would explain why allowing additional time to meet the final limitations is appropriate, and why the discharger cannot meet the effluent limitations as of October 13, 2021. In cases where the plant is already operating the BAT technology basis for a specific wastestream (*e.g.,* high recycle rate system for BA transport water), operates the majority of the proposed BAT technology basis (*e.g.,* FGD chemical precipitation and biological treatment, without sulfide addition), or expects that relevant treatment and process changes would be in place prior to October 13, 2021 (for example due to the CCR rule), it would not usually be appropriate to allow additional time beyond that date to comply with the final rule limitations and standards. Regardless, in all cases, the permitting authority would make clear in the permit by what date the plant must meet the final limitations, and that date is no later than December 31, 2025.[162]

Where a discharger chooses to participate in the VIP and be subject to effluent limitations for FGD wastewater based on membranes, the NPDES permitting authority must allow the plant up to December 31, 2028, to meet those limitations, consistent with the documentation received from the plant. Again, the permit must make clear that the plant must meet the limitations by December 31, 2028.

2. Determining the Site-Specific Bottom Ash Purge Water Volume and Treatment

While EPA is establishing a maximum 10 percent volumetric cap on bottom ash purge water, the NPDES permitting authority is to determine the site-specific volumes and technology-based BAT effluent limitations using BPJ.[163] To assist the NPDES permitting authority in making these determinations, EPA is requiring information on the types of discharges and available treatment technologies in the reporting and recordkeeping requirements discussed below. However, having reviewed the information available in the record, EPA has distilled certain basic principles that may be useful for a permitting authority to consider.

Information in EPA's record indicates that purges can be classified into two distinct classes. The first class comprises purges that must be made on a regular or continuous basis. These purges are typically related to system water chemistry or water balance and are permissible under 40 CFR 423.13(k)(2)(i)(A)(*2*) and (*3*). Based on EPA's record, once a plant has taken steps to manage such purges, these purges should typically comprise a small portion of system volume, and in some cases may have volumes close to zero. The second class of purges are those that are made less frequently. Based on information in EPA's record, discharges from storm events larger than a 10-year, 24-hour or longer duration event, or maintenance events not included in 40 CFR 423.13(k)(2)(i)(A)(*1*) through (A)(*3*)—such as those associated with EGU outages or decommissioning of the high recycle rate system—are expected in many cases to occur at most once per year and are permissible under 40 CFR 423.13(k)(2)(i)(A)(*1*) and (*4*).

EPA notes that the storm events included in (A)(*1*) are: Different from those included at proposal in two ways. First, commenters suggested that EPA use a 10-year storm event rather than a 25-year storm event. EPA agrees that such a change makes the requirements consistent with those for coal pile runoff.[164] Second, commenters pointed to a 30-day rainfall event in Tennessee in which individual 24-hour precipitation events may not have exceeded a 10-year storm event, but multiple 24-hour periods of precipitation taken together did exceed a 10-year, 30-day storm event. At proposal EPA had used the phrase ''multiple consecutive events'' to capture such a possibility; however, the more precise characterization of the event in the Tennessee example would be a 10-year, 30-day storm event. Therefore, the Agency now uses the phrase ''or longer duration'' to denote all 10-year events of a duration longer than 24-hours.[165]

Permitting authorities may initially determine which of these two classes of purge are necessary at any given site. Where necessary purges fall into the first class, and result in relatively consistent volumes and water quality, such a discharge may be more amenable to treatment technologies beyond physical settling. Necessary purges fall into the second class, and result in infrequent and potentially very large volumes; such a discharge may make treatment beyond physical settling challenging. In both of these cases, where only a single class of purge is expected, the permitting authority's job will be more straightforward.

A more challenging scenario occurs when the NPDES permitting authority determines that both classes of purge will be present. In such cases a permitting authority could consider whether tiered or differentiated purges or purge treatment might be warranted. For example, during periods where no large precipitation or maintenance events occur, continuous purges may be properly limited to a smaller volume, with more advanced treatment with a second limitation permitting larger volumes and less advanced treatment during periods where the plant records a qualifying event. There is no across-the-board formula for determining appropriate purge limitations, as long as the bottom ash purge volume does not exceed 10 percent of the primary active wetted bottom ash system volume on a 30-day rolling average basis.

[162] For BA purge water, permitting authorities may determine the appropriate timeframe for any limitations imposed as a result of a BPJ analysis on this wastestream; however, EPA strongly encourages state and tribal permitting authorities to invest the time and resources necessary to establish BPJ limits for BA purge water and issue permits timely to allow facilities to install the necessary equipment within the compliance deadlines in the final rule.

[163] BPJ limits established by the permitting authority only apply to discharges from high recycle rare systems and do not apply to BA transport water discharges from LUEGUs or EGUs permanently ceasing coal combustion, as plants eligible for those subcategories are subject to the TSS limitations established in this final rule.

[164] 40 CFR 423.12(b)(10).

[165] *NOAA ATLAS 14 POINT PRECIPITATION FREQUENCY ESTIMATES* include the following 10-year events in this range: 24-hour, 2-day, 3-day, 4-day, 7-day, 10-day, 20-day, 30-day, 45-day, and 60-day storm events. Available online at: *https://hdsc.nws.noaa.gov/hdsc/pfds/pfds_map_cont.html* (DCN SE09100).

3. Implementation for the Low Utilization Subcategory

The final rule establishes a subcategory for LUEGUs with a two-year average capacity utilization rate (CUR) of less than 10 percent per year. CUR is calculated as the total MWh of production divided by the hours per year times the nameplate capacity. Unlike other subcategories, which often require that a plant possess some static characteristic (*e.g.,* less than 50 MW nameplate capacity), the low utilization subcategory is based on the fluctuating CUR. Thus, EPA is clarifying how permitting authorities can determine whether a plant qualifies for this subcategory.

If a plant seeks to have the limitations from this subcategory applied to discharges from one or more EGUs, the plant needs to provide the permitting authority its calculation of the average of the most recent two calendar years of CUR for the subject EGU(s). EPA received some comments that plants should be allowed to certify to future low utilization operations, even where current operations are not low utilization. Other comments stated that additional reporting and recordkeeping should be required to prevent abuse. EPA agrees with both comments. It was not the Agency's intent for plants on a downward utilization trajectory to be barred from the LUEGU subcategory, where current operations exceed the required less than 10 percent CUR threshold. Thus, the NPDES permitting authority should refrain from establishing a ''no later than date'' that would restrict a plant from demonstrating two years of reduced CUR. However, NPDES permitting authorities also need to know when to provide flexibility and when to dutifully set a compliance date which is ''as soon as possible.'' Thus, EPA is requiring in the rule that a plant seeking to qualify for this subcategory must file a Notice of Planned Participation (NOPP) by October 13, 2021, even if it would not yet qualify, and must operate below this threshold before the latest compliance dates of December 31, 2023. Upon receipt of a NOPP, the NPDES permitting authority can properly consider that NOPP in the ''other factors'' of 40 CFR 423.11(t)(4).

Once a plant reaches the ''as soon as possible'' date determined by the permitting authority, it must thereafter provide annual certifications of its 24-month average CUR. This average should primarily be calculated using data developed for reporting to the EIA, since MWh production information already collected for the EIA will both eliminate the potentially unnecessary paperwork burden of a separate calculations and information gathering and allow the NPDES permitting authority to verify the accuracy of the reported values more easily. The use of a two-year average will ensure that a low utilization EGU responding to a single extreme demand event in one year (*e.g.,* unexpectedly high peak demand in summer or winter) can still qualify for this subcategory if its average CUR over the two years remains below 10 percent. Furthermore, the plant must annually provide the permitting authority an updated two-year average CUR for each subcategorized EGU within 60 days of submitting production information to the EIA to ensure that it remains an LUEGUs.

4. Transitioning Between Limitations

EPA received a significant number of comments that it should harmonize the CCR and ELG rules to the extent practicable. As discussed above, EPA agrees that such harmonization is important. One major set of features EPA attempted to harmonize this final rule with are the alternative closure provisions of Paragraphs 257.103(f)(1) and (f)(2) of the CCR rule. In response to comments on the CCR Part A Proposed Rule (one of which, the USWAG comment, was incorporated by reference into a public comment submitted for this ELG rule), EPA added a provision to the final CCR Part A Rule that provides for transfer between these paragraphs. A plant that had applied for a site-specific alternative closure extension to extend its cease receipt of waste date under paragraph 257.103(f)(1) could, for example, now transfer into the provision that requires permanent cessation of a coal-fired EGU under paragraph 257.103(f)(2). Similarly, EPA has discussed transfer between ELG subcategories with electric utilities. Thus, to align with the flexibilities of the CCR Part A final rule and make implementation of this rule easier, EPA is finalizing provisions allowing for a plant with a permit to transfer between two subcategories, or between a subcategory and the VIP, without undergoing a permit modification.[166]

The EPA is also establishing deadlines by which such transfers must occur. Transfers into the LUEGU subcategory must occur no later than December 31, 2023, the latest date by which compliance dates for this subcategory would fall. For all other transfers, the EPA is selecting December 31, 2025 as the latest date for three reasons. First, the ability to transfer under Section 257.103 of the CCR Rule will terminate before this date, giving plants certainty as to their CCR compliance strategies. Thus, it is consistent with the CCR rule. Second, the first five-year permitting cycle will have ended, and EPA expects that plants subject to NPDES permitting under this rule will have determined their compliance path by then. Lastly, some of the provisions that can be transferred to in this rule include compliance dates for the generally applicable limitations of no later than December 31, 2025. In such cases, allowing transfer to such provisions at a later date could create disparities for compliance with these genearlly applicable limitations within the industry. Thus, a final transfer date of December 31, 2025, creates a consistent time frame for all plants to make decisions and achieve compliance with the generally applicable limitations, whether they initially start in another subcategory or not.

Consistent with the CCR Part A final rule requirements, a plant seeking to transfer between the ELG rule provisions must demonstrate compliance with all requirements of both the provision transferred from and the provision transferred to, and continue to meet requirements that were applicable if that applicability date has passed. This ensures that a plant does not miss or circumvent otherwise applicable deadlines or cease operating equipment already installed, operated, and maintained to comply with deadlines that have passed.

The first objective addresses, for example, a plant converting from the permanent cessation of coal combustion subcategory with deadlines of 2028, to the LUEGU subcategory, with deadlines no later than 2023. EPA does not want a plant to miss or circumvent the lastest LUEGU compliance dates of December 31, 2023, because the plant initially

[166] Categorical pretreatment standards are directly enforceable and are not implemented through NPDES permits issued to indirect dischargers. Indirect dischargers, however, may be subject to enforceable individual local permits or equivalent individual control mechanisms issued to individual indirect dischargers by a POTW with an approved pretreatment program or the appropriate control authority. Because indirect dischargers do not have NPDES permits, the NPDES provisions for transferring between limits in a permit do not apply to indirect dischargers. Indirect dischargers subject to categorical pretreatment standards under EPA's pretreatment regulations must comply with these standards. What pretreatment standards will apply depends on whether an indirect discharger is subject to a particular subcategory as provided in the regulation. As such, in the event the pretreatment standards change, the indirect dischargers will be subject to the modified standards.

intends to meet the 2028 requirements and later changes its mind. Such a scenario could, for example, result in the plant failing to meet the 2023 LUEGU requirements for five years between 2023 and 2028.

The second objective would mean that, for example, where a plant is already implementing a BMP plan for BA transport water under the LUEGU subcategory and then decided to convert to the subcategory for permanent cessation of coal combustion, the plant would continue to implement the BMP plan until such cessation occurs. This ensures that technology-based requirements that were applicable would continue to be met, furthering the goals of eliminating discharges to the extent technologically available and achievable under section 301(b) of the CWA.

This new set of provisions is also appropriate as a practical matter to implement the subcategories as finalized. While EPA proposed for plants to certify to a subcategory immediately, based on public comments. EPA has finalized provisions allowing plants to file an initial notice of planned participation such that the plant could certify differently within the compliance time frame. In many cases, a plant may require local or state regulatory approval prior to reducing its utilization or planning to retire. These changes in the final rule allow plants to notify their permitting authority of their intent to particpiate in a subcategory, but also allows time to obtain local or state approval, if necessary, before the compliance deadline. By allowing automatic transfer between alternatives, the final rule also avoids unecessarily burdensome permit modifications that can further extend timelines to make plant changes, including equipment upgrades.

Finally, the Agency notes that with later dates for certification and the ability to transfer between alternative limitations for a period of time, there is no longer a need for tiered limitations in the LUEGU subcategory. Thus, the proposed tiering of limitations are not being finalized.

5. Addressing Unexpected Changes in Generation

Since the 2015 rule, EPA has learned of several instances when plants have withdrawn or delayed retirement announcements for coal-fired EGUs and plants. These instances can be grouped into two categories. First, some delays were involuntary, resulting from orders issued by the Department of Energy (DOE) or Public Utility Commissions (PUCs). The remaining announcements were withdrawn or delayed voluntarily due to changed circumstances. While both the voluntary and involuntary changes to announced retirements were infrequent, EPA acknowledges that such changes will necessarily impact a plant's status with regard to some of the subcategories in the final rule. These situations are discussed below. For further information on announced retirements, *see* DCN SE07207.

a. Involuntary Retirement Delays

At least five plants with announced retirement dates had those dates involuntarily delayed as a result of the DOE issuing orders under Section 202(c) of the Federal Power Act, or a PUC issuing a reliability must-run agreement. Such involuntary operations have raised questions about the conflict between legal obligations to produce electricity and legal obligations under environmental statutes.[167] Today's final rule would subcategorize LUEGUs and EGUs permanently ceasing coal combustion by 2028, subjecting those subcategories to less stringent limitations. However, both utilization and decisions to permanently cease coal combustion could be impacted by involuntary orders and agreements. Thus, EPA is establishing in this final rule an NPDES permit condition that would be included in all permits where a plant seeks limitations under one of these two subcategories. Such a provision protects a plant that involuntarily fails to qualify for the subcategory for low utilization EGUs or EGUs permanently ceasing coal combustion by 2028, and it allows that plant to prove that, but for the order or agreement, it would have qualified for the subcategory. EPA received comments that the enumerated orders in the proposal were too narrow, and that alternative regulatory bodies (*e.g.,* Independent System Operators) might also issue these types of orders. EPA agrees with these commenters, and thus, has modified the language in section 423.18(a) of the final rule.

b. Emergencies and Major Disasters Under the Stafford Act

The final rule also includes in the section 423.18(a) provision ''Emergency'' [168] and ''Major Disaster'' [169] events as defined by the Stafford Act.[170] These events encompass scenarios such as the current Covid–19 pandemic, floods, hurricanes, and other scenarios that may not be predictable, but may impact the need for, and availability of, electricity. The benefit of adding these terms to the emergency orders and must run agreements already detailed in section 423.18(a) is that it would prevent an EGU from being noncompliant if operations during such an emergency or major disaster would have otherwise caused it to exceed the rule's capacity utilization threshold. Stafford Act declarations of major disaster or emergency are made by the President at the request of the Governor or Chief Executive of an Indian Tribe. *See* 42 U.S.C. 5170 and 5191. For emergency declarations involving primary federal responsibility, the President does not need a request from the Governor, but may make an emergency determination (42 U.S.C. 5191(b)). Furthermore, these events are limited in geographic scope and in duration. Thus, while they would advance the protection for future LUEGUs to operate in emergency situations above the required capacity, they would be relatively rare, thus maintaining the majority of pollutant removals expected under this final rule in the long run.

c. Voluntary Retirement Withdrawals and Delays

Units at five plants with announced retirement dates had those dates voluntarily withdrawn or delayed due to changed situations, including market conditions, unavailability of natural gas pipelines, changes in environmental regulations, and sale of the plant. Like the involuntary retirement delays discussed in the section above, these situations could impact a plant's qualification for the subcategories for LUEGUs and EGUs ceasing combustion of coal by 2028. Unlike the involuntary retirement delays, these voluntary delays and withdrawals can be accounted for through normal integrated resource planning. Thus, the final rule does not include a similar protection provision for such units. Instead, a plant should carefully plan its implementation of the ELGs.

B. Reporting and Recordkeeping Requirements

To implement the rule's provisions providing for subcategories and a site-specific determination of controls on BA purge water, this final rule includes eight reporting and recordkeeping requirements. There were two

[167] Moeller, James. 2013. *Clean air vs. electric reliability: The case of the Potomac River Generating Station*. September. Available online at: *https://scholarlycommons.law.wlu.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1077&context=jece.* (DCN SE09101)

[168] 42 U.S.C. 5122(1).

[169] 42 U.S.C. 5122(2).

[170] 42 U.S.C. 5121 *et seq.*

overarching goals of these requirements. The first goal was to balance the additional flexibilities for certifying to subcategories or VIP limitations at a later date with additional reporting and recordkeeping to provide extra certainty that the plant still intends to avail itself of those provisions. A second goal was to adopt provisions consistent with those of the CCR rule where an initial notice is provided to EPA, followed by regular progress reports to avoid last-minute surprises that might result in unexpected noncompliance.[171]

First, EPA is finalizing a reporting and recordkeeping requirement for plants operating high recycle rate BA systems. EPA is requiring that such plants submit the calculation of the primary active wetted BA system volume, which means the maximum volumetric capacity of bottom ash transport water in all non-redundant piping (including recirculation piping) and primary tanks (*e.g.,* bins, troughs, clarifiers, and hoppers) of a wet bottom ash system, excluding the volumes of surface impoundments, secondary bottom ash system equipment (*e.g.,* installed spares, redundancies, and maintenance tanks), and non-bottom ash transport systems that may direct process water to the bottom ash system. This ensures that the permitting authority can verify the volume of discharge allowed for a high recycle rate system.

Because the NPDES permitting authority is basing the site-specific purge percentage and limitations on BPJ, EPA is also requiring the following:

(1) A list of all potential discharges, the expected volume of each discharge, and the expected frequency of each discharge.

(2) Material assumptions, information, and calculations used by the certifying professional engineer to determine the expected volume and frequency of each discharge.

(3) A list of all wastewater treatment systems currently at the plant, or otherwise required by a date certain under this section.

(4) A narrative discussion of each treatment system, including the system type, design capacity, and current operation.

Second, EPA is finalizing a reporting and recordkeeping requirement for plants seeking to qualify as an LUEGU. EPA is requiring that the plant submit a NOPP to certify one or more LUEGUs. Once any limitations of this subcategory are applicable, the final rule requires that such a plant annually recertify that the EGU continues to meet the requirements of this subcategory, along with an updated two-year average CUR calculation and information for each applicable EGU. If an EGU exceeds the CUR requirements of this subcategory, no further recordkeeping or reporting would be required for this subcategory, as the EGU would leave the subcategory permanently.

Third, as described in Section VII.C.2, plants with EGUs that qualify for the low-utilization subcategory and that discharge BA transport water, are required to develop and implement a BMP plan to minimize the discharge of pollutants by recycling as much BA transport water as feasible back to the BA handling system.[172] As part of any NPDES permit renewal or any re-opening, such plants need to submit their plant-specific plan, certified that it meets the proposed requirements of 40 CFR 423.13(k)(3)) along with certification that the plan is being implemented. For each NPDES permit renewal, the plan and professional engineer certification needs to be updated and provided to the permitting authority.

Fourth, EPA is finalizing reporting and recordkeeping requirements for plants seeking subcategorization for an EGU(s) achieving permanent cessation of coal combustion by December 31, 2028. EPA is requiring that a plant file a NOPP to certify one or more such EGUs, including whether the retirement or fuel conversion has already been approved by the regulatory authority. EPA received comments suggesting that additional information should be required regularly from such EGUs. EPA agrees that, given the time frame for retiring or repowering some EGUs, a lack of reporting combined with missed deadlines could lead to situations where a plant fails to permanently cease coal combustion as scheduled and immediately falls into noncompliance without the permitting authority being aware of the situation. Thus, EPA is also requiring in the rule annual progress reports to confirm that the EGU is on track to complete its retirement or fuel conversion on time. This requirement is meant to provide the NPDES permitting authority further evidence that an EGU will, in fact, cease the combustion of coal by December 31, 2028.

Fifth, EPA is finalizing reporting and recordkeeping requirements for plants invoking the protective NPDES permit conditions described above, which allow a plant to continue to be subject to limitations for low utilization EGUs or those ceasing combustion of coal by 2028 in the event of an emergency order, must-run agreement, national emergency, or major disaster. EPA is requiring in the rule that such plants must demonstrate that an EGU would have qualified for the subcategory at issue, if not for the emergency order, must-run agreement, national emergency, or major disaster as described above. Furthermore, EPA is requiring in the rule that the plant submit to the NPDES permitting authority a copy of such order or agreement as an attachment to the submission.

Sixth, EPA is finalizing reporting and recordkeeping requirements for plants participating in the VIP. As with the retirement subcategory, given the long time frames, a lack of reporting combined with missed deadlines could lead to situations in which a plant fails to complete the installation of a VIP technology as scheduled and immediately falls into noncompliance without the permitting authority being aware. Thus, EPA is requiring in the rule annual progress reports to confirm that the plant is on track to complete its VIP technology installation. This requirement is meant to provide the NPDES permitting authority further evidence that an EGU will, in fact, be able to meet the VIP limitations by December 31, 2028.

Seventh, the final rule includes reporting and recordkeeping requirements for plants transitioning between compliance alternatives. For example, a plant may initially file a NOPP for participation in the permanent cessation of coal combustion subcategory, but then several years later it may determine that it is profitable to remain in operation, and instead comply with the VIP. Under such scenarios, where the permitting authority has included alternative limitations subject to eligibility requirements, EPA is requiring in the rule that the plant provide a notice to the NPDES permitting authority of what transition the plant will make.

[171] While the initial notice in the CCR rule is termed a ''notice of intent'' because that is a CWA term of art related to NPDES permitting that has a different meaning than intended here, this final rule provides a ''notice of planned participation.'' The intended result is the same for both rules, to give the permitting authority advanced notice that a plant intends to avail itself of provisions other than those generally applicable to the industry.

[172] EPA is finalizing the same requirements for determining feasibility that were included in the proposal: Segregation of bottom ash transport water from other process water, minimization of the introduction of stormwater by diverting (*e.g.,* curbing, using covers) stormwater to a segregated collection system, recycling bottom ash transport water back to the bottom ash transport water system, recycling bottom ash transport water for use in the FGD scrubber, optimization of existing equipment (*e.g.,* pumps, pipes, tanks) and installing new equipment where practicable to achieve the maximum amount of recycle, and utilization of ''in-line'' treatment of transport water (*e.g.,* pH control, fines removal) where needed to facilitate recycle.

Finally, the final rule includes a requirement that a plant provide notice of any material delays, meaning a delay that could result in non-compliance (with the compliance date set forth in the permit) within 30 days of experiencing such a delay.[173] For instance, if such a delay might preclude permanent cessation of coal combustion by December 31, 2028, a plant shall file a notice of material delay with the permitting authority (or the control authority in the case of an indirect discharger) to facilitate resolution before the compliance date. The notice requirement does not change the 2028 date in this rule but provides the permitting authority adequate notice to seek a resolution. The contents of such a notice shall include the reason for the delay, the projected length of the delay, and a proposed resolution to maintain compliance.

C. Site-Specific Water Quality-Based Effluent Limitations

EPA regulations at 40 CFR 122.44(d)(1), implementing section 301(b)(1)(C) of the CWA, require that each NPDES permit shall include any requirements, in addition to or more stringent than effluent limitations guidelines or standards promulgated pursuant to sections 301, 304, 306, 307, 318 and 405 of the CWA, necessary to achieve water quality standards established under section 303 of the CWA, including state narrative criteria for water quality. Those same regulations require that limitations must control all pollutants, or pollutant parameters (either conventional, nonconventional, or toxic pollutants) which the Director determines are or may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any state water quality standard, including state narrative criteria for water quality.

Bromide was discussed in the preamble to the 2015 rule as a parameter for which water quality-based effluent limitations may be appropriate. EPA stated its recommendation that permitting authorities carefully consider whether water quality-based effluent limitations for bromide or TDS would be appropriate for FGD wastewater discharged from steam electric power plants upstream of drinking water intakes. EPA also stated its recommendation that the permitting authority notify any downstream drinking water treatment plants of the discharge of bromide.

In addition to the comments regarding EPA's analysis of bromide-related pollutant loadings, DBP formation, and health benefits (discussed in Section XII above), EPA also received many comments on the bromide-focused sub-options discussed in the 2019 proposal. Some commenters supported implementation of one or more of the proposed options, while other comments did not support the proposed options. Electric utility commenters were split. Some electric utility comments disagreed that these sub-options were warranted, with one trade association stating that these sub-options were not sufficiently described to allow meaningful comment. Other electric utility comments supported a monitoring-only approach. One commenter also provided an example of a site-specific approach on the Broad River, which is discussed further below. Environmental group commenters also disagreed with the proposed bromide sub-options; they argued that membrane filtration should be BAT, and thus these sub-options should either not be implemented or should be implemented on top of more stringent limitations. Drinking water utilities, though supporting the selection of membrane filtration over these sub-options, also recommended that in the absence of selecting more stringent limitations for discharges of FGD wastewater, EPA should finalize requirements for monitoring and a bromide minimization plan.

The final rule does not include limitations on bromide for FGD wastewater beyond the removals that would be required of plants choosing to meet the VIP limitations. EPA agrees with the wide variety of commenters that the selection of BAT based on the statutory factors, combined with the imposition of water quality-based effluent limitations where appropriate, rather than these sub-options, is the proper way to address impacts from bromides at this time.

The records for the 2015 rule, the 2019 proposal, and this final rule continue to suggest that permitting authorities should consider establishing water quality-based effluent limitations that are protective of populations served by downstream drinking water treatment plants. As described in Section XII, the analysis of changes in downstream bromide concentrations associated with changes in bromide discharges are concentrated at a small number of sites. This supports EPA's determination that potential discharges are best addressed using site-specific, water quality-based effluent limitations established by NPDES permitting authorities for the small number of steam electric power plants that may impact downstream drinking water treatment plants. Such an approach allows the permitting authority to tailor any monitoring or other requirement to the watershed and plants at issue, avoiding many of the individual concerns raised about specific monitoring programs. While EPA is not finalizing monitoring or other requirements, EPA believes that some information provided in comments discussed below may be particularly helpful for NPDES permitting authorities in devising a water quality-based approach.

Duke Energy provided an example of a successful site-specific bromide approach instituted on the Broad River in South Carolina.[174] As detailed in the settlement agreement attached to Duke Energy's public comment (EPA–HQ–OW–2009–0819–8320), this approach relied upon the establishment of an in-river bromide concentration of 0.6 ppm, below which there was ''. . . no significant impact upon the Downstream Plants' ability to meet the MCL for TTHMs.'' As part of this approach, the plant discharging bromide had to establish a collection point where the process water could be transferred off-site for treatment or disposal, and USGS data were used to determine the average flow of the river each week. Using the river flow from the previous week and the concentrations in the process water, the discharging plant had to determine the volume of process water to divert to the collection point. The discharging plant had to take 24-hour composite samples of its effluent one or more times per week and use those data to estimate in-river bromide concentrations, taking additional steps should those estimates exceed 0.6 ppm. EPA notes that this approach could be modified and applied at any particular watershed by determining the in-river bromide concentrations that affect the ability of drinking water treatment plants to meet the MCL for TTHMs, whether the bromide level is set higher or lower than the 0.6 ppm level established for the Broad River.

In December 2019, AWWA also finalized *Methods to Assess Anthropogenic Bromide Loads from Coal-fired Power Plants and Their Potential Effect on Downstream*

[173] Note: It is unlikely that a delay would be material after 2028, as all requirements of the rule will have been implemented industry-wide.

[174] See Attachment E of Document ID: EPA–HQ–OW–2009–0819–8320, available online at *www.regulations.gov*.

Drinking Water Utilities.[175] This document describes methodologies, data sources, and considerations for constructing an approach to bromide issues on a site-specific basis. This document presents additional data sources that could be used by NPDES permitting authorities to establish site-specific, water quality-based effluent limitations (see, *e.g.,* figure 29 in AWWA's document). The document also provides examples of where states have already taken similar action. For example, the AWWA cites California's 0.05 mg/L standard for in-river bromide to protect public health for specific waterways and drinking water treatment systems.

EPA also received a variety of comments on iodides. For a discussion of iodides, including data limitations and EPA's response to these comments, see Section 6 of the Supplemental TDD and EPA's response to comments document.

XV. Related Acts of Congress, Executive Orders, and Agency Initiatives

Additional information about these statutes and Executive Orders can be found at *http://www2.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review)

This final rule is an economically significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review. Any changes made in response to OMB recommendations have been documented in the docket. EPA prepared an analysis of the estimated social costs and benefits associated with this action. This analysis is presented in Chapter 13 of the BCA, available in the docket. The analysis in the BCA builds on compliance costs and certain other assumptions regarding compliance years discussed in the RIA to analyze and update estimated incremental social costs and benefits of the final rule and revisions relative to the baseline.

Table XV–1 presents the annualized value of the social costs and benefits of the final rule. These costs and benefits are annualized over 27 years and discounted using three and seven percent discount rates. In the table, negative costs indicate avoided costs (*i.e.,* cost savings) and negative benefits indicate forgone benefits (positive benefits values represent realized benefits).

TABLE XV–1—TOTAL MONETIZED ANNUALIZED BENEFITS AND COSTS OF THE FINAL RULE AT 3% AND 7% DISCOUNT RATES AS COMPARED TO BASELINE

[Millions of 2018$; annualized] [a]

Discount rate	Total social costs [b]	Total monetized benefits [c] [d]
3%	−$127.1	−$1.7 to $43.3
7%	−$153.4	$6.5 to $45.9

[a] All social costs and benefits were annualized over 27 years using 3% and 7% discount rates. Negative costs indicate avoided costs and negative benefits indicate forgone benefits.
[b] Total social costs are compliance costs to plants accounting for when those costs are incurred.
[c] Total monetized benefits exclude other benefits discussed qualitatively.
[d] The range reflects the lower and upper bound willingness-to-pay estimates and air quality-related effects.

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

The final rule is an Executive Order 13771 deregulatory action. Details on the estimated cost savings of the final rule are in the RIA, and in Table XV–1 above.

C. Paperwork Reduction Act

OMB has previously approved the information collection requirements contained in the current regulations 40 CFR part 423 under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2040–0004. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

EPA estimated small changes in monitoring costs at steam electric power plants under the final rule relative to the baseline. These changes apply to plants to which the subcategories are applicable. In some cases, in lieu of these monitoring requirements, plants will have additional paperwork burden such as that associated with certifications and applicable BMP plans. See Section VII of this preamble. However, some plants will also realize savings relative to the baseline by no longer monitoring pollutants discharged by some subcategories of EGUs and because their applicable limitations and standards are based on less costly technologies. EPA projects that the burden associated with the new paperwork requirements will be largely offset by the reduced burden associated with less monitoring; therefore, the Agency projects that the final rule will have no net effect on the burden of the approved information collection requirements. With respect to permitting authorities, based on the information in its record, EPA also does not expect the final rule to increase or decrease their burden. The final rule will not change permit application requirements or the associated review; the final rule will not affect the number of permits issued to steam electric power plants; nor will the final rule materially change the efforts involved in developing or reviewing such permits. Accordingly, EPA estimated no net change (*i.e.,* no increase or decrease) in the cost burden to federal or state governments or dischargers associated with the final rule. EPA does not believe that any updates are needed to that ICR so it has not submitted it to OMB for review under the PRA.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

The Agency certifies that this action will not have a significant economic impact on a substantial number of small entities under the RFA. The basis for this finding is summarized below. For

[175] Availabile online at *www.awwa.org/Portals/0/AWWA/ETS/Resources/17861ManagingBromideREPORT.pdf?ver=2020-01-09-151706-107 (DCN SE08643).*

further details, including analysis of other regulatory options considered, see Chapter 8 of the RIA.

EPA estimates that 231 to 459 entities, of which 76 to 127 are small, own steam electric power plants to which the final rule applies. These small entities own a total of 138 steam electric power plants. EPA considered the impacts of the final rule on small businesses using a cost-to-revenue test. The analysis compares the cost of implementing controls for BA and FGD wastewater under the final rule to those costs under the baseline (which reflects the 2015 rule, as explained in Section V of this preamble). EPA used cost-to-revenue ratios of three percent and one percent as indicative of potentially significant impact. EPA's analysis shows that no small entities exceed the three percent impact threshold. Three small entities (one cooperative and two municipalities) are expected to incur costs equal to or greater than one percent (but less than three percent) of revenue to meet the 2015 rule. Cost savings provided under the final rule reduce to two the number of small entities incurring costs equal to or greater than one percent of revenue. The number of small entities exceeding the one percent impact threshold in the baseline is small in the absolute and represents a small percentage of the total estimated number of small entities; the cost savings provided by the final rule further support EPA's finding of no significant impact on a substantial number of small entities (No SISNOSE).

E. Unfunded Mandates Reform Act

EPA finds that this action is not subject to the requirements of UMRA section 203 because the expenditures are less than $160 million or more in any one year. As detailed in Chapter 9 of the RIA, for its assessment of the impact of changes in compliance requirements on small governments (governments with jurisdiction over populations of less than 50,000), EPA estimated the changes in costs for compliance with the final rule relative to the baseline for different categories of entities. The final rule results in lower compliance costs (cost savings) when compared to the baseline. Compared to $113.5 million in the baseline, the Agency estimates that the final rule will reduce the maximum cost in any one year to state, local, or tribal governments by −$74.1 million. Compared to $1,313 million in baseline, the incremental cost in any given year to the private sector under the final rule is −$914 million. From these incremental cost values, EPA determines that the final rule does not constitute a federal mandate that may result in expenditures of $160 million (in 2018 dollars) or more for state, local, and tribal governments in the aggregate, or the private sector in any one year. Chapter 9 of the RIA report provides details of these analyses.

This action is also not subject to the requirements of UMRA section 203 because it contains no regulatory requirements that might significantly or uniquely affect small governments. To assess whether the final rule would affect small governments in a way that is disproportionately burdensome in comparison to the effect on large governments, EPA compared total incremental costs and incremental costs per plant for small governments and large governments. EPA also compared the changes in per plant costs incurred for small-government-owned plants with those incurred by non-government-owned plants. The Agency evaluated both average and maximum annualized incremental costs per plant. These analyses find that small governments will not be significantly or uniquely affected by the final rule. For further discussion, including results for other regulatory options, see Chapter 9 of the RIA.

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. Under Executive Order (E.O.) 13132, EPA may not issue an action that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by state and local governments, or EPA consults with state and local officials early in development of the action.

EPA anticipates that the final rule will not impose incremental administrative burden on states due to issuing, reviewing, and overseeing compliance with discharge limitations and standards.

As detailed in Chapter 9 of the RIA in the docket for this action, EPA has identified 157 steam electric plants owned by state or local governments, of which 13 plants are estimated to incur costs to comply with the BA transport water and FGD limitations in the 2015 rule. However, the final rule provides estimated cost savings as compared to the baseline. The difference in the maximum annualized costs per plant under the final rule as compared to the baseline is −$1.2 million. Based on this information, EPA concludes that this action will not impose substantial direct compliance costs on state or local governments.

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

This action does not have tribal implications, as specified in E.O. 13175 (65 FR 67249, November 9, 2000). It will not have substantial direct effects on tribal governments, on the relationship between the federal government and the Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes, as specified in E.O. 13175.

EPA assessed potential tribal implications for the final rule arising from three main changes: (1) Direct compliance costs incurred by plants; (2) impacts on drinking water systems downstream from steam electric power plants; and (3) administrative burden on governments that implement the NPDES program.

Regarding direct compliance costs, EPA's analyses show that no steam electric power plants with BA transport water or FGD discharges are owned by tribal governments. Regarding impacts on drinking water systems, EPA identified 14 public water systems operated by tribal governments that may have waters that receive halogen discharges from steam electric power plants. These systems serve a total of approximately 28,000 people. EPA estimated changes in source water halogen concentrations for these systems under the final rule relative to the baseline. This analysis, which is described in Chapter 4 of the BCA report, finds very small changes in source water halogen concentrations between the baseline and the final rule. Finally, regarding administrative burden, no tribal governments are currently authorized pursuant to section 402(b) of the CWA to implement the NPDES program. Based on this information, EPA concludes that the final rule will not have substantial direct effects on tribal governments.

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

This action is not subject to E.O. 13045 (62 FR 19885, April 23, 1997) because EPA does not expect that the environmental health risks or safety risks associated with steam electric power plant discharges addressed by this action present a disproportionate risk to children. This action's health risk

assessments are described in Chapters 4 and 5 of the BCA report and are summarized below.

EPA identified several ways in which this final rule could affect children, including potentially increasing health risks due to an increase in exposure to pollutants present in steam electric power plant FGD wastewater and BA transport water discharged, and through those pollutants' potential impacts on public water systems' source water quality. This increase arises from less stringent pollutant limitations and later deadlines for meeting effluent limitations under the final rule relative to the baseline. In particular, EPA quantified the changes in IQ losses from lead exposure among pre-school children and from mercury exposure *in utero* deriving from maternal fish consumption under the final rule relative to the baseline. EPA also estimated changes in the number of children with very high blood lead concentrations. Finally, EPA estimated changes in concentrations of halogens in source waters for drinking water treatment plants. Under certain circumstances, halogens can contribute to the formation of halogenated disinfection byproducts in drinking water, for which there is evidence of a linkage to bladder cancer incidence. EPA did not estimate children-specific exposure to changes in halogen concentrations because these adverse health effects normally follow long-term exposure. These analyses show that today's final rule will have a small, and not disproportionate, impact on children.

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

This action is not a ''significant energy action,'' as defined by E.O. 13211 (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

The Agency analyzed the potential energy effects of the final rule relative to the baseline and found minimal or no impacts on electricity generation, generating capacity, cost of energy production, or dependence on a foreign supply of energy. Specifically, the Agency's analysis found that the final rule will not reduce electricity production by more than 1 billion kilowatt hours per year or by 500 megawatts of installed capacity, nor will the final rule increase U.S. dependence on foreign supplies of energy. For details on the potential energy effects of the other regulatory options considered, see Section 10.7 in the RIA, available in the docket.

J. National Technology Transfer and Advancement Act

The final rule does not involve technical standards.

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

The EPA believes that this action may have disproportionate effects on minority populations, low-income populations and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). EPA conducted two main analyses, described in Chapter 14 of the BCA, to evaluate the environmental justice (EJ) considerations for the final rule: (1) Summarizing the demographic characteristics of the households living in proximity to steam electric power plants, plant air emissions and surface water discharges, and to the downstream reaches affected by plant discharges; and (2) Analyzing the distribution of estimated human health impacts among minority and/or low-income populations from estimated changes in exposure to pollutants in drinking water, self-caught fish, and the air.

The first analysis provides insight on the distribution of estimated regulatory option effects (*e.g.,* estimated effects on water quality and air pollutant emissions) on communities in proximity to steam electric power plants. The second analysis seeks to provide more specific insight on the distribution of estimated changes in adverse health effects and benefits and to assess whether minority and/or low-income populations incur disproportionately high environmental impacts and/or will be disproportionately excluded from realizing benefits under the regulatory options.

Overall, the various analyses show that estimated environmental changes under the regulatory options analyzed, including the final rule, may affect minority and/or low income populations to different degrees across environmental media, exposure pathways, and over time, but the estimated effects (positive or negative) of the changes will be small.

Communities living near steam electric power plants (*i.e.,* up to 50 miles) tend to have a lower proportion of low-income households and minority population than the national average, when considered in the aggregate, but there may be localized EJ considerations for some communities near individual plants (up to 50 miles) that have higher proportions of low-income or minority populations than the national and/or state average.

EPA's analysis considered the distribution of estimated effects on populations near both immediate and downstream reaches, in downstream PWS service areas, and in adjacent airsheds to assess whether low-income and/or minority populations may be disproportionately affected by changes under the final rule. The analysis shows that the EJ population subgroups are not excluded from the benefits of the final rule. For example, projected air quality changes under the final rule may disproportionately benefit minority and low-income populations based on the socioeconomic characteristics of populations of counties with changes in $PM_{2.5}$ and ozone levels during the period of analysis. Additionally, estimated foregone benefits related to water quality changes may disproportionately affect minority and subsistence fisher populations. However, the magnitude of the changes (positive and negative) and associated benefits (including foregone benefits) is small, relative to the baseline, both overall across the exposed population, and across socioeconomic and fisher subgroups..

L. Congressional Review Act (CRA)

This action is subject to the CRA, and EPA will submit a rule report to each House of Congress and to the Comptroller General of the United States. This action is a ''major rule'' as defined by 5 U.S.C. 804(2).

Appendix A to the Preamble: Definitions, Acronyms, and Abbreviations Used in This Preamble

The following acronyms and abbreviations are used in this preamble. These terms are provided for convenience to the reader and they are not regulatory definitions with the force or effect of law, nor are they to be used as guidance for implementation of this final rule.

Administrator. The Administrator of the U.S. Environmental Protection Agency.

Agency. U.S. Environmental Protection Agency.

BAT. Best available technology economically achievable, as defined by CWA sections 301(b)(2)(A) and 304(b)(2)(B).

Bioaccumulation. General term describing a process by which chemicals are taken up by an organism either directly from exposure to a contaminated medium or by consumption of food containing the chemical, resulting in a net accumulation of the chemical by the organism.

BMP. Best management practice.

BA. The ash, including EGU slag, which settles in the furnace or is dislodged from furnace walls. Economizer ash is included when it is collected with BA.

BA Purge Water. The water discharged from a wet BA handling system that recycles some, but not all, of its BA transport water.

BPT. The best practicable control technology currently available as defined by sections 301(b)(1) and 304(b)(1) of the CWA.

CBI. Confidential Business Information.

CCR. Coal Combustion Residuals.

CSC. Compact Submerged Conveyor.

Clean Water Act (CWA). The Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. 1251 *et seq.*), as amended, *e.g.,* by the Clean Water Act of 1977 (Pub. L. 95–217), and the Water Quality Act of 1987 (Pub. L. 100–4).

Combustion residuals. Solid wastes associated with combustion-related power plant processes, including fly and BA from coal-, petroleum coke-, or oil-fired units; FGD solids; FGMC wastes; and other wastewater treatment solids associated with combustion wastewater. In addition to the residuals that are associated with coal combustion, this also includes residuals associated with the combustion of other fossil fuels.

Direct discharge. (a) Any addition of any ''pollutant'' or combination of pollutants to ''waters of the United States'' from any ''point source,'' or (b) any addition of any pollutant or combination of pollutant to waters of the ''contiguous zone'' or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation. This definition includes additions of pollutants into waters of the United States from: Surface runoff that is collected or channeled by man; discharges through pipes, sewers, or other conveyances owned by a state, municipality, or other person that do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances that lead into privately owned treatment works. This term does not include addition of pollutants by any ''indirect discharger.''

Direct discharger. A plant that discharges treated or untreated wastewaters into waters of the U.S.

DOE. Department of Energy.

Dry BA handling system. A system that does not use water as the transport medium to convey BA away from the EGU. It includes systems that collect and convey the bottom ash without using any water, as well as systems in which BA is quenched in a water bath and then mechanically or pneumatically conveyed away from the EGU. Dry BA handling systems do not include wet sluicing systems (such as remote MDS or complete recycle systems).

Effluent limitation. Under CWA section 502(11), any restriction, including schedules of compliance, established by a state or the Administrator on quantities, rates, and concentrations of chemical, physical, biological, and other constituents that are discharged from point sources into navigable waters, the waters of the contiguous zone, or the ocean, including schedules of compliance.

EIA. Energy Information Administration.

ELGs. Effluent limitations guidelines and standards.

E.O. Executive Order.

EPA. U.S. Environmental Protection Agency.

FA. Fly Ash.

Facility. Any NPDES ''point source'' or any other facility or activity (including land or appurtenances thereto) that is subject to regulation under the NPDES program.

FGD. Flue Gas Desulfurization.

FGD Wastewater. Wastewater generated specifically from the wet FGD scrubber system that comes into contact with the flue gas or the FGD solids, including, but not limited to, the blowdown or purge from the FGD scrubber system, overflow or underflow from the solids separation process, FGD solids wash water, and the filtrate from the solids dewatering process. Wastewater generated from cleaning the FGD scrubber, cleaning FGD solids separation equipment, cleaning FGD solids dewatering equipment, or that is collected in floor drains in the FGD process area is not considered FGD wastewater.

Fly Ash. The ash that is carried out of the furnace by a gas stream and collected by a capture device such as a mechanical precipitator, electrostatic precipitator, and/or fabric filter. Economizer ash is included in this definition when it is collected with FA. Ash is not included in this definition when it is collected in wet scrubber air pollution control systems whose primary purpose is particulate removal.

Groundwater. Water that is found in the saturated part of the ground underneath the land surface.

Indirect discharge. Wastewater discharged or otherwise introduced to a POTW.

IPM. Integrated Planning Model.

Landfill. A disposal facility or part of a facility or plant where solid waste, sludges, or other process residuals are placed in or on any natural or manmade formation in the earth for disposal and which is not a storage pile, a land treatment facility, a surface impoundment, an underground injection well, a salt dome or salt bed formation, an underground mine, a cave, or a corrective action management unit.

MDS. Mechanical drag system.

Mechanical drag system. BA handling system that collects BA from the bottom of the EGU in a water-filled trough. The water bath in the trough quenches the hot BA as it falls from the EGU and seals the EGU gases. A drag chain operates in a continuous loop to drag BA from the water trough up an incline, which dewaters the BA by gravity, draining the water back to the trough as the BA moves upward. The dewatered BA is often conveyed to a nearby collection area, such as a small bunker outside the EGU building, from which it is loaded onto trucks and either sold or transported to a landfill. The MDS is considered a dry BA handling system because the ash transport mechanism is mechanical removal by the drag chain, not the water.

Mortality. Death rate or proportion of deaths in a population.

NAICS. North American Industry Classification System.

NPDES. National Pollutant Discharge Elimination System.

ORCR. Office of Resource Conservation and Recovery.

Paste. A substance containing solids in a fluid which behaves as a solid until a force is applied that causes it to behave like a fluid.

Paste landfill. A landfill that receives any paste designed to set into a solid after the passage of a reasonable amount of time.

Point source. Any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, vessel, or other floating craft from which pollutants are or may be discharged. The term does not include agricultural stormwater discharges or return flows from irrigated agriculture. *See* CWA section 502(14), 33 U.S.C. 1362(14); 40 CFR 122.2.

POTW. Publicly owned treatment works. *See* CWA section 212, 33 U.S.C. 1292; 40 CFR 122.2, 403.3

PSES. Pretreatment Standards for Existing Sources.

Publicly Owned Treatment Works. Any device or system owned by a state or municipality that is used in the treatment (including recycling and reclamation) of municipal sewage or industrial wastes of a liquid nature. This includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment. CWA section 212, 33 U.S.C. 1292; 40 CFR 122.2 and 403.3.

RCRA. The Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901 *et seq.*

Remote MDS. BA handling system that collects BA at the bottom of the EGU, then uses transport water to sluice the ash to a remote MDS that dewaters BA using a similar configuration as the MDS. The remote MDS is considered a wet BA handling system because the ash transport mechanism is water.

RFA. Regulatory Flexibility Act.

SBA. Small Business Administration.

Sediment. Particulate matter lying below water.

Surface water. All waters of the United States, including rivers, streams, lakes, reservoirs, and seas.

Toxic pollutants. As identified under the CWA, 65 pollutants and classes of pollutants, of which 126 specific substances have been designated priority toxic pollutants. *See* Appendix A to 40 CFR part 423.

Transport water. Wastewater that is used to convey FA, BA, or economizer ash from the ash collection or storage equipment, or EGU, and has direct contact with the ash. Transport water does not include low volume, short duration discharges of wastewater from minor leaks (*e.g.,* leaks from valve packing, pipe flanges, or piping) or minor maintenance events (*e.g.,* replacement of valves or pipe sections).

UMRA. Unfunded Mandates Reform Act.

Wet BA handling system. A system in which BA is conveyed away from the EGU using water as a transport medium. Wet BA systems typically send the ash slurry to dewatering bins or a surface impoundment. Wet BA handling systems include systems that operate in conjunction with a traditional wet sluicing system to recycle all BA transport water (remote MDS or complete recycle system).

Wet FGD system. Wet FGD systems capture sulfur dioxide from the flue gas using a

sorbent that has mixed with water to form a wet slurry, and that generates a water stream that exits the FGD scrubber absorber.

List of Subjects in 40 CFR Part 423

Environmental protection, Electric power generation, Power facilities, Waste treatment and disposal, Water pollution control.

Andrew Wheeler,

Administrator.

For the reasons stated in the preamble, the Environmental Protection Agency amends 40 CFR part 423 as follows:

PART 423—STEAM ELECTRIC POWER GENERATING POINT SOURCE CATEGORY

■ 1. The authority citation for part 423 continues to read as follows:

Authority: Secs. 101; 301; 304(b), (c), (e), and (g); 306; 307; 308 and 501, Clean Water Act (Federal Water Pollution Control Act Amendments of 1972, as amended; 33 U.S.C. 1251; 1311; 1314(b), (c), (e), and (g); 1316; 1317; 1318 and 1361).

■ 2. Amend § 423.11 by revising paragraphs (n), (p), and (t) and adding paragraphs (u), (v), (w), (x), (y), (z), (aa), (bb), (cc), and (dd) to read as follows.

§ 423.11 Specialized definitions.

* * * * *

(n) The term flue gas desulfurization (FGD) wastewater means any wastewater generated specifically from the wet flue gas desulfurization scrubber system that comes into contact with the flue gas or the FGD solids, including but not limited to, the blowdown from the FGD scrubber system, overflow or underflow from the solids separation process, FGD solids wash water, and the filtrate from the solids dewatering process. Wastewater generated from cleaning the FGD scrubber, cleaning FGD solids separation equipment, cleaning FGD solids dewatering equipment, FGD paste equipment cleaning water, treated FGD wastewater permeate or distillate used as boiler makeup water, or water that is collected in floor drains in the FGD process area is not considered FGD wastewater.

* * * * *

(p) The term transport water means any wastewater that is used to convey fly ash, bottom ash, or economizer ash from the ash collection or storage equipment, or boiler, and has direct contact with the ash. Transport water does not include low volume, short duration discharges of wastewater from minor leaks (*e.g.,* leaks from valve packing, pipe flanges, or piping), minor maintenance events (*e.g.,* replacement of valves or pipe sections), FGD paste equipment cleaning water, or bottom ash purge water

* * * * *

(t) The phrase ''as soon as possible'' means November 1, 2018 (except for purposes of § 423.13(g)(1)(i) and (k)(1)(i), in which case it means October 13, 2021), unless the permitting authority establishes a later date, after receiving site-relevant information from the discharger, which reflects a consideration of the following factors:

(1) Time to expeditiously plan (including to raise capital), design, procure, and install equipment to comply with the requirements of this part.

(2) Changes being made or planned at the plant in response to:

(i) New source performance standards for greenhouse gases from new fossil fuel-fired electric generating units, under sections 111, 301, 302, and 307(d)(1)(C) of the Clean Air Act, as amended, 42 U.S.C. 7411, 7601, 7602, 7607(d)(1)(C);

(ii) Emission guidelines for greenhouse gases from existing fossil fuel-fired electric generating units, under sections 111, 301, 302, and 307(d) of the Clean Air Act, as amended, 42 U.S.C. 7411, 7601, 7602, 7607(d); or

(iii) Regulations that address the disposal of coal combustion residuals as solid waste, under sections 1006(b), 1008(a), 2002(a), 3001, 4004, and 4005(a) of the Solid Waste Disposal Act of 1970, as amended by the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. 6906(b), 6907(a), 6912(a), 6944, and 6945(a).

(3) For FGD wastewater requirements only, an initial commissioning period for the treatment system to optimize the installed equipment.

(4) Other factors as appropriate.

(u) The term ''FGD paste'' means any combination of FGD wastewater treated with fly ash, lime, Portland cement, and/or other pozzolanic material prior to being landfilled, and which is engineered to form a solid through pozzolanic reactions.

(v) The term ''FGD paste equipment cleaning water'' means any wastewater generated from the cleaning of pugmills, piping, or other equipment used to make, process, or transport FGD paste from its point of generation to a landfill.

(w) The term ''permanent cessation of coal combustion'' means the owner or operator certifies under § 423.19(f) that an electric generating unit will cease combustion of coal no later than December 31, 2028.

(x) The term ''high FGD flow'' means the maximum daily volume of FGD wastewater that could be discharged by a facility is above 4 million gallons per day after accounting for that facility's ability to recycle the wastewater to the maximum limits for the FGD system materials of construction.

(y) The term ''capacity utilization rating'' means the total MWh production of an electric generating unit over a calendar year divided by the product of the number of hours in that year times the nameplate capacity.

(z) The term ''low utilization electric generating unit'' means any electric generating unit for which the facility owner certifies, and annually recertifies, under § 423.19(e) that the two-year average annual capacity utilization rating is less than 10 percent.

(aa) The term ''primary active wetted bottom ash system volume'' means the maximum volumetric capacity of bottom ash transport water in all non-redundant piping (including recirculation piping) and primary bottom ash collection and recirculation loop tanks (*e.g.,* bins, troughs, clarifiers, and hoppers) of a wet bottom ash system, excluding the volumes of surface impoundments, secondary bottom ash system equipment (*e.g.,* installed spares, redundancies, and maintenance tanks), and non-bottom ash transport systems that may direct process water to the bottom ash.

(bb) The term ''tank'' means a stationary device, designed to contain an accumulation of wastewater which is constructed primarily of non-earthen materials (*e.g.,* wood, concrete, steel, plastic) which provide structural support.

(cc) The term ''bottom ash purge water'' means any water being discharged subject to § 423.13(k)(2)(i) or 423.16(g)(2)(i).

(dd) The term ''30-day rolling average'' means the series of averages using the measured values of the preceding 30 days for each average in the series.

■ 3. Amend § 423.12 by revising paragraph (b)(11) to read as follows.

§ 423.12 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

* * * * *

(b)(11) The quantity of pollutants discharged in FGD wastewater, flue gas mercury control wastewater, combustion residual leachate, gasification wastewater, or bottom ash purge water shall not exceed the quantity determined by multiplying the

flow of the applicable wastewater times the concentration listed in the table 7:

TABLE 7 TO PARAGRAPH (b)(11)

Pollutant or pollutant property	BPT effluent limitations	
	Maximum for any 1 day (mg/L)	Average of daily values for 30 consecutive days shall not exceed (mg/L)
TSS	100.0	30.0
Oil and grease	20.0	15.0

* * * * *

■ 4. Amend § 423.13 by:

■ a. Revising paragraphs (g)(1)(i); (g)(2) and (g)(3)(i);

■ b. Revising paragraphs (k)(1)(i) and (k)(2);

■ c. Adding paragraphs (k)(3), and (o).

The additions and revisions read as follows:

§ 423.13 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

* * * * *

(g) * * *

(1) * * *

(i) FGD wastewater. Except for those discharges to which paragraph (g)(2) or (g)(3) of this section applies, the quantity of pollutants in FGD wastewater shall not exceed the quantity determined by multiplying the flow of FGD wastewater times the concentration listed in the table 1 following this paragraph (g)(1)(i). Dischargers must meet the effluent limitations for FGD wastewater in this paragraph by a date determined by the permitting authority that is as soon as possible beginning October 13, 2021, but no later than December 31, 2025. These effluent limitations apply to the discharge of FGD wastewater generated on and after the date determined by the permitting authority for meeting the effluent limitations, as specified in this paragraph.

TABLE 5 TO PARAGRAPH (g)(1)(i)

Pollutant or pollutant property	BAT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed
Arsenic, total (ug/L)	18	8
Mercury, total (ng/L)	103	34
Selenium, total (ug/L)	70	29
Nitrate/nitrite as N (mg/L)	4	3

* * * * *

(2)(i) For any electric generating unit with a total nameplate capacity of less than or equal to 50 megawatts, that is an oil-fired unit, or for which the owner has submitted a certification pursuant to § 423.19(f), the quantity of pollutants discharged in FGD wastewater shall not exceed the quantity determined by multiplying the flow of FGD wastewater times the concentration listed for TSS in § 423.12(b)(11).

(ii) For FGD wastewater discharges from a high FGD flow facility, the quantity of pollutants in FGD wastewater shall not exceed the quantity determined by multiplying the flow of FGD wastewater times the concentration listed in the table following this paragraph (g)(2)(ii). Dischargers must meet the effluent limitations for FGD wastewater in this paragraph by a date determined by the permitting authority that is as soon as possible beginning October 13, 2021, but no later than December 31, 2023. These effluent limitations apply to the discharge of FGD wastewater generated on and after the date determined by the permitting authority for meeting the effluent limitations, as specified in this paragraph.

TABLE 6 TO PARAGRAPH (g)2)(ii)

Pollutant or pollutant property	BAT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed
Arsenic, total (ug/L)	11	8
Mercury, total (ng/L)	788	356

(iii) For FGD wastewater discharges from a low utilization electric generating unit, the quantity of pollutants in FGD wastewater shall not exceed the quantity determined by multiplying the flow of FGD wastewater times the concentration listed in the table following paragraph (g)(2)(ii). Dischargers must meet the effluent limitations for FGD wastewater in this paragraph by a date determined by the permitting authority that is as soon as possible beginning October 13, 2021, but no later than December 31, 2023. These effluent limitations apply to the discharge of FGD wastewater generated on and after the date determined by the permitting authority for meeting the effluent limitations, as specified in this paragraph.

(3)(i) For dischargers who voluntarily choose to meet the effluent limitations for FGD wastewater in this paragraph, the quantity of pollutants in FGD wastewater shall not exceed the quantity determined by multiplying the flow of FGD wastewater times the concentration listed in the table following this paragraph (g)(3)(i). Dischargers who choose to meet the effluent limitations for FGD wastewater in this paragraph must meet such limitations by December 31, 2028. These effluent limitations apply to the discharge of FGD wastewater generated on and after December 31, 2028.

TABLE 7 OF PARAGRAPH (g)(3)(i)

Pollutant or pollutant property	BAT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed
Arsenic, total (ug/L)	5	NA
Mercury, total (ng/L)	23	10
Selenium, total (ug/L)	10	NA
Nitrate/Nitrite (mg/L)	2.0	1.2
Bromide (mg/L)	0.2	NA
TDS (mg/L)	306	149

* * * * *

(k)(1)(i) Bottom ash transport water. Except for those discharges to which paragraph (k)(2) of this section applies, or when the bottom ash transport water is used in the FGD scrubber, there shall be no discharge of pollutants in bottom ash transport water. Dischargers must meet the discharge limitation in this paragraph by a date determined by the permitting authority that is as soon as possible beginning October 13, 2021, but no later than December 31, 2025. This limitation applies to the discharge of bottom ash transport water generated on and after the date determined by the permitting authority for meeting the discharge limitation, as specified in this paragraph. Except for those discharges to which paragraph (k)(2) of this section applies, whenever bottom ash transport water is used in any other plant process or is sent to a treatment system at the plant (except when it is used in the FGD scrubber), the resulting effluent must comply with the discharge limitation in this paragraph. When the bottom ash transport water is used in the FGD scrubber, it ceases to be bottom ash transport water, and instead is FGD wastewater, which must meet the requirements in paragraph (g) of this section.

* * * * *

(2)(i)(A) The discharge of pollutants in bottom ash transport water from a properly installed, operated, and maintained bottom ash system is authorized under the following conditions:

(*1*) To maintain system water balance when precipitation-related inflows are generated from storm events exceeding a 10-year storm event of 24-hour or longer duration (*e.g.,* 30-day storm event) and cannot be managed by installed spares, redundancies, maintenance tanks, and other secondary bottom ash system equipment; or

(*2*) To maintain system water balance when regular inflows from wastestreams other than bottom ash transport water exceed the ability of the bottom ash system to accept recycled water and segregating these other wastestreams is not feasible; or

(*3*) To maintain system water chemistry where installed equipment at the facility is unable to manage pH, corrosive substances, substances or conditions causing scaling, or fine particulates to below levels which impact system operation or maintenance; or

(*4*) To conduct maintenance not otherwise included in paragraphs (k)(2)(i)(A) (*1*), (*2*), or (*3*) of this section and not exempted from the definition of transport water in § 423.11(p), and when water volumes cannot be managed by installed spares, redundancies, maintenance tanks, and other secondary bottom ash system equipment.

(B) The total volume that may be discharged for the above activities shall be reduced or eliminated to the extent achievable using control measures (including best management practices) that are technologically available and economically achievable in light of best industry practice. The total volume of the discharge authorized in this subsection shall be determined on a case-by-case basis by the permitting authority and in no event shall such discharge exceed a 30-day rolling average of ten percent of the primary active wetted bottom ash system volume. The volume of daily discharges used to calculate the 30-day rolling average shall be calculated using measurements from flow monitors.

(ii) For any electric generating unit with a total nameplate generating capacity of less than or equal to 50 megawatts, that is an oil-fired unit, or for which the owner has certified to the permitting authority that it will cease combustion of coal pursuant to § 423.19(f), the quantity of pollutants discharged in bottom ash transport water shall not exceed the quantity determined by multiplying the flow of the applicable wastewater times the concentration for TSS listed in § 423.12(b)(4).

(iii) For bottom ash transport water generated by a low utilization electric generating unit, the quantity of pollutants discharged in bottom ash transport water shall not exceed the quantity determined by multiplying the flow of the applicable wastewater times the concentration for TSS listed in § 423.12(b)(4), and shall incorporate the elements of a best management practices plan as described in (k)(3) of this section.

(3) Where required in paragraph (k)(2)(iii) of this section, the discharger shall prepare, implement, review, and update a best management practices plan for the recycle of bottom ash transport water, and must include:

(i) Identification of the low utilization coal-fired generating units that contribute bottom ash to the bottom ash transport system.

(ii) A description of the existing bottom ash handling system and a list of system components (*e.g.,* remote mechanical drag system, tanks, impoundments, chemical addition). Where multiple generating units share a bottom ash transport system, the plan shall specify which components are associated with low utilization generating units.

(iii) A detailed water balance, based on measurements, or estimates where measurements are not feasible, specifying the volume and frequency of water additions and removals from the bottom ash transport system, including:

(A) Water removed from the BA transport system:

(*1*) To the discharge outfall.

(*2*) To the FGD scrubber system.

(*3*) Through evaporation

(*4*) Entrained with any removed ash

(*5*) To any other mechanisms not specified above.

(B) Water entering or recycled to the BA transport system:

(*1*) Makeup water added to the BA transport water system.

(*2*) Bottom ash transport water recycled back to the system in lieu of makeup water.

(*3*) Any other mechanisms not specified above.

(iv) Measures to be employed by all facilities:

(A) Implementation of a comprehensive preventive maintenance program to identify, repair and replace equipment prior to failures that result in the release of bottom ash transport water.

(B) Daily or more frequent inspections of the entire bottom ash transport water system, including valves, pipe flanges and piping, to identify leaks, spills and other unintended bottom ash transport water escaping from the system, and timely repair of such conditions.

(C) Documentation of preventive and corrective maintenance performed.

(v) Evaluation of options and feasibility, accounting for the associated costs, for eliminating or minimizing discharges of bottom ash transport water, including:

(A) Segregation of bottom ash transport water from other process water.

(B) Minimization of the introduction of stormwater by diverting (*e.g.,* curbing, using covers) storm water to a segregated collection system.

(C) Recycling bottom ash transport water back to the bottom ash transport water system.

(D) Recycling bottom ash transport water for use in the FGD scrubber.

(E) Optimization of existing equipment (*e.g.,* pumps, pipes, tanks) and installing new equipment where practicable to achieve the maximum amount of recycle.

(F) Utilization of ''in-line'' treatment of transport water (*e.g.,* pH control, fines removal) where needed to facilitate recycle.

(vi) Description of the bottom ash recycle system, including all technologies, measures, and practices that will be used to minimize discharge.

(vii) A schedule showing the sequence of implementing any changes necessary to achieve the minimized discharge of bottom ash transport water, including the following:

(A) The anticipated initiation and completion dates of construction and installation associated with the technology components or process modifications specified in the plan.

(B) The anticipated dates that the discharger expects the technologies and process modifications to be fully implemented on a full-scale basis, which in no case shall be later than December 31, 2023.

(C) The anticipated change in discharge volume and effluent quality associated with implementation of the plan.

(viii) Description establishing a method for documenting and demonstrating to the permitting/control authority that the recycle system is well operated and maintained.

(ix) Performance of weekly flow monitoring for the following:

(A) Make up water to the bottom ash transport water system.

(B) Bottom ash transport water sluice flow rate (*e.g.,* to the surface impoundment(s), dewatering bins(s), tank(s), remote mechanical drag system).

(C) Bottom ash transport water discharge to surface water or POTW.

(D) Bottom ash transport water recycle back to the bottom ash system or FGD scrubber.

* * * * *

(o)(1) Transfer between applicable limitations in a permit. Where, in the permit, the permitting authority has included alternative limits subject to eligibility requirements, upon timely notification to the permitting authority under § 423.19(i), a facility can become subject to the alternative limits under the following circumstances:

(i) On or before December 31, 2023 a facility may convert:

(A) From limitations for electric generating units permanently ceasing coal combustion under paragraphs (g)(2)(i) or (k)(2)(ii) of this section to limitations for low utilization electric generating units under paragraphs (g)(2)(iii) or (k)(2)(iii) of this section; or

(B) From voluntary incentives program limitations under paragraph (g)(3)(i) of this section or generally applicable limitations under paragraph (k)(1)(i) of this section to limitations for low utilization electric generating units under paragraphs (g)(2)(iii) or (k)(2)(iii) of this section.

(ii) On or before December 31, 2025 a facility may convert

(A) From voluntary incentives program limitations under paragraph (g)(3)(i) of this section to limitations for

electric generating units permanently ceasing coal combustion under paragraph (g)(2)(i) of this section; or

(B) From limitations for electric generating units permanently ceasing coal combustion under paragraphs (g)(2)(i) or (k)(2)(ii) of this section to voluntary incentives program limitations under paragraphs (g)(3)(i) of this section or generally applicable limitations under (k)(1)(i) of this section; or

(C) From limitations for low utilization electric generating units under paragraphs (g)(2)(iii) or (k)(2)(iii) of this section to generally applicable limitations under paragraphs (g)(1)(i) or (k)(1)(i) of this section; or

(D) From limitations for low utilization electric generating units under paragraphs (g)(2)(iii) or (k)(2)(iii) of this section to voluntary incentives program limitations under paragraphs (g)(3)(i) of this section or generally applicable limitations under paragraph (k)(1)(i) of this section; or

(E) From limitations for low utilization electric generating units under paragraphs (g)(2)(iii) or (k)(2)(iii) of this section to limitations for electric generating units permanently ceasing coal combustion under paragraphs (g)(2)(i) and (k)(2)(ii) of this section.

(2) A facility must be in compliance with all of its currently applicable requirements to be eligible to file a notice under § 423.19(i) and to become subject to a different set of applicable requirements under paragraph (o)(1) of this section.

(3) Where a facility seeking a transfer under paragraph (o)(1)(ii) of this section is currently subject to more stringent limitations than the limitations being sought, the facility must continue to meet those more stringent limitations.

2. Amend § 423.16 by revising paragraphs (e) and (g) to read as follows:

§ 423.16 Pretreatment standards for existing sources (PSES).

* * * * *

(e)(1) *FGD wastewater.* Except as provided for in paragraph (e)(2) of this section, for any electric generating unit with a total nameplate generating capacity of more than 50 megawatts, that is not an oil-fired unit, and that the owner has not certified to the permitting authority that it will cease the coal combustion pursuant to § 423.19(f), the quantity of pollutants in FGD wastewater shall not exceed the quantity determined by multiplying the flow of FGD wastewater times the concentration listed in table 3 to this paragraph (e)(1). Dischargers must meet the standards in this paragraph by October 13, 2023 except as provided for in paragraph (e)(2) of this section. These standards apply to the discharge of FGD wastewater generated on and after October 13, 2023.

TABLE 3 TO PARAGRAPH (e)(1)

Pollutant or pollutant property	PSES	
	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed
Arsenic, total (ug/L)	18	8
Mercury, total (ng/L)	103	34
Selenium, total (ug/L)	70	29
Nitrate/nitrite as N (mg/L)	4	3

(2)(i) For FGD wastewater discharges from a low utilization electric generating unit, the quantity of pollutants in FGD wastewater shall not exceed the quantity determined by multiplying the flow of FGD wastewater times the concentration listed in the table 4 to paragraph (e)(2)(ii). Dischargers must meet the standards in this paragraph by October 13, 2023.

(ii) If any low utilization electric generating unit fails to timely recertify that the two year average capacity utilization rating of such a electric generating unit is below 10 percent per year as specified in § 423.19(e), regardless of the reason, within two years from the date such a recertification was required, the quantity of pollutants in FGD wastewater shall not exceed the quantity determined by multiplying the flow of FGD wastewater times the concentration listed in the Table 3 to paragraph (e)(1).

TABLE 4 TO PARAGRAPH (e)(2)(ii)

Pollutant or pollutant property	PSES	
	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed
Arsenic, total (ug/L)	11	8
Mercury, total (ng/L)	788	356

* * * * *

(g)(1) Except for those discharges to which paragraph (g)(2) applies, or when the bottom ash transport water is used in the FGD scrubber, for any electric generating unit with a total nameplate generating capacity of more than 50 megawatts, that is not an oil-fired unit, that is not a low utilization electric generating unit, and that the owner has not certified to the permitting authority that the electric generating unit will cease the cessation of coal combustion pursuant to § 423.19(f), there shall be no discharge of pollutants in bottom ash

transport water. This standard applies to the discharge of bottom ash transport water generated on and after October 13, 2023. Except for those discharges to which paragraph (g)(2) of this section applies, whenever bottom ash transport water is used in any other plant process or is sent to a treatment system at the plant (except when it is used in the FGD scrubber), the resulting effluent must comply with the discharge standard in this paragraph. When the bottom ash transport water is used in the FGD scrubber, the quantity of pollutants in bottom ash transport water shall not exceed the quantity determined by multiplying the flow of bottom ash transport water times the concentration listed in the table in paragraph (e) of this section.

(2)(i) The discharge of pollutants in bottom ash transport water from a properly installed, operated, and maintained bottom ash system is authorized under the following conditions:

(A) To maintain system water balance when precipitation-related inflows are generated from a 10-year storm event of 24-hour or longer duration (*e.g.,* 30-day storm event) and cannot be managed by installed spares, redundancies, maintenance tanks, and other secondary bottom ash system equipment; or

(B) To maintain system water balance when regular inflows from wastestreams other than bottom ash transport water exceed the ability of the bottom ash system to accept recycled water and segregating these other wastestreams is feasible; or

(C) To maintain system water chemistry where current operations at the facility are unable to currently manage pH, corrosive substances, substances or conditions causing scaling, or fine particulates to below levels which impact system operation or maintenance; or

(D) To conduct maintenance not otherwise included in paragraphs (g)(2)(i)(A)(*1*), (*2*), or (*3*) of this section and not exempted from the definition of transport water in§ 423.11(p), and when water volumes cannot be managed by installed spares, redundancies, maintenance tanks, and other secondary bottom ash system equipment.

(ii) The total volume that may be discharged to a POTW for the above activities shall be reduced or eliminated to the extent achievable as determined by the control authority. The control authority may also include control measures (including best management practices) that are technologically available and economically achievable in light of best industry practice. In no event shall the total volume of the discharge exceed a 30-day rolling average of ten percent of the primary active wetted bottom ash system volume. The volume of daily discharges used to calculate the 30-day rolling average shall be calculated using measurements from flow monitors.

(iii) For bottom ash transport water generated by a low utilization electric generating unit, the quantity of pollutants discharged in bottom ash transport water shall incorporate the elements of a best management practices plan as described in § 423.13(k)(3).

■ 5. Add § 423.18 to read as follows.

§ 423.18 Permit conditions.

All permits subject to this part shall include the following permit conditions:

(a) An electric generating unit shall qualify as a low utilization electric generating unit or permanently ceasing the combustion of coal by December 31, 2028, if such qualification would have been demonstrated absent the following qualifying event:

(1) An emergency order issued by the Department of Energy under Section 202(c) of the Federal Power Act,

(2) A reliability must run agreement issued by a Public Utility Commission, or

(3) Any other reliability-related order or agreement issued by a competent electricity regulator (*e.g.,* an independent system operator) which results in that electric generating unit operating in a way not contemplated when the certification was made; or

(4) The operation of the electric generating unit was necessary for load balancing in an area subject to a declaration under 42 U.S.C. 5121 *et seq.,* that there exists:

(i) An ''Emergency,'' or

(ii) A ''Major Disaster,'' and

(iii) That load balancing was due to the event that caused the ''Emergency'' or ''Major Disaster'' in paragraph (a)(4) of this section to be declared,

(b) Any facility providing the required documentation pursuant to § 423.19(g) may avail itself of the protections of this permit condition.

■ 6. Add § 423.19 to read as follows.

§ 423.19 Reporting and recordkeeping requirements.

(a) Discharges subject to this part must comply with the following additional reporting requirements.

(b) Signature and certification. Unless otherwise provided below, all certifications and recertifications required in this part must be signed and certified pursuant to 40 CFR 122.22 for direct dischargers or 40 CFR 403.12(l) for indirect dischargers.

(c) Requirements for facilities discharging bottom ash transport water pursuant to § 423.13(k)(2)(i) or 423.16(g)(2)(i).

(1) Initial Certification Statement. For sources seeking to discharge bottom ash transport water pursuant to § 423.13(k)(2)(i) or 423.16(g)(2)(i), an initial certification shall be submitted to the permitting authority by the as soon as possible date determined under § 423.11(t), or the control authority by October 13, 2023 in the case of an indirect discharger.

(2) Signature and certification. The certification statement must be signed and certified by a professional engineer.

(3) Contents. An initial certification shall include the following:

(A) A statement that the professional engineer is a licensed professional engineer.

(B) A statement that the professional engineer is familiar with the regulation requirements.

(C) A statement that the professional engineer is familiar with the facility.

(D) The primary active wetted bottom ash system volume in § 423.11(aa).

(E) Material assumptions, information, and calculations used by the certifying professional engineer to determine the primary active wetted bottom ash system volume.

(F) A list of all potential discharges under § 423.13(k)(2)(i)(A)(*1*) through (4) or § 423.16(g)(2)(i)(A) through (D), the expected volume of each discharge, and the expected frequency of each discharge.

(G) Material assumptions, information, and calculations used by the certifying professional engineer to determine the expected volume and frequency of each discharge including a narrative discussion of why such water cannot be managed within the system and must be discharged.

(H) A list of all wastewater treatment systems at the facility currently, or otherwise required by a date certain under this section.

(I) A narrative discussion of each treatment system including the system type, design capacity, and current or expected operation.

(d) Requirements for a bottom ash best management practices plan.

(1) *Initial and annual certification statement.* For sources required to develop and implement a best management practices plan pursuant to § 423.13(k)(3), an initial certification shall be made to the permitting authority with a permit application or within two years of October 13, 2021, whichever is later, or to the control authority no later than October 13, 2023 in the case of an indirect discharger, and an annual recertification shall be made to the permitting authority, or control

authority in the case of an indirect discharger, within 60 days of the anniversary of the original plan.

(2) *Signature and certification.* The certification statement must be signed and certified by a professional engineer.

(3) *Contents for initial certification.* An initial certification shall include the following:

(A) A statement that the professional engineer is a licensed professional engineer.

(B) A statement that the professional engineer is familiar with the regulation requirements.

(C) A statement that the professional engineer is familiar with the facility.

(D) The best management practices plan.

(E) A statement that the best management practices plan is being implemented.

(4) *Additional contents for annual certification.* In addition to the required contents of the initial certification in paragraph (c)(3) of this section an annual certification shall include the following:

(A) Any updates to the best management practices plan.

(B) An attachment of weekly flow measurements from the previous year.

(C) The average amount of recycled bottom ash transport water in gallons per day.

(D) Copies of inspection reports and a summary of preventative maintenance performed on the system.

(E) A statement that the plan and corresponding flow records are being maintained at the office of the plant.

(e) Requirements for low utilization electric generating units.

(1) *Notice of Planned Participation.* For sources seeking to qualify as a low utilization electric generating units, a Notice of Planned Participation shall be submitted to the permitting authority or control authority no later than October 13, 2021.

(2) *Contents.* A Notice of Planned Participation shall identify the potential low utilization electric generating unit. The notice shall also include a statement of at least two years' capacity utilization rating data for the most recent two years of operation of each low utilization electric generating unit and a statement that the facility has a good faith belief that each low utilization electric generating unit will continue to operate at the required capacity utilization rating. Where the most recent capacity utilization rating does not meet the low utilization electric generating unit requirement, a discussion of the projected future utilization shall be provided, including material data and assumptions used to make that projection.

(3) *Initial and annual certification statement.* For sources seeking to qualify as a low utilization electric generating unit under this part, an initial certification shall be made to the permitting authority, or to the control authority in the case of an indirect discharger, no later than December 31, 2023, and an annual recertification shall be made to the permitting authority, or control authority in the case of an indirect discharger, within 60 days of submitting annual electricity production data to the Energy Information Administration.

(4) *Contents.* A certification or annual recertification shall be based on the information submitted to the Energy Information Administration and shall include copies of the underlying forms submitted to the Energy Information Administration, as well as any supplemental information and calculations used to determine the two year average annual capacity utilization rating.

(f) Requirements for units that will achieve permanent cessation of coal combustion by December 31, 2028.

(1) *Notice of Planned Participation.* For sources seeking to qualify as an electric generating unit that will achieve permanent cessation of coal combustion by December 31, 2028, under this part, a Notice of Planned Participation shall be made to the permitting authority, or to the control authority in the case of an indirect discharger, no later than October 13, 2021.

(2) *Contents.* A Notice of Planned Participation shall identify the electric generating units intended to achieve the permanent cessation of coal combustion. A Notice of Planned Participation shall include the expected date that each electric generating unit is projected to achieve permanent cessation of coal combustion, whether each date represents a retirement or a fuel conversion, whether each retirement or fuel conversion has been approved by a regulatory body, and what the relevant regulatory body is. The Notice of Planned Participation shall also include a copy of the most recent integrated resource plan for which the applicable state agency approved the retirement or repowering of the unit subject to the ELGs, certification of electric generating unit cessation under 40 CFR 257.103(b), or other documentation supporting that the electric generating unit will permanently cease the combustion of coal by December 31, 2028. The Notice of Planned Participation shall also include, for each such electric generating unit, a timeline to achieve the permanent cessation of coal combustion. Each timeline shall include interim milestones and the projected dates of completion.

(3) *Annual Progress Report.* Annually after submission of the Notice of Planned Participation in paragraph (f)(1) of this section, a progress report shall be filed with the permitting authority, or control authority in the case of an indirect discharger.

(4) *Contents.* An Annual Progress Report shall detail the completion of any interim milestones listed in the Notice of Planned Participation since the previous progress report, provide a narrative discussion of any completed, missed, or delayed milestones, and provide updated milestones.

(g) Requirements for facilities seeking the protections of § 423.18.

(1) *Certification statement.* For sources seeking to apply the protections of the permit conditions in paragraph § 423.18, and for each instance that § 423.18 is applied, a one-time certification shall be submitted to the permitting authority, or control authority in the case of an indirect discharger, no later than:

(A) In the case of an order or agreement under § 423.18(a)(1), 30 days from receipt of the order or agreement attached pursuant to paragraph (g)(2)(B) of this section; or

(B) In the case of an ''Emergency'' or ''Major Disaster'' under § 423.18(a)(2), 30 days from the date that a load balancing need arose.

(2) *Contents.* A certification statement must include the following:

(A) The qualifying event from the list in § 423.18(a), the individual or entity that issued or triggered the event, and the date that such an event was issued or triggered.

(B) A copy of any documentation of the qualifying event from the individual or entity listed under paragraph (g)(2)(A) of this section, or, where such documentation does not exist, other documentation with indicia of reliability for the permitting authority to confirm the qualifying event.

(C) An analysis and accompanying narrative discussion which demonstrates that a electric generating unit would have qualified for the subcategory at issue absent the event detailed in paragraph (g)(2)(A), including the material data, assumptions, and methods used.

(3) *Termination of need statement.* For sources filing a certification statement under paragraph (g)(1) above, and for each such certification statement, a one-time termination of need statement shall be submitted to the permitting authority, or control authority in the case of an indirect

discharger, no later than 30 days from when the source is no longer subject to increased production from the qualifying event.

(4) *Contents.* A termination of need statement must include a narrative discussion including the date the qualifying event terminated, or if it has not terminated, why the source believes the capacity utilization will no longer be elevated to a level requiring the protection of § 423.18.

(h) Requirements for facilities voluntarily meeting the limits in 423.13(g)(3)(i).

(1) *Notice of Planned Participation.* For sources opting to comply with the Voluntary Incentives Program requirements of section 423.13(g)(3)(i) by December 31, 2028, a Notice of Planned Participation shall be made to the permitting authority no later than October 13, 2021.

(2) *Contents.* A Notice of Planned Participation shall identify the facility opting to comply with the Voluntary Incentives Program requirements of 423.13(g)(3)(i), specify what technology or technologies are projected to be used to comply with those requirements, and provide a detailed engineering dependency chart and accompanying narrative demonstrating when and how the system(s) and any accompanying disposal requirements will be achieved by December 31, 2028.

(3) *Annual progress report.* After submission of the Notice of Planned Participation in paragraph (h)(1), a progress report shall be filed with the permitting authority, or control authority in the case of an indirect discharger.

(4) *Contents.* An Annual Progress Report shall detail the completion of interim milestones presented in the engineering dependency chart from the Notice of Planned Participation since the previous progress report, provide a narrative discussion of completed, missed, or delayed milestones, and provide updated milestones.

(5) *Rollover certification.* Where, prior to the effective date, a discharger has already provided a notice to the permitting authority of opting to comply with the Voluntary Incentives Program requirements of § 423.13(g)(i), such notice will satisfy paragraph (h)(1) of this section. However, where details required by (h)(2) of this sectionwere missing from the previously provided notice, those details must be provided in the first Annual Progress Report, no later than October 13, 2021.

(i) Requirements for facilities seeking to transfer between applicable limitations in a permit under § 423.13(o).

(1) *Notice of Planned Participation.* For sources which have filed a Notice of Planned Participation under paragraphs (e)(1), (f)(1), or (h)(1) of this section and intend to make changes that would qualify them for a different set of requirements under § 423.13(o), a Notice of Planned Participation shall be made to the permitting authority, or to the control authority in the case of an indirect discharger, no later than the dates stated in § 423.13(o)(1).

(2) *Contents.* A Notice of Planned Participation shall include a list of the electric generating units for which the source intends to change compliance alternatives. For each such electric generating unit, the notice shall list the specific provision under which this transfer will occur, the reason such a transfer is warranted, and a narrative discussion demonstrating that each electric generating unit will be able to maintain compliance with the relevant provisions.

(j) *Notice of material delay.* (1) *Notice.* Within 30 days of experiencing a material delay in the milestones set forth in paragraphs (f)(2) or (h)(2) of this section and where such a delay may preclude permanent cessation of coal combustion or compliance with the voluntary incentives program limitations by December 31, 2028, a facility shall file a notice of material delay with the permitting authority, or control authority in the case of an indirect discharger.

(2) *Contents.* The contents of such a notice shall include the reason for the delay, the projected length of the delay, and a proposed resolution to maintain compliance.

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Part IV

Department of Labor

Office of Labor-Management Standards

29 CFR Parts 402, 403 and 408

Labor Organization Annual Financial Reports: LM Form Revisions; Proposed Rule

DEPARTMENT OF LABOR

Office of Labor-Management Standards

29 CFR Parts 402, 403, and 408

RIN 1245–AA10

Labor Organization Annual Financial Reports: LM Form Revisions

AGENCY: Office of Labor-Management Standards, Department of Labor.

ACTION: Proposed rule and request for comments.

SUMMARY: The Department of Labor (Department) proposes to promulgate a rule that updates and revises our regulations in order to improve the Form LM–2 and establish a Form LM–2 Long Form (LF), in the interest of labor organization financial integrity and transparency. The proposed rule would apply prospectively.

DATES: Submit written comments on or before December 14, 2020.

ADDRESSES: You may submit comments, identified by RIN 1245–AA10, only electronically, through the Federal eRulemaking Portal *http://www.regulations.gov.* To locate the proposed rule, use key words such as ''Labor-Management Standards'' or ''Labor Organization Annual Financial Reports.''. Follow the instructions for submitting comments. Please be advised that comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. All comments must be received by 11:59 p.m. on the date indicated for consideration in this rulemaking.

FOR FURTHER INFORMATION CONTACT: Andrew Davis, Chief of the Division of Interpretations and Standards, Office of Labor-Management Standards, U.S. Department of Labor, 200 Constitution Avenue NW, Room N–5609, Washington, DC 20210, (202) 693–0123 (this is not a toll-free number), (800) 877–8339 (TTY/TDD).

SUPPLEMENTARY INFORMATION:

I. Statutory Authority

The Department's statutory authority is set forth in sections 201 and 208 of the Labor- Management Reporting and Disclosure Act of 1959, as amended (LMRDA or Act), 29 U.S.C. 431, 438. Section 208 of the LMRDA provides that the Secretary of Labor shall have authority to issue, amend, and rescind rules and regulations prescribing the form and publication of reports required to be filed under Title II of the Act and such other reasonable rules and regulations as he may find necessary to prevent the circumvention or evasion of the reporting requirements. 29 U.S.C. 438. Section 201, discussed in more detail below, sets out the substantive reporting obligations.

The Secretary has delegated his authority under the LMRDA to the Director of the Office of Labor-Management Standards and permitted redelegation of such authority. *See* Secretary's Order 03–2012 (Oct. 19, 2012), published at 77 FR 69376 (Nov. 16, 2012).

II. Background

A. Introduction

The Department proposes to introduce a new Form LM–2 Long Form (Form LM–2 LF), and update and revise Form LM–2 labor organization annual financial disclosure report to provide additional valuable information to union members, the Department, and the public. This proposal is part of the Department's continuing effort to better effectuate the reporting requirements of the LMRDA. The LMRDA's various reporting provisions are designed to empower labor organization members by providing them the means to maintain democratic control over their labor organizations and ensure a proper accounting of labor organization funds. Labor organization members are better able to monitor their labor organization's financial affairs and to make informed choices about the leadership of their labor organization and its direction when labor organizations provide financial information required by the LMRDA in an easily accessible way. By reviewing the reports, a member may ascertain the labor organization's priorities and whether they are in accord with the union's constitution and purposes, the member's own priorities, and those of fellow members. At the same time, this transparency promotes the labor organization's own interests as a democratic institution as well as the interests of the public and the government. Furthermore, the LMRDA's reporting and disclosure provisions, together with the fiduciary duty provision, 29 U.S.C. 501, which directly regulates the primary conduct of labor organization officials, operate to safeguard a labor organization's funds from depletion by improper or illegal means. Timely and complete reporting also helps deter labor organization officers or employees from embezzling or otherwise making improper use of such funds.

B. Statutory Background

In 1959, Congress found that ''in the labor and management fields * * * there have been a number of instances of breach of trust, corruption, disregard of the rights of individual employees, and other failures to observe high standards of responsibility and ethical conduct which require further and supplementary legislation that will afford necessary protection of the rights and interests of employees and the public generally as they relate to the activities of labor organizations, employers, labor relations consultants, and their officers and representatives.'' 29 U.S.C. 401(b). The LMRDA was designed to remedy these various ills through a set of integrated provisions aimed largely at labor organization governance and management. These include a ''bill of rights'' for labor organization members, which provides for equal voting rights, freedom of speech and assembly, and other basic safeguards for labor organization democracy, *see* 29 U.S.C. 411–415; financial reporting and disclosure requirements for labor organizations, their officers and employees, employers, labor relations consultants, and surety companies, *see* 29 U.S.C. 431–436, 441; detailed procedural, substantive, and reporting requirements relating to labor organization trusteeships, *see* 29 U.S.C. 461–466; detailed procedural requirements for the conduct of elections of labor organization officers, *see* 29 U.S.C. 481–483; safeguards for labor organizations, including bonding requirements, the establishment of fiduciary responsibilities for labor organization officials and other representatives, criminal penalties for embezzlement from a labor organization, a prohibition on certain loans by a labor organization to officers or employees, prohibitions on individuals convicted of certain crimes from holding union office or employment or serving in other prohibited capacities, and prohibitions on payments for prohibited purposes by an employer or labor relations consultant to employees, labor organizations, and labor organization officers and employees, *see* 29 U.S.C. 501–505; and prohibitions against extortionate picketing, retaliation for exercising protected rights, and deprivation of LMRDA rights by violence, *see* 29 U.S.C. 522, 529, 530. The LMRDA was a bipartisan bill. It originally passed the Senate 90–1 on April 25, 1959. The conference report, which set forth the version of the bill negotiated between the House and Senate, passed the Senate 95–2 on

September 3, 1959. The bill passed the House 352–52 on September 4, 1959.

The LMRDA was the direct outgrowth of a congressional investigation conducted by the Select Committee on Improper Activities in the Labor or Management Field, commonly known as the McClellan Committee, chaired by Senator John McClellan of Arkansas. Senators John F. Kennedy, Sam Ervin, Karl Mundt, Patrick McNamara, Carl Curtis, Irving Ives, and Barry Goldwater also sat on the committee. Future U.S. Attorney General Robert Kennedy served as Chief Counsel and led Senator McClellan's staff. In 1957, the committee began a highly publicized investigation of labor organization racketeering and corruption. Its findings of financial abuse, mismanagement of labor organization funds, and unethical conduct provided much of the impetus for the bipartisan enactment of the LMRDA's remedial provisions. The committee heard from 1,526 witnesses over 270 days of hearings, creating a record of over twenty thousand pages. *See* generally Benjamin Aaron, The Labor-Management Reporting and Disclosure Act of 1959, 73 Harv. L. Rev. 851, 851–55 (1960); and R. Alton Lee, Eisenhower & Landrum-Griffin (1990). During the investigation, the committee uncovered a host of improper financial arrangements between officials of several international and local labor organizations and employers (and labor consultants aligned with the employers) whose employees were represented by the labor organizations in question or might have been organized by them. Similar arrangements were also found between labor organization officials and the companies that handled matters relating to the administration of labor organization benefit funds. *See* generally Interim Report of the Select Committee on Improper Activities in the Labor or Management Field, S. Report No. 85–1417 (1957); *see* also William J. Isaacson, Employee Welfare and Benefit Plans: Regulation and Protection of Employee Rights, 59 Colum. L. Rev. 96 (1959).

Financial reporting and disclosure were conceived as a means of combatting improper practices. As noted in a key Senate Report on the legislation, disclosure would discourage questionable practices (''The searchlight of publicity is a strong deterrent.''); aid labor organization governance (labor organizations will be able ''to better regulate their own affairs. The members may vote out of office any individual whose personal financial interests conflict with his duties to members.''); facilitate legal action by members against ''officers who violate their duty of loyalty to the members;'' and create a record (the reports will furnish a ''sound factual basis for further action in the event that other legislation is required''). S. Rep. No. 187, at 16 (1959), reprinted in 1 NLRB Legislative History of the Labor-Management Reporting and Disclosure Act of 1959, at 412.

As the House Report disclosed, ''It is the purpose of this bill to insure that full information concerning the financial and internal administrative practices and procedures of labor organizations shall be, in the first instance available to the members of such organizations. In addition, this information is to be made available to the Government, and through the Secretary of Labor, is to be open to inspection by the general public. By such disclosure, and by relying on voluntary action by members of labor organizations, it is hoped that a deterrent to abuses will be established.'' House Report No. 741 (86th Cong., 1st Sess., 2 U.S. Code Cong. & Admin. News, 1959, p. 2424).

C. Regulatory Background

The Department has developed forms for implementing the LMRDA's financial reporting requirements. The annual reports required by section 202(b) of the Act, 29 U.S.C. 432(b) (Form LM–2, Form LM–3, and Form LM–4), contain information about a labor organization's assets, liabilities, receipts, disbursements, loans to officers and employees and business enterprises, payments to each officer, and payments to each employee of the labor organization paid more than $10,000 during the fiscal year. The reporting detail required of labor organizations, as the Secretary has established by rule, varies depending on the amount of the labor organization's annual receipts. 29 CFR 403.4.

Labor organizations with annual receipts of at least $250,000 and all labor organizations in trusteeship (without regard to the amount of their annual receipts) must file the Form LM–2. 29 CFR 403.2–403.4. The Form LM–2 requires certain receipts and disbursements to be reported by functional categories, such as representational activities; political activities and lobbying; contributions, gifts, and grants; union administration; and benefits. Further, the form requires labor organizations to allocate the time their officers and employees spend according to functional categories, as well as the payments that each of these officers and employees receive, and it requires the itemization of certain transactions totaling $5,000 or more. This form must be electronically signed and filed with the Department. Form LM–2 is filed by approximately 22 percent of the reporting labor organizations. If a labor organization has less than $250,000 in total annual receipts, it will file either a Form LM–3 or Form LM–4, both of which require significantly less detail than the Form LM–2. Form LM–3 is filed by approximately 45 percent of the reporting labor organizations, *i.e.,* those with less than $250,000 in total annual receipts but $10,000 or more. Labor organizations with receipts of less than $10,000 file the Form LM–4. They constitute 29 percent of the filers. The remaining 5 percent are subject to an even more simplified report, which is available to labor organizations with no assets, liabilities, receipts, or disbursements. The reforms the Department now proposes to make would affect only Form LM- 2 filers and thus only 22 percent of the reporting labor organization community.

The labor organization's president and treasurer (or its corresponding officers) are personally responsible for filing the reports and for any statement in the reports known by them to be false. 29 CFR 403.6. These officers are also responsible for maintaining records in sufficient detail to verify, explain, or clarify the accuracy and completeness of the reports for not less than five years after the filing of the forms. 29 CFR 403.7. A labor organization ''shall make available to all its members the information required to be contained in such reports'' and ''shall * * * permit such member[s] for just cause to examine any books, records, and accounts necessary to verify such report[s].'' 29 CFR 403.8(a).

The reports are public information. 29 U.S.C. 435(a). The Secretary is charged with providing for the inspection and examination of the financial reports, 29 U.S.C. 435(b). For this purpose, OLMS maintains (1) a public disclosure room where copies of such reports may be reviewed and (2) an online public disclosure site (*https://www.dol.gov/olms/regs/compliance/rrlo/lmrda.htm*), where reports filed since the year 2000 are available for the public's review.

On December 27, 2002, the Department issued a notice of proposed rulemaking, *67 FR 79820,* proposing revisions of the Form LM–2 (and other proposals for reforms of reports), expanding LMRDA coverage, and a newly created form.

On October 9, 2003, the Department issued a final rule, *68 FR 58373,* with an effective date of January 4, 2004. The rule put into effect the NPRM-proposed changes to the Form LM–2 with

modifications. The key changes put into place by the final rule were as follows:

1. $5,000 Itemization Threshold: Form LM–2 filers itemize certain categories of receipts and disbursements of $5,000 or more, as well as receipts and disbursements to a single entity that total $5,000 or more in the reporting year.

2. Confidentiality Exemption: Labor organizations (hereinafter also referred to as ''labor unions'' or ''unions'') may take advantage of special procedures for reporting confidential information, such as information that would expose the reporting union's prospective organizing strategy and information that would provide a tactical advantage to parties with whom the union engages in contract negotiations. Such information is not specifically reported or publicly disclosed.

3. Functional Reporting: Disbursements are reported in five specified categories (Representational Activities; Political Activities and Lobbying; Contributions, Gifts and Grants; General Overhead; and Union Administration).

4. Functional Reporting of Work Time: The Form LM–2 requires unions to estimate the time spent by each union officer and union employee (collectively, ''union officials'') on different duties, based on the categories of activities represented by the Form LM–2 schedules and represented as percentage of work time totaling 100 percent. Unions then report the portion of gross salaries for each schedule based on the percentage of time estimates.

5. Accounts Payable/Receivable: The Form LM–2 includes schedules designed for reporting delinquent accounts payable and receivable (with the typical Form LM–2 itemization threshold of $5,000).

6. Reporting of Investments: The Form LM–2 requires unions to report all investments that both have a book value greater than $5,000 and represent five percent or more of the union's investments.

7. Membership Categories: The Form LM–2 requires unions to report their number of members by aggregate categories. The union may determine the categories. Common categories include active members, retirees, full retirees, apprentices, etc.

Approximately four and a half years later, on May 12, 2008, the Department issued a notice of proposed rulemaking, 73 FR 27345, to further revise the Form LM–2 in a number of ways. A major piece required an expanded number of schedules to itemize receipts further.

On January 21, 2009, the Department issued a final rule, 74 FR 3677, with an effective date of February 20, 2009. The rule was ultimately rescinded before any reports were filed. The following were the key changes in the 2009 rule:

1. Additional information on Schedules 3 and 4: Had it become applicable, the rule would have required additional information on Form LM–2 Schedule 3—Sales of Investments and Fixed Assets, and Schedule 4—Purchase of Investments and Fixed Assets, disclosing the party buying or selling union assets.

2. Additional information on Schedules 11 and 12: The rule would have required additional information on Form LM–2 Schedule 11—All Officers and Disbursements to Officers, and Schedule 12—Disbursements to Employees, disclosing the total value of the benefits received by union officers and union employees (*i.e.,* it would have required unions to include the value of union officer/employee benefits in Schedules 11/12 rather than aggregated in a lump sum figure in Schedule 20).

3. Itemization of Receipts: The rule added itemization schedules corresponding to additional categories of receipts.

On April 21, 2009, the Department issued a notice of proposed rulemaking, 74 FR 18172, to rescind the Form LM–2 changes made by the January 2009 final rule.

The NPRM expressed concern that the January 2009 final rule failed to consider the utility of increased reporting and its attendant burdens, which may have resulted in a reporting regime that lacked what the NPRM stated was a required balance between the need for transparency in union financial reporting and the need to protect unions from excessive burdens attendant to such reporting. 74 FR 18173, 18175. The Department also stated that the January 2009 rule was not informed by an adequate review of the Department's experience under the ''relatively recent'' revisions to Form LM–2 in 2003. *Id.*

On October 13, 2009, the Department issued a final rule, 74 FR 52401, which rescinded the Form LM–2 changes made by the January 2009 final rule. As to the perceived failure to adequately balance burden with benefit, the Department concluded that the annual reports need not disclose ''every bit of probative financial information,'' *id.* at 52406 (internal quotation marks omitted).

Second, the Department rescinded the January 2009 rule on the view that it had promulgated the rule ''too soon after the 2003 changes'' and ''without an adequate review of the benefits and costs of the changes.'' *Id.* The Department stated that ''a more comprehensive review'' was needed to measure the benefits of the 2003 revisions against their costs; the Department suggested as two potential options ''a survey of all Department investigators or a documented review of the thousands of filings received by the Department under the 2003 rule.'' *Id.* at 52408.

III. Proposal

A. Introduction

The Department now proposes to introduce a new Form LM–2 Long Form (LF) and modify the Form LM–2 for the purpose of providing additional information to labor organization members, the Department, and the public about the financial activities of labor organizations.

Today's labor organizations are more like modern corporations in their structure, scope, and complexity than the labor organizations of 1959. The balance between wages/salaries paid to workers and their ''other compensation'' has changed significantly during this time. For example, in 1966, more than 80 percent of total compensation consisted of wages and salaries, with less than 20 percent representing benefits. U.S. Department of Labor, Report on the American Workforce 76, 87 (2001).[1] By 2019, wages had dropped to 70.1 percent of total compensation and benefits had grown to 29.9 percent of the compensation package. U.S. Department of Labor, Bureau of Labor Statistics Chart on Total Benefits, available at *https://data.bls.gov/cgi-bin/surveymost?cu.* Moreover, labor organization members today are better educated, more empowered, and more familiar with financial data and transactions than ever before. Labor organization members, no less than consumers, citizens, or creditors, expect access to relevant and useful information in order to make fundamental investment, career, and retirement decisions, evaluate options, and exercise legally guaranteed rights.

The revisions to the Form LM–2 made by the Department in 2003 have helped to fulfill the LMRDA's reporting mandate. However, based upon the Department's experience since 2003 and after input from OLMS field offices, the Department believes that further enhancements to the Form LM–2 are necessary.

[1] In 2003, more than 71 percent of total compensation consisted of wages and salaries, with less than 29 percent representing benefits. *See* News Release on Employer Costs for Employee Compensation December 2003, Bureau of Labor Statistics, available at *https://www.bls.gov/news.release/archives/ecec_02262004.pdf.*

Union and management corruption remains a problem today. For example, a recent investigation of auto industry corruption involving the United Auto Workers International Union (UAW) in Detroit, Michigan and a Detroit automaker produced multiple criminal convictions in the United States District Court for the Eastern District of Michigan.[2] The joint investigations conducted by OLMS, the Department's Office of Inspector General, the Federal Bureau of Investigation, and the Internal Revenue Service centered on a conspiracy involving Fiat Chrysler executives bribing labor officials to influence labor negotiations. Violations included conspiracy to violate the Labor Management Relations Act for paying and delivering more than $1.5 million in prohibited payments and things of value to UAW officials, receiving prohibited payments and things of value from others acting in the interest of Fiat Chrysler, failing to report income on individual tax returns, conspiring to defraud the United States by preparing and filing false tax returns for the UAW-Chrysler National Training Center that concealed millions of dollars in prohibited payments directed to UAW officials, and deliberately providing misleading and incomplete testimony in the federal grand jury.

OLMS cases illustrate the link between reporting and disclosure and criminal conduct. A strictly enforced reporting regime deters and reveals legal violations and aids in the enforcement of the LMRDA's civil and criminal penalties. For example, on February 12, 2020, in the United States District Court for the Central District of California, after a six-day trial, a jury found John S. Romero, former President of United Industrial Services Worker of America (UISWA), located in Colton, California, guilty of 1 count of conspiracy to commit theft or embezzlement in connection with health care (18 U.S.C. 371), 12 counts of theft or embezzlement of approximately $800,000 in connection with health care (18 U.S.C. 669), and 1 count of filing a false LM financial report with the Department, in which he failed to properly report more than $100,000 in receipts and disbursements (18 U.S.C. 1001). Romero's family members, who were co-defendants (son John J. Romero, former UISWA Secretary-Treasurer; daughter Danae Romero, former UISWA Trustee; and ex-wife Evelyn Romero, former UISWA President), had each previously pleaded guilty to counts under the indictment and testified at trial on behalf of the government. The guilty verdict followed an investigation by the OLMS Los Angeles District Office, Department of Labor's Office of Inspector General, and the Employee Benefits Security Administration. *https://www.justice.gov/usao-cdca/pr/former-labor-union-president-convicted-conspiracy-embezzling-union-health-plan-funds.*

On December 18, 2019, in the United States District Court for the Southern District of West Virginia, Eric Childress, former Secretary-Treasurer of Communications Workers of America Local 2276 (located in Bluefield, West Virginia), pleaded guilty to one count of making a false entry in a union record, in violation of 29 U.S.C. 439(c). The guilty plea followed an investigation by the OLMS Philadelphia-Pittsburgh District Office. *https://www.dol.gov/olms/regs/compliance/enforce_2019.htm.*

On January 29, 2019, in the United States District Court for the Eastern District of Pennsylvania, John Dougherty, Business Manager of International Brotherhood of Electrical Workers Local 98 (located in Philadelphia, Pennsylvania), was charged in an indictment with 1 count of conspiracy to embezzle from a labor union and employee benefits plan (18 U.S.C. 371), 34 counts of embezzlement of union funds (29 U.S.C. 501(c)), 23 counts of wire fraud theft from the union (18 U.S.C. 1343), 2 counts of wire fraud theft from political action committee (18 U.S.C. 1343), 2 counts of filing a false LM report (29 U.S.C. 439(b)), 2 counts of falsifying union records (29 U.S.C. 439(c)), 5 counts of filing false federal income tax returns (26 U.S.C. 7206(1)), 1 count of conspiracy to accept unlawful payments from an employer (18 U.S.C. 371), 8 counts of accepting unlawful payments from an employer (29 U.S.C. 186(a)(2),(b)(1) & (d)(2)), 1 count of conspiracy to commit honest services fraud and federal program bribery (18 U.S.C. 371), 11 counts of honest services wire fraud (18 U.S.C. 1343, 1346), and 1 count of honest services mail fraud (18 U.S.C. 1341, 1346). The charges followed an investigation by the OLMS Philadelphia-Pittsburgh District Office, the Employee Benefits Security Administration, the Department of Labor's Office of Inspector General, the Federal Bureau of Investigation, the Internal Revenue Service, the Pennsylvania State Police, and the Pennsylvania Attorney General's Office. *https://www.dol.gov/olms/regs/compliance/enforce_2019.htm.*

On September 21, 2017, in the United States District Court for the Northern District of Illinois, Bobby Buford, former President of UAW Local 2419 (located in Danville, Illinois), was sentenced to 21 months of incarceration and 3 years of supervised release, and he was ordered to pay restitution of $129,723 and a $100 special assessment. On November 10, 2016, Buford pled guilty to one count of mail fraud, in violation of 18 U.S.C. 1341, for diverting over $129,723 in unions funds for personal use. While he served as president of the union, Buford made cash withdrawals and issued cashier's checks from the accounts for his own personal benefit. Buford then covered up his scheme by mailing false annual reports to the Department. The false reports underreported the amount of dues and fees collected from union members, inflated the balance of the union's accounts, and omitted his personal withdrawals from the accounts. *https://www.justice.gov/usao-cdil/pr/former-president-uaw-local-2419-danville-sentenced-prison-embezzling-union-funds' https://www.dol.gov/olms/regs/compliance/enforce_2017.htm.*

Those are just a handful of examples. The proposed enhancements, as more fully described below, would also ensure that information is reported in such a way as to meet the objectives of the LMRDA by providing labor organization members with useful data that will enable them to be responsible and effective participants in the democratic governance of their labor organizations. The proposed changes are designed to provide members of labor organizations with additional and more detailed information about the financial activities of their labor organization than is available through the current reporting.

These proposed revisions are consistent with the goals of the LMRDA and its purposes as discussed above and

[2] *U.S.* v. *Durden,* Case No.17–cr–20406, 2018 WL 6198288 (E.D. Mich. Nov. 13, 2018), *judgment amended* 2020 WL 2151149 (E.D. Mich. Mar. 25, 2020); *U.S.* v. *Iacobelli,* Case No. 17–cr–20406, 2018 WL 4567268 (E.D. Mich. Sept. 13, 2018); *U.S.* v. *Morgan,* Case No. 17–cr–20406, 2018 WL 4567269 (E.D. Mich. July 19, 2018); *U.S.* v. *King,* Case No.17–cr–20406, 2018 WL 10667957 (E.D. Mich. Nov. 21, 2018), *judgment amended* 2019 WL 255638 (E.D. Mich. Jan. 2, 2019); *U.S.* v. *Mickens,* Case No. 17–cr–20406, 2018 WL 6198290 (E.D. Mich. Nov. 13, 2018); *U.S.* v. *Johnson,* Case No. 17–cr–20406, 2018 WL 7075322 (E.D. Mich. Dec. 28, 2018); *U.S.* v. *Brown,* Case No. 17–cr–20406, 2018 WL 6198289 (E.D. Mich. Nov. 13, 2018), *judgment amended* 2020 WL 1079963 (E.D. Mich. Jan. 8, 2020); *U.S.* v. *Jewell,* Case No.19–cr–20146, 2019 WL 4722945 (E.D. Mich. Aug. 7, 2019); *U.S.* v. *Grimes,* Case No. 19–cr–20520, 2020 WL 1942424 (E.D. Mich. Feb. 24, 2020); *U.S.* v. *Pietrzyk,* Case No. 19–cr–20630, 2019 WL 7667054 (E.D. Mich. Oct. 22, 2019); *U.S.* v. *Ashton,* Case No. 19–cr–20738, 2019 WL 7625626 (E.D. Mich. Nov. 6, 2019); *U.S.* v. *Robinson,* Case No. 19–cr–20726, 2020 WL 2612988 (E.D. Mich. Mar. 2, 2020); *U.S.* v. *Pearson,* Case No. 19–cr–20726, 2020 WL 2612990 (E.D. Mich. Feb. 7, 2020); *U.S.* v. *Jones,* Case No. 19–cr–20726, 2020 WL 1910242 (E.D. Mich. Feb. 27, 2020).

in connection with the Department's 2002 NPRM and 2003 Final Rule, as well as the 2008 NPRM and 2009 Final Rule, which ultimately did not go into effect but put forward similar revisions.[3] This proposed rule is considered to be an Executive Order (E.O.) 13771 regulatory action. Details on the estimated costs of this final rule can be found in the rule's economic analysis.

The OLMS Electronic Forms System (EFS) makes it simpler to complete LM reports than it was at the time of previous updates to the Form LM–2. This web-based system enables labor organizations, their officials, employers, and labor relations consultants to complete and submit LM reports to OLMS. Currently, EFS can be used by filers of Forms LM–2, LM–3, LM–4, LM-10 Employer Report, LM–20 Agreement and Activities Report, LM–21 Receipts and Disbursements Report, LM–30 Labor Organization Officer and Employee Report, and Form T–1 Trust Report.[4] The filer accesses EFS to register for an EFS User ID and password, obtain a union PIN, as well as edit account information or retrieve existing passwords or User IDs. By accessing EFS, the filer can also obtain, work on, or sign and submit an LM form. EFS allows anyone with a web-enabled computer to complete, sign, and electronically file a Form LM–2, LM–3, LM–4, LM–10, LM–20, LM–21, and LM–30 without purchasing a digital signature or downloading special software. EFS performs all calculations for the LM reports and completes a form error check prior to submission. EFS also allows unions that maintain electronic accounting records to import financial data from their accounting programs directly into the Form LM–2 or LM–3 they are completing.[5]

B. Canvassing OLMS Field Investigators

i. Field Investigators Response on Benefits and Drawbacks of Form LM–2

In July and September of 2019, the Department sought information from its OLMS field investigators on the benefits or drawbacks of the changes made to the Form LM–2 by the 2003 rulemaking. This is in keeping with the 2009 rule's suggestion for additional study of the 2003 changes, such as by reviewing them with OLMS staff. As discussed below, this review has been helpful to the Department by confirming disclosure requirements' helpful role in ensuring union democracy and transparency under the LMRDA. Indeed, some of the comments provided by OLMS staff are directly implemented as proposed revisions to the LM forms. The Department of does not, however, view itself as restricted to these comments when deciding how to revise the LM forms. The staff's comments demonstrate that many of the reforms accomplished in 2003 have been helpful to OLMS in uncovering and deterring wrongdoing. Further reforms, including those suggested by the staff, are intended to further protect union members' rights and enhance compliance with the LMRDA.

For these same reasons, the Department is of the view that this proposed rule is an appropriate exercise of its discretion in administering the LMRDA. *See Ala. Educ. Ass'n* v. *Chao,* 539 F. Supp. 2d 378, 384 (D.D.C. 2008). The Department's October 2009 rule stated that the Department should consider the utility of increased reporting against the burdens it imposes, citing various types of legislative history about the need for government to not impede union self-governance. The LMRDA weights that balance heavily in favor of ''necessary protection of the rights and interests of employees and the public generally as they relate to the activities of labor organizations, employers, labor relations consultants, and their officers and representatives.'' 29 U.S.C. 401(b). The LMRDA ''is necessary to eliminate or prevent improper practices on the part of labor organizations'' and others. *Id.* 401(c). While this rule would incur some new burdens on labor unions, the Department views those burdens as necessary and appropriate to ensure transparency and prevent malfeasance before it happens. The Department views this as especially important now given the massive UAW criminal scheme and a smaller but steady stream of criminal misconduct despite the Department's vigorous enforcement of the LMRDA. Other aspects of this rule propose reducing reporting obligations where those have proved to be unhelpful in effecting the LMRDA's purposes.

Further, the LMRDA's comprehensive reporting regime, including as enhanced by this proposed rule, does not impede but furthers union self-governance. The changes to the LM forms proposed in this rule give union members more information about how their elected leaders are using their funds, allowing them to better hold them accountable and better ensuring that the LMRDA is followed. Robust reporting regimes are the norm under the securities laws, in lobbying and in contributions to political candidates, and in many other areas where voters select officials who are charged with their trust. Accounting ensures accountability. ''Sunlight is said to be the best of disinfectants,'' and that is true here as well. Louis D. Brandeis, *Other People's Money* 92 (1914).

[3] The Department has recently created a new form, the Form T–1, for certain labor organization trusts as another means to combat union and management corruption and to prevent circumvention or evasion of the LMRDA reporting requirements. *https://www.govinfo.gov/content/pkg/FR-2020-03-06/pdf/2020-03958.pdf.*

[4] As discussed, Forms LM–2, LM–3 and LM–4 are labor organization annual financial disclosure forms. The Form LM–10 Employer Report requires employers to file annual reports to disclose certain specified financial dealings with their employees, unions, union agents, and labor relations consultants.

The Form LM–20 Agreement and Activities Report requires that every person, including a labor relations consultant, who enters into an arrangement with an employer under which he or she undertakes activities where an object thereof is, directly or indirectly, to persuade employees about exercising their rights to organize and bargain collectively, or obtain information about the activities of employees or a union in connection with a labor dispute involving the employer (except information solely for administrative, arbitral, or court proceedings) must file an Agreement and Activities Report, Form LM–20.

Every person required to file a Form LM–20 also must file the annual Receipts and Disbursements Report, Form LM–21, if any payments were made or received during the fiscal year as a result of arrangements of the kind requiring the Form LM–20.

Pursuant to the instructions for the Form LM–30 Union Officer and Employee Report, labor organization officers or employees (other than exclusively clerical or custodial employees) who have directly or indirectly held any legal or equitable interest in, received any payments from, or engaged in any transactions or arrangements with certain employers or businesses must file a report with OLMS.

The Form T–1 was published, on March 6, 2020, and requires annual reporting by Form LM–2 filing labor organizations on financial information pertinent to ''trusts in which a labor organization is interested'' (''section 3(l) trusts''). See: *https://www.govinfo.gov/content/pkg/FR-2020-03-06/pdf/2020-03958.pdf.* The rule requires a labor organization with total annual receipts $250,000 or more to file a Form T–1, under certain circumstances, for each section 3(l) trust, as defined by 29 U.S.C. 402(l) of the LMRDA. Under this rule, the Form T–1 reporting requirements are triggered where the labor organization during the reporting period, either alone or in combination with other labor organizations, (1) selects or appoints the majority of the members of the trust's governing board, or (2) contributes more than 50 percent of the trust's receipts.

[5] The current Form LM–4 does not contain schedules. Therefore, EFS does not have a function for importing electronic data into the Form LM–4.

A questionnaire summarized the changes made in 2003 and asked ''whether the changes made to the Form LM–2 in 2003 have aided or hindered OLMS in its enforcement activities.''[6] Field personnel were advised that ''[w]e are looking to determine whether the changes OLMS made to the Form LM–2 in 2003 have proven beneficial. The document LM Form Benefits of 2003 Changes contains a description of the changes made in 2003. Please ask your district directors to meet with their staff. I envision each office holding a 30 minute brainstorming session. The idea is to determine whether the new parts of the Form LM–2, like itemization or functional categories, have helped with investigations.''

For the convenience of the investigators, the changes were summarized as follows:

1. $5,000 Itemization threshold: Form LM–2 filers itemize certain categories of receipts and disbursements of $5,000 or more, as well as receipts and disbursements to a single entity that total (aggregate to) $5,000 or more in the reporting year.

2. $5,000 Itemization Confidentiality Exemption: Provides labor organizations with a procedure to avoid itemizing disbursements that would reveal the following types of information:

- Information that would identify individuals paid by the union to work in a non-union bargaining unit in order to assist the union in organizing employees;
- Information that would expose the reporting union's prospective organizing strategy;
- Information that would provide a tactical advantage to parties with whom the reporting union or an affiliated union is engaged or will be engaged in contract negotiations;
- Information pursuant to a settlement that is subject to a confidentiality agreement, or that the union is otherwise prohibited by law from disclosing; and
- Information in those situations where disclosure would endanger the health or safety of an individual.

3. Disbursements are reported in specified categories (Representational Activities; Political Activities and Lobbying; Contributions, Gifts and Grants; General Overhead; and Union Administration).

4. Functional Reporting: The LM–2 requires unions to estimate the time spent by each union officer and employee on different duties, based on the categories of activities represented by the LM–2 schedules and represented as percentage of work time totaling 100 percent. Unions then report the portion of gross salaries for each schedule based on the percentage of time estimates.

5. Accounts Payable/Receivable: The LM–2 includes schedules designed for reporting delinquent accounts payable and receivable (with the typical LM–2 itemization threshold of $5,000).

6. Reporting of Investments: The LM–2 requires unions to report all investments that both have a book value greater than $5,000 and represent five percent or more of the union's investments.

7. Membership Categories: The LM–2 requires unions to report their number of members by aggregate categories (unions can determine the categories for reporting).

First, with regard to the $5,000 itemization threshold, the field investigators noted that itemization aided in determining whether Form LM–30 and Form LM–10 cases should be opened, aided in embezzlement investigations, and was an important case targeting tool.[7] One office stated, ''Of the seven changes to the Form LM–2 in 2003, the consensus is that the [existing] $5,000 itemization threshold was the best of the seven as it provides more transparency to the membership and can be utilized for targeting special report investigations.'' Itemization is important because it can reveal unlawful payments to identified individuals. It can reveal conflicts of interest that are reportable on other LMRDA forms.[8] Absent itemization, this information would not be known.

Second, with regard to the confidentiality exemption, one investigator wrote that it ''has been a hindrance in case targeting because it allows unions to hide transactions under the guise that it will hurt their organizational strategy.'' Others felt that it likely benefited only unions but they could also see how some reporting might be harmful to the unions. The confidentiality exemption attempts to protect important labor union interests, but it reduces transparency by eliminating itemization.

Third, with regard to functional categories (reporting of disbursements in specified categories *i.e.,* Representational Activities, Political Activities and Lobbying; Contributions, Gifts and Grants; General Overhead; and Union Administration), the field offered examples of being able to target audits ''based on unusual categorization patterns.'' They also ''traced categorized transfers between affiliates that indicated reporting or other potential LMRDA violations.'' On the other hand, investigators noted that the $5,000 itemization occurs only within each category so that disbursements of more than $5,000 might not be itemized if the disbursement fell under more than one category. Functional reporting aids in understanding the purposes of labor union spending but it can cloak individual transactions because of the $5,000 itemization threshold.

Another investigator felt that two of the categories, Schedule 18—General Overhead and Schedule 19—Union Administration, were similar and were confused by labor organizations.[9]

Fourth, with regard to union officers and employees allocating their time by functional categories, the investigators stated that the reporting of time in categories could not be audited, could not be enforced, and did not lead to other enforcement activity. One field office stated, ''It provides unverifiable disclosure information to the public.'' Another stated flatly that ''this information offers no valuable insight for case targeting and has provided no benefit in criminal investigations or compliance audits.'' Another wrote, ''It is and will always be a ballpark guess and the categories are confusing to the

[6] This questionnaire and the responses to it have been made part of the administrative record and will be available at the start of the comment period, along with the comments that will be filed by the public. *Note:* The first response included in the questionnaire was included as an example to demonstrate to the investigators what type of information was being sought.

[7] Pursuant to the instructions for the Form LM–10 Employer Report, employers must file annual reports to disclose certain specified financial dealings with their employees, unions, union agents, and labor relations consultants. Pursuant to the instructions for the Form LM–30 Union Officer and Employee Report, labor organization officers or employees (other than exclusively clerical or custodial employees) who have directly or indirectly held any legal or equitable interest in, received any payments from, or engaged in any transactions or arrangements with certain employers or businesses must file a report with OLMS. This report is submitted on a Form LM–30 and is required to make public any actual or likely conflict between the personal financial interests of union officers or employees and their obligations to the union and its members. Form LM–10 and LM–30 cases, along with several other case types, are called ''special reports'' cases.

[8] See prior footnote for discussion of the type of transactions that might trigger other LMRDA reports.

[9] In reflecting on this assertion, OLMS reviewed the instructions and finds that there is an adequate distinction between union administration (''includes disbursements relating to the nomination and election of union officers, the union's regular membership meetings, intermediate, national and international meetings, union disciplinary proceedings, the administration of trusteeships, and the administration of apprenticeship and member education programs'') and general overhead (''support personnel at the labor organization's headquarters, such as building maintenance personnel and security guards, and other overhead costs'').

union and to OLMS field staff.'' Functional reporting, which discloses the amount of time union officers and employees spend on different functions, arguably does not provide investigators with useful information in enforcing or administering the LMRDA.

Fifth, with regard to accounts payable/receivable aging schedules, one field office wrote that the information is ''necessary to determine how much the union is owed/owes.'' Another thought it was ''useful to encounter embezzlements.'' This schedule can reveal the financial health of the labor union and can disclose delinquent or troubled accounts or questionable financial transactions.

Sixth, with regard to reporting of investments, one office found it necessary for tracking purposes on investments from year to year. Another determined that it ''can be useful to the field and to members.'' Another said, ''This is useful to the extent the unions are able to figure out how to report it. We have found corroborating information reported here that has been useful in a criminal investigation as well as a union officer reports case.'' Another office concluded that the information was ''good for union members.'' The schedule enables a union member to learn about the performance of union investments. Further, it assists in other aspects of union reporting. As described above, union officers and employees must file a Form LM–30 if they or their spouses or minor children received certain payments, held certain interests, or engaged in certain transactions involving, for example, the represented employer. The Form LM–30 also covers payments from businesses, such as vendors and service providers, that buy from or sell to such employers, the official's union, or the union's trust. A union investment in a union official's business would necessitate a Form LM–30 and this schedule would reveal such an interest.

Seventh, with regard to membership categories, investigators found it helpful in that the categories many times include agency fee payers and that it assists in determining the active dues paying members, as it corresponds to dues receipts. This is particularly helpful in trade unions where there are different levels of memberships. Another investigator felt that it was helpful to estimate dues receipts and very useful in union election cases.

In summary, field investigators were in favor of itemization, believing it provides both transparency and aids investigations. The investigators recognized the need for some confidentiality for labor unions but also believed the confidentiality exemption detracted from transparency. With regard to functional categories, the field investigators believed that it helped in selecting unions for audit but reduced transparency by limiting the number of itemized transactions. The field discerned no value in union officers and union employees allocating their time by functional categories. The investigators believed the accounts payable/receivable aging schedules, as well as reporting of investments, aided in the enforcement of the LMRDA. With regard to membership categories, the investigators found it helpful when targeting audits, estimating dues receipts, and in running supervised elections.

ii. Field Investigators' Responses on Items To Be Added to the Reporting Forms

The investigators were also asked to identify any information that is not currently available on the Form LM–2 but would be useful to OLMS in its mission or to union members interested in their union's financial conditions, operations, and activities. They were also asked to identify any unnecessary information now reported on the annual disclosure forms. The regional directors were directed to ''canvas your district directors to identify any changes that could be made to the Form LM–2/3/4 annual financial disclosure form. The idea is to consider what additional information would be useful to OLMS in its mission or to union members interested in their union's financial conditions, operations, and activities. Conversely, if you believe that certain information now reported on the annual disclosure forms is unnecessary, please let us know.''

Two responses advocated removing three of the special procedures for reporting confidential information. Under these procedures, the following information is subject to special reporting privileges under the confidentiality exception: (1) Information that would identify individuals paid by the union to work in a non-union facility in order to assist the union in organizing employees, provided that such individuals are not employees of the union who receive more than $10,000 in the aggregate from the union in the reporting year; (2) information that would expose the reporting union's prospective organizing strategy; (3) information that would provide a tactical advantage to parties with whom the reporting union or an affiliated union is engaged or would be engaged in contract negotiations; (4) information pursuant to a settlement that is subject to a confidentiality agreement, or that the union is otherwise prohibited by law from disclosing; and (5) information in those situations where disclosure would endanger the health or safety of an individual. The investigator would eliminate the first three of these exceptions. As mentioned above, the confidentiality exemption attempts to protect important labor union interests, but eliminating itemization provides a means for unscrupulous filers to avoid scrutiny of questionable transactions.

A district director recommended that the forms identify whether the labor union filing the report is under trusteeship. This would allow easy and immediate recognition of trusteeship, the district director concluded. Under the LMRDA, a labor organization that has imposed a trusteeship over a subordinate labor organization must file an initial trusteeship report on Form LM–15, including a Statement of Assets and Liabilities, within 30 days after the date of the imposition of the trusteeship. By requiring Form LM–2 filers to disclose their trusteeship status, OLMS would be better able to enforce the Form LM–15 filing obligation.

A district director suggested a question that would identify officers and employees who were paid $10,000 or more by the filing labor organization and other labor organizations. Similarly, an investigator suggested that OLMS add the following question to the Form LM–2: ''Has any officer who received $10,000 or more by your organization also received $10,000 or more as an officer or employee of another labor organization or of an employee benefit plan?'' If the answer is ''yes,'' the union would be required to complete a table listing the name of the officer, the amount paid, and the file number of any filing affiliate. This query would provide union members with more complete information about their union officials' compensation and would assist in determining whether officials are receiving compensation twice for the same expenses or same work.

A regional director asked for a change in wording on a question on the Form LM–2. Instead of asking whether the labor organization had ''discovered'' a shortage of funds, the labor organization would be asked whether the labor organization has ''experienced'' a shortage of funds. Specifically, Item 13 asks, ''During the reporting period did the labor organization discover any loss or shortage of funds or other assets?'' The regional director would change this sentence to read, ''[d]uring the reporting period did the labor organization

experience any loss or shortage of funds or other assets?'' The regional director reasoned, ''Since the person embezzling funds is often the same person that completes the LM report, to ensure [false reporting] can be used as an alternative violation/charge, these questions should ask if the union experienced and/or discovered a loss.''

An investigator recommended revising the Form LM–3 to add a schedule requiring the labor union to identify disbursements to employees. Similarly, the investigator recommended that the Form LM–4 require the labor union to complete a schedule of all officers and disbursements to officers. To minimize burden for labor unions with fewer financial resources, the Form LM–3 currently does not require unions to identify disbursements to employees. Similarly, the Form LM–4 does not require filers to identify disbursements to employees or to identify officers.

An investigator opined that OLMS should add a column to the schedule of compensation to officers and employees. This would affect Schedule 11—All Officers and Disbursements to Officers and Schedule 12—Disbursements to Employees. The column would identify disbursements for benefits paid to the officers. The investigator recommended that, in light of these changes, Schedule 20—Benefits, could be eliminated.[10]

One investigator offered that labor organizations that file Form LM–4 should disclose the date of their next scheduled election of officers. Form LM–2 and Form LM–3 filers already report election dates. Requiring election dates on Form LM–4 reports would assist union members in participating in the governance of their union. It would aid OLMS in the enforcement of Title IV election provisions of the LMRDA.

With regard to Schedule 4—Purchase of Investments and Fixed Assets, an investigator proposed adding a column to show credit received on purchases, such as a trade-in of an automobile. Absent such information, the ''cash paid'' column on Schedule 4—Purchase of Investments and Fixed Assets, will appear misleadingly low.

With regard to Item 46—On Behalf of Affiliates for Transmittal to Them and its counterpart Item 63—To Affiliates of Funds Collected on Their Behalf, one investigator proposed to require a description of the types of funds being withheld and transmitted. That investigator had the same suggestion with regard to Item 47—From Members for Disbursements on Their Behalf and Item 64—On Behalf of Individual Members. Currently, the filer must enter the total receipts from members that are specifically designated by them for disbursement on their behalf. For example, contributions from members for transmittal by the labor organization to charities would be reported. Requiring a description of the types of funds being withheld and transmitted would enable members to know which of their funds were being channeled and where the funds ultimately went. It would also require a new schedule.

A regional director recommended that (1) LM forms and instructions should be translated into Spanish, (2) reports should list the principal employers of the union members, along with the city and state, (3) the fiscal year should appear on top of each page of the reports, (4) the report should disclose distributions to PAC funds and PAC fund payees, (5) the report should disclose if an officer or employee of a union also receives compensation from another labor union. A Spanish version of the instructions would be helpful for Spanish-speaking union officers but would make the report inaccessible to non-Spanish speakers. A list of the principal employers would be helpful in criminal investigations but would be difficult to administer as the phrase ''principal employers'' is not clear. A list of PAC fund payees would be redundant to other election-related reporting.

An investigator recommended that OLMS require reporting of transactions if an officer or employee, or a spouse or minor child of the officer or employee, either directly or indirectly held any legal or equitable interest, received any payments, or engaged in transactions or arrangements (including loans) of the types described in the Form LM–30 instructions. Under the Form LM–30, union officers or employees (except employees performing exclusively clerical or custodial services) must file a Form LM–30 if they or their spouses or minor children (less than 21 years of age) either directly or indirectly received certain payments, held certain interests, or engaged in certain transactions involving (1) the employers whose employees the union represents or actively seeks to represent (*i.e.,* the represented employer); (2) businesses, such as vendors and service providers, that buy from or sell to such employers, the official's union, or the union's trust; and (3) other employers from which a payment could create a conflict. The investigator's work on a complex case involving the UAW in Detroit led this investigator to believe that this information would be valuable in identifying such cases, and having them prosecuted.

An investigator endorsed using the IRS Principal Business or Professional Activities Codes to answer the ''Type or Classification (B)'' column Schedules 14 through 19. As background, the instructions for the Form LM–2 require labor organizations to ''[e]nter in Column (B) the type of business or job classification of the entity or individual.'' The instructions for the Annual Report Form 5500 includes a chart of the codes, which are available online. General Instructions to Form 5500–SF, p. 23. The investigator opined that these codes would help get more uniform answers and prevent some of the vague and deficient answers.

An investigator recommended that union vendors should be listed with their Employer Identification Number (EIN), a nine-digit number that the IRS assigns to identify the tax accounts of employers and certain others who have no employees. EINs are used by employers, sole proprietors, corporations, partnerships, non-profit associations, trusts, estates of decedents, government agencies, and other business entities. The investigator explained that sham businesses often do not have an EIN.

For the Form LM–4, a supervisory investigator recommended requiring labor unions to list the names of officers, as well as identifying whether the officer is continuing in office, is a past officer, or is a new officer. This would allow OLMS to better be able to locate and contact officers of a union other than the signers of its previous LM–4, should both of those signers leave office. That supervisory investigator also recommended adding the date of next election of officers to the Form LM–4, allowing OLMS to determine any turnover in officers in a union and to aid in locating/contacting officers of a union. It would also enable OLMS to avoid scheduling an audit at a time close to a labor union officer election.

A district director recommended eliminating a reporting exception applicable to Item 24 of the Form LM–3. The reporting exception is also applicable to Schedule 11—All Officers and Disbursements to Officers and Schedule 12—Disbursements to Employees of the Form LM–2. This exception covers ''indirect disbursements for temporary lodging

[10] The investigator's recommendation is based on a faulty premise. Reporting of disbursements to employees and officers and the schedule next to their names would not eliminate the need for a schedule of benefits. The benefits schedule would still be needed to allow the labor organization to report its disbursements associated with benefits of members and their beneficiaries.

(room rent charges only) or transportation by public carrier necessary for conducting official business while the officer is in travel status away from his or her home and principal place of employment with [the labor] organization if payment is made by [the] organization directly to the provider or through a credit arrangement.'' The district director explained that the exception is cumbersome to follow (and even for OLMS representatives to explain to the regulated community), unnecessary for accurate disclosure, and contrary to the procedures applied to disclosure for the remainder of transactions reportable in Item 24 and Schedules 11 and 12. By disclosing those transactions as payments to officers or employees (rather than in more general categories elsewhere on the reports), the public would know who really benefited from them, the district director concluded.

With regard to Schedule 3—Sale of Investments and Fixed Assets and Schedule 4—Purchase of Investments and Fixed Assets, a regional director proposed separation into two different schedules. This would, it was asserted, more easily allow for a reconciliation of investments and fixed assets by using beginning of year figures plus sales, minus receipts, and comparing to end of year figures. This cannot currently be done using electronic data because investments and fixed assets are combined. This would arguably provide better transparency for evaluation of the performance of investments.

An investigator suggested that automobiles purchased and sold should be specifically identified either with a VIN or by detailed description, similar to the requirement for land and buildings. This would provide better transparency for vehicles as the current schedules require labor organizations report only the cost, book value, sales price, and amount received. Any extraordinary handling of a vehicle such as, for example, a sale well below book value would be obvious.

A district director proposed removing Line (I) (estimated percentage of time spent by the officer/employee on activities that fall within Schedules 15 through 19) from Schedule 11—All Officers and Disbursements to Officers and Schedule 12—Disbursements to Employees. In lieu of these time estimates, the district director recommended the addition of a more detailed breakdown of disbursements reported to officers and employees in (1) the salaries reported in Column D; (2) the allowances reported in Column E; (3) the reimbursed expenses reported in Column F; and (4) other disbursements reporting in Column G.

For example, the district director continued, the report of salaries paid to an officer/employee would be broken down and reported in the following categories: (1) Salary, (2) lost wages, and (3) bonuses. In another example, the reporting of reimbursed expenses paid to an officer/employee could be reported in the following categories: (1) Disbursements for meal expenses/entertainment', (2) disbursements for mileage, (3) disbursements for travel expenses, and (4) disbursements for union vehicle expenses. This additional information on salary, allowances, reimbursed expenses, and other disbursements would provide better transparency to union members and the public on how union funds are being spent. Further, this would provide OLMS additional data for targeting potential compliance audits and/or criminal cases, it was asserted.

Other suggestions included a requirement that the union report contact phone numbers and/or email addresses for all executive officers, require Form LM–3 filers to list all employees, and require LM–4 filers to list all officers. This would make it easier for OLMS investigators to contact the correct union officials, in the event of an investigation or audit.

The union, an investigator recommended, should provide the date of the most recent constitution and bylaws. This would assist the members in participating in the governance of their union and would aid OLMS in administering the Title IV election provisions of the LMRDA.

Taking the field's observations under consideration, along with OLMS' experiences in the administration of current reporting requirements, the Department makes the following proposals to establish a Form LM–2 Long Form (LF), and revise the Form LM–2.

C. Proposed Form LM–2 LF

In light of the Department's experience and observations, and to increase transparency for the benefit of union members, the public, and the Department, the Department proposes a long form version of the Form LM–2, the Form LM–2 LF. This form will be applicable to labor organizations with annual receipts of $8,000,000 or more. The $8,000,000 threshold is based on the Small Business Administration's definition of a small entity, as identified by North American Industry Classification System (NAICS) codes. 13 CFR 121.201. Some small-entity thresholds are lower, and some are higher; the Department has sought a threshold that ensures proper coverage of large unions while not overburdening smaller unions. By setting this threshold, the Department will bring additional transparency to the largest and most prominent labor unions.

When practicable, the changes to the form are set out in this section in the order in which they would appear on the form. When no change to an item is proposed, that fact is also noted. New material, added by this proposal, will be discussed in the order it would appear in a revised form. A facsimile of the current LM–2 is available at *https://www.dol.gov/olms/regs/compliance/GPEA_Forms/forms/Form_LM2_2021.pdf.* And the full proposed LM–2 LF is available on the rulemaking docket on *www.regulations.gov.*

The Department invites comment on all aspects of the proposed changes to the forms. In particular, the Department seeks comments on the following questions:

- Are there other changes to the LM forms that would help deter or expose potential misuse of union members' funds or other violations of the LMRDA?
- Are there other problematic practices involving, for instance, wastes of union funds, conflicts of interest, or failures to discharge fiduciary duties faithfully that potentially could be deterred or exposed by revisions to the LM forms?
- Are there other changes to the form that would help ensure transparency and accountability to the public, to union members, and to the Department regarding uses of union members' funds?
- Are there other means for union members to obtain the information sought in the proposal that would decrease the reporting burden on unions or maintain union confidentiality without sacrificing transparency and accountability?

Item 1—File Number. The Department proposes no change to this item.

Item 2—Period Covered. The Department proposes no change to this item.

Item 3—Amended, Hardship Exempted, Terminal, or Trusteeship Report. The Department proposes to add ''(d) TRUSTEESHIP'' with a checkbox to Item 3. The checkbox would indicate that the report is being filed by a labor organization for a subordinate labor organization that it has placed in trusteeship. This would assist the Department to determine whether a labor union is in trusteeship to ensure that the appropriate trusteeship reports (Form LM–15, Form LM–15A, or Form

LM–16) are also filed.[11] The Form LM–2 LF is only for labor organizations in trusteeships with $8,000,000 or more in annual receipts. Other trusteeships would be reported on the Form LM–2.

Item 4—Affiliation or Organization Name. The Department proposes no change to this item.

Item 5—Designation. The Department proposes no change to this item.

Item 6—Designation Number. The Department proposes no change to this item.

Item 7—Unit Name. The Department proposes no change to this item.

Item 8—Mailing Address. The Department proposes no change to this item.

Item 9—Records Kept. The Department proposes no change to these items.

Item 10—Trust or Other Fund. The Department proposes to redesignate the current Item 10 as Item 10(a).

The Department also proposes a new Item 10(b), concerning payments from more than one union. Item 10(b) would ask whether, during the reporting period, an officer or employee who was paid $10,000 or more by the reporting organization also received $10,000 or more as an officer or employee of another labor organization in gross salaries, allowances, and other direct and indirect disbursements during the reporting period. If the answer is ''Yes,'' the labor organization would provide additional information in Item 75—Additional Information.[12] This additional information would require the union to list the name of the officer, amount paid, labor organization that made the payment, and file number of the labor organization. This change would promote union democracy and accountability by helping members understand whether officers and employees are also receiving money from another union. This change would also help identify conflicts of interest and make it easier to track funds flowing from union to union.

Item 11—Political Action Committee (PAC) Funds, Subsidiary Organizations, and Strike Funds. The Department proposes no changes to current Items 11(a) (Political Action Committee funds) and 11(b) (Subsidiary organization). The Department proposes a new Item 11(c), in which the union would be required to report if it has a separate strike fund. If the answer is ''Yes,'' the union must provide, in Item 75—Additional Information, the amount of funds in the strike fund as of the close of the reporting period.

Strike funds are meant to help meet the basic needs of striking workers. Union members likely would be interested in knowing the financial strength of the strike fund. This knowledge would help union members when considering strategies for dealing with employers.

Unions promote strike funds to their members and make the case that members must contribute to a fund. If the strike fund is not as healthy as advertised, this could be a warning sign for members.

Strike funds are also subject to embezzlement. For example, on March 30, 2009, in the United States District Court for the Northern District of West Virginia, Steven Snyder, former Financial Secretary of Steelworkers Local 5724 (located in Clarington, Ohio), was sentenced to five months' incarceration after pleading guilty to embezzling $78,893.47 in union strike fund benefits. In another example, a former president of Steelworkers Union Local 5000 was indicted for submitting more than $185,000 in vouchers to receive Strike Fund benefits for his family's expenses between 2010 and 2012. He and his wife had nearly $160,000 in income during the same time period. While collecting Strike Fund benefits, he made and caused to be made numerous retail purchases of non-necessity items, such as dining out at several restaurants and the purchase of Carrie Underwood concert tickets. On October 18, 2017, in the United States District Court for the Northern District of Ohio, the defendant was sentenced and ordered to pay restitution. *https://www.justice.gov/usao-ndoh/pr/former-president-steelworkers-union-local-5000-charged-stealing-hundreds-thousandshttps://www.dol.gov/olms/regs/compliance/enforce_2017.htm*

The Department acknowledges that employers may benefit from knowing the extent of their employees' union strike fund during negotiations or a labor impasse. There is further a potential cost to individual members associated with public disclosure. Once publicly-available, the information may lead to less favorable contracts, harming the members. Given, nevertheless, that strike funds may hold substantial sums that otherwise would not be available for public inspection—and thus more opportunity for the detection of financial improprieties, as has happened in the past—and that public disclosure would make it easier for union members to review this information, the Department believes the benefits of disclosure outweigh competing considerations. The Department requests comment on this item and how it can best ascertain the proper and transparent use of union funds, including through strike funds.

Item 12—Audit or Review of Books and Records. The Department proposes no change to this item.

Item 13—Loss or Shortages. The Department proposes to revise Item 13 to clarify that reporting is required if the filer is aware the labor organization has experienced a shortage of funds. Currently Item 13 asks, ''During the reporting period did the labor organization discover any loss or shortage of funds or other assets?'' Yet, the person filling out the report may not report anything if he caused the loss through embezzlement, on the argument that he always knew of the loss. As revised, Item 13 would provide, ''During the reporting period did the labor organization experience and/or discover any loss or shortage of funds or other assets?'' Currently, reporting is required only when the shortage has been discovered. An individual responsible for filing the form may be responsible for, and therefore know of, an undiscovered embezzlement. The change in wording from ''discover'' to ''experience and/or discover'' would clarify that all shortages are reportable, even if the labor union itself has not discovered the loss, and that the union is on inquiry notice to take reasonable steps to uncover losses or shortages. This is more in keeping with typical financial certifications in which the filer must make reasonable inquiries as to things the filer knows or should know. So long as the officer filing the report is aware of the shortage, the shortage must be reported.

[11] The Form LM–15 Trusteeship Report requires both initial and semiannual reports. Initial reports are due within 30 days after a labor union imposes a trusteeship over a subordinate union. The form is filed by the parent union and it discloses the reasons for the trusteeship, when it was established, the financial condition of the trusteed union at the time the trusteeship was established, and other required information. Semiannual reports are due within 30 days after the end of each 6-month period for the duration of the trusteeship. The parent union must file a semiannual report, on Form LM–15, explaining its reasons for continuing the trusteeship.

Form LM–15A must be filed with a semiannual or terminal trusteeship report if, during the period covered by the report, there was any convention or other policy-determining body to which the subordinate union sent delegates or would have sent delegates if not in trusteeship, or any election of officers of the union that imposed the trusteeship over the subordinate union.

Within 90 days after the termination of the trusteeship, or the loss of identity as a reporting organization by the trusteed union, the parent union must file a Terminal Trusteeship Report, Form LM–16.

[12] Current Item 69—Additional Information is proposed to be renumbered Item 75—Additional information, with no substantive change. For clarity, we use the proposed numbering here.

Item 14—Fidelity Bond. The Department proposes no change to this item.

Item 15— Acquisition or Disposition of Assets. The Department proposes no change to this item.

Item 16—Pledged or Encumbered Assets. The Department proposes no change to this item.

Item 17—Contingent Liabilities. The Department proposes no change to this item.

Item 18—Changes in Constitution and Bylaws. The Department proposes to re-designate the current Item 18 as Item 18(a). The Department proposes a new Item 18(b). This item would require labor organizations to provide the date of the labor organizations' current constitution and bylaws. This would aid the Department, when conducting investigations of union elections and when supervising rerun elections, to ensure that the most current and correct provisions are applied. It would also aid union members in their efforts to follow the most current and accurate union procedures.

Item 19—Next Regular Election. The Department proposes no change to this item.

Item 20—Number of Members. The Department proposes no change to this item. This item is supported by Schedule 13—Membership Status. Schedule 13 would be renumbered Schedule 15—Membership Status, without any substantive change.

Item 21—Dues and Fees. The Department proposes no change to this item.

Statement A—Assets and Liabilities

This statement contains two primary sections, ''Assets'' and ''Liabilities.'' Under each heading are items listed that describe categories of assets or liabilities that should be reported. There are no proposed changes to the items listed under ''Assets'' and ''Liabilities.'' Two of the schedules (Schedule 1—Accounts Receivable Aging Schedule and Schedule 8—Accounts Payable Aging Schedule) that support these items would be revised. Specifically, the Department proposes to raise the $5,000 reporting threshold to a $7,500 threshold. This thresholds reflects that inflation has occurred since 2003, when the $5,000 threshold was promulgated. Further, with fewer transactions to itemize, the reporting burden would be reduced.[13]

[13] The Department's threshold increase to $7,500 will apply only to Schedule 1—Accounts Receivable Aging Schedule and Schedule 8 (proposed to be renumbered as Schedule 10)—Accounts Payable Aging Schedule. The other schedule thresholds will remain at $5,000.

Item 22—Cash. The Department proposes no change to this item.

Item 23—Accounts Receivable. The Department proposes no change to this item. Item 23 remains supported by Schedule 1. On its supporting schedule (Schedule 1—Accounts Receivable Aging Schedule), the Department proposes to raise the $5,000 reporting threshold to a $7,500 threshold. Accounts Receivable of less than $7,500 need not be reported. This 50 percent increase in the threshold would reduce the reporting burden.

Item 24—Loans Receivable. The Department proposes no change to this item. Item 24 remains supported by Schedule 2.

Item 25—U.S. Treasury Securities. The Department proposes no change to this item.

Item 26—Investments. The Department proposes no change to this item. This item is supported by Schedule 5—Investments. Schedule 5 would be renumbered Schedule 7—Investments, without substantive change.

Item 27—Fixed Assets. The Department proposes no change to this item. This item is supported by Schedule 6—Fixed Assets. Schedule 6 would be renumbered Schedule 8—Fixed Assets, without substantive change.

Item 28—Other Assets. The Department proposes no change to this item. This item is supported by Schedule 7—Other Assets. Schedule 7 would be renumbered Schedule 9—Other Assets, without substantive change.

Item 29—Total Assets. The Department proposes no change to this item.

Item 30—Accounts Payable. The Department proposes no change to this item. This item is currently supported by Schedule 8—Accounts Payable Aging Schedule. Schedule 8 would be renumbered Schedule 10—Accounts Payable Aging Schedule. The Department proposes to raise the $5,000 reporting threshold for that schedule to a $7,500 threshold. Accounts payable of less than $7,500 need not be reported.

Item 31—Loans Payable. The Department proposes no change to this item. This item is supported by Schedule 9—Loans Payable. Schedule 9 would be renumbered Schedule 11—Loans Payable, without substantive change.

Item 32—Mortgages Payable. The Department proposes no change to this item.

Item 33—Other Liabilities. The Department proposes no change to this item. This item is supported by Schedule 10—Other Liabilities. Schedule 10 would be renumbered Schedule 12— Other Liabilities, without substantive change.

Item 34—Total Liabilities. The Department proposes no change to this item.

Item 35—Net Assets. The Department proposes no change to this item.

Statement B—Receipts and Disbursements

This statement contains two sections, ''Cash Receipts'' and ''Cash Disbursements.'' Under each heading are items listed that describe categories of receipts or disbursements that should be reported. There is one proposed change to the items listed under ''Cash Receipts.'' Specifically, Item 43—Sale of Investments and Fixed Assets would be divided into two items, Item 43—Sale of Investments and Item 44—Sale of Fixed Assets. Subsequent items would be renumbered sequentially.

There are two proposed changes to the items listed under ''Cash Disbursements.'' First, Item 50—Political Activities and Lobbying would be renumbered and separated into Item 51—Political Activities and Item 52—Lobbying. Subsequent items would be renumbered sequentially.

Further, as discussed below, the Department proposes additional schedules to correspond to certain items listed under ''Cash Receipts'' that currently have no schedules. The Department also proposes additional schedules to correspond to items listed under ''Cash Disbursements.''

Cash Receipts

Item 36—Dues and Agency Fees. The Department proposes no change to this item. The Department proposes adding a new Schedule 16, discussed below.

Item 37—Per Capita Tax. The Department proposes no change to this item. The Department proposes adding a new Schedule 17, discussed below.

Item 38—Fees, Fines, Assessments, Work Permits. The Department proposes no change to this item. The Department proposes adding a new Schedule 18, discussed below.

Item 39—Sale of Supplies. The Department proposes no change to this item. The Department proposes adding a new Schedule 19, discussed below.

Item 40—Interest. The Department proposes no change to this item.

Item 41—Dividends. The Department proposes no change to this item.

Item 42—Rents. The Department proposes no change to this item. The Department proposes adding a new Schedule 20.

Item 43—Sale of Investments and Fixed Assets. The Department proposes

to divide Item 43—Sale of Investments and Fixed Assets into two items. Item 43 would be renamed Item 43—Sale of Investments. Item 43 is currently supported by Schedule 3—Sale of Investments and Fixed Assets. It would be supported by a new Schedule 3, which would be Schedule 3—Sale of Investments. The Department proposes a new Item 44—Sale of Fixed Assets. It would be supported by a new Schedule 4—Sale of Fixed Assets.

In doing so, the Department proposes to divide the Sale of Investments and Fixed Assets schedule into two schedules. On one schedule, Schedule 3—Sale of Investments, labor organizations would report receipts from the sale of investments. On another schedule, Schedule 4—Sale of Fixed Assets, the labor organization would report receipts from the sale of fixed assets.

Item 44—Loans Obtained. The Department proposes no substantive change to this item. Item 44 would be renumbered Item 45. It is currently supported by Schedule 9. It would now be supported by Schedule 11—Loans Obtained, without substantive change.

Item 45—Repayments of Loans Made. The Department proposes no substantive change to this item. Item 45 would be renumbered Item 46. The item remains supported by Schedule 2.

Item 46—On Behalf of Affiliates for Transmittal to Them. The Department proposes no substantive change to this item. Item 46 would be renumbered Item 47. Item 47—On Behalf of Affiliates for Transmittal would be supported by a new Schedule 21—On Behalf of Affiliates for Transmittal to Them.

Item 47—From Members for Disbursement on Their Behalf. The Department proposes no substantive change to this item. Item 47 would be renumbered Item 48. Item 48—From Members for Disbursement on Their Behalf would be supported by a new Schedule 22—From Members for Disbursement on Their Behalf.

Item 48—Other Receipts. The Department proposes no substantive change to this item. Item 48 would be renumbered Item 49. This item would no longer be supported by schedule 14. Item 48—Other Receipts would be supported by a new Schedule 23—Other Receipts.

Item 49—Total Receipts. The Department proposes no substantive change to this item. Item 49 would be renumbered Item 50.

Cash Disbursements

Item 50—Representational Activities. The Department proposes to divide Item 50—Representational Activities into two items. Item 50 would be renumbered Item 51 and renamed Item 51—Contract Negotiation and Administration. There would be a new Item 52—Organizing. Schedule 15 would be divided in two and designated Schedule 24—Contract Negotiation and Administration and Schedule 25—Organizing.

Item 51—Political Activities and Lobbying. The Department proposes to divide Item 51— Political Activities and Lobbying into two items. Item 51 would be renumbered Item 53, and renamed Item 53—Political Activities. There would be a new Item 54—Lobbying. The schedule, currently Schedule 16—Political Activities and Lobbying, would be split. It would be supported by a new Schedule 26—Political Activities and a new Schedule 27—Lobbying.

In doing so, the Department proposes to break the Political Activities and Lobbying schedule into two schedules. On Schedule 26, labor organizations would report disbursements for political activities. On Schedule 27, the labor organization would report lobbying disbursements.

Item 52—Contributions, Gifts, and Grants. The Department proposes no substantive change to this item. This item would be renumbered Item 55—Contributions, Gifts, and Grants. The item would be supported by a renumbered Schedule 28—Contributions, Gifts, and Grants, without substantive change.

Item 53—General Overhead. The Department proposes no substantive change to this item. This item would be renumbered Item 56—General Overhead. The Item would be supported by a renumbered Schedule 29—General Overhead, without substantive change.

Item 54—Union Administration. The Department proposes no substantive change to this item. This item would be renumbered Item 57—Union Administration. This Item would be supported by a renumbered Schedule 30—Union Administration, without substantive change.

Item 55—Benefits: This item would be renumbered Item 58—Benefits. The item would be supported by a renumbered and revised Schedule 31—Benefits, without substantive change.

Item 56—Per Capita Tax. The Department proposes no substantive change to this item. This item would be renumbered Item 59—Per Capita Tax.

Item 57—Strike Benefits. The Department proposes no substantive change to this item. This item would be renumbered Item 60—Strike Benefits.

Item 58.—Fees, Fines, Assessments, etc. The Department proposes no substantive change to this item. This item would be renumbered Item 61—Fees, Fines, Assessments, etc.

Item 59—Supplies for Resale. The Department proposes no substantive change to this item. This item would be renumbered Item 62—Supplies for Resale.

Item 60—Purchase of Investments and Fixed Assets. The Department proposes to divide Item 60—Purchase of Investments and Fixed Assets into Item 63—Purchase of Investments and Item 64—Purchase of Fixed Assets.

The current Item 60 is supported by Schedule 4—Purchase of Investments and Fixed Assets. The Department proposes to divide the Purchase of Investments and Fixed Assets schedule into two new schedules. On one schedule, proposed Schedule 5—Purchase of Investments, labor organizations would report disbursements for the purchase of investments. On another schedule, proposed Schedule 6—Purchase of Fixed Assets, labor organizations would report disbursements for the purchase of fixed assets.

Item 61—Loans Made. The Department proposes no substantive change to this item. This item would be renumbered Item 65—Loans Made. It would continue to be supported by Schedule 2— Loans Receivable.

Item 62—Repayment of Loans Obtained. The Department proposes no substantive change to this item. This item would be renumbered Item 66—Repayment of Loans Obtained. This item was previously supported by Schedule 9—Loans Payable and would now be supported by renumbered Schedule 11—Loans Payable, without substantive change.

Item 63—To Affiliates of Funds Collected on Their Behalf. The Department proposes no substantive change to this item. This item would be renumbered Item 67—To Affiliates of Funds Collected on Their Behalf.

Item 64—On Behalf of Individual Members. The Department proposes no substantive change to this item. This item would be renumbered Item 68—On Behalf of Individual Members.

Item 65—Direct Taxes. The Department proposes no substantive change to this item. This item would be renumbered Item 69—Direct Taxes.

Item 66—Subtotal. The Department proposes no substantive change to this item. This item would be renumbered Item 72—Subtotal.

Item 67—Withholding Taxes and Payroll Deductions. The Department proposes no substantive change to this item. This item would be renumbered Item 73—Withholding Taxes and Payroll Deductions.

Item 67a—Total Withheld. The Department proposes no substantive change to this item. This item would be renumbered Item 73a—Total Withheld.

Item 67b—Less Total Disbursed. The Department proposes no substantive change to this item. This item would be renumbered Item 73b—Less Total Disbursed.

Item 67c—Total Withheld But Not Disbursed. The Department proposes no substantive change to this item. This item would be renumbered Item 73c—Total Withheld But Not Disbursed.

Item 68—Total Disbursements. The Department proposes no substantive change to this item. This item would be renumbered Item 74—Total Disbursements.

Item 69—Additional Information. The Department proposes no substantive change to this item. This item would be renumbered Item 75—Additional Information.

Item 70—Signed. The Department proposes no substantive change to this item, which requires the signature of the union president or equivalent officer. This item would be renumbered Item 76—Signed.

Item 71—Signed. The Department proposes no substantive change to this item, which requires the signature of the union treasurer or equivalent officer. This item would be renumbered Item 77—Signed.

Schedule 1—Accounts Receivable Aging Schedule. The Department proposes no substantive change to this schedule. Under this schedule, a labor organization must report (1) all accounts with an entity or individual that aggregate to a value of $5,000 or more and that are 90 days or more past due at the end of the reporting period or were liquidated, reduced, or written off during the reporting period and (2) the total aggregated value of all other accounts receivable. The Department proposes to reduce the burden by raising the threshold to $7,500. Accounts below this threshold need not be individually reported.

Schedule 2—Loans Receivable. The Department proposes no substantive change to this schedule.

Schedule 3—Sale of Investments and Fixed Assets. Under this schedule, currently, a labor organization must report details of the sale or redemption of U.S. Treasury securities, marketable securities, other investments, and fixed assets, including those fixed assets that were expensed. The assets and the investments are totaled and the result is entered in Item 43.

As discussed above, under this proposed rule, Item 43 would be renamed Item 43—Sale of Investments. A new Item 44—Sale of Fixed Assets would be established.

The current Schedule 3—Sale of Investments and Fixed Assets does not allow the user to easily distinguish between investments and assets and does not allow the Department to electronically compare beginning-of-year investments, add purchases, and subtract sales, to determine end-of-year investments. The schedule does not include adequate information to determine whether a particular sale of an investment or asset was at fair market value and at arm's length.

To address this lack of transparency, the Department proposes to divide this schedule into new Schedule 3—Sale of Investments and new Schedule 4—Sale of Fixed Assets.

In the new Schedule 3—Sale of Investments, the Department proposes to add two new columns. The first new column, entitled ''Name and Address of Purchaser or Financial Management Firm (A),'' would disclose the purchasers of investments from the labor organization. A second column ''Date (C)'' would disclose the date of the sale. The other columns (Description (if land or buildings, give location); Cost; Book Value; Gross Sales Price; and Amount Received) would remain the same but would be designated with different letters, to accommodate the two new columns. The columns would thus read: ''Name and Address of Purchaser or Financial Management Firm (A); Description (B); Date of Sale (C); Cost (D); Book Value (E); Gross Sales Price (F); and Amount Received (G).'' These additions would enable members to determine, in conjunction with other publicly-available information, that a sale was transacted at fair market value and at arm's length, thereby helping to prevent interested parties from unjustly enriching themselves by purchasing labor organization investments at below-market price.[14]

The book value of an asset is the value at which the investment or fixed asset is shown on the labor organization's books. The value of certain investments such as stocks can vary greatly within the fiscal year. Because the date of sale is not listed on the current Form LM–2, it cannot be determined whether the labor organization received fair market value on the sale transaction.

The stock on the day of the sale may have been worth more than its book value. In this scenario, it is impossible to determine whether the stocks were sold by the labor organization at market value. The labor organization's financial report filed on the current Form LM–2 would show this transaction as a profit for the labor organization, but the transaction could also have in fact been less favorable to the labor organization if the investment was sold at a price below current market value. The proposed changes would also help ensure disclosure of any potential conflicts of interest between the purchaser and the labor organization. The schedule would total all individually itemized transactions and would provide the sum of the sales by itemized individual purchasers and the sum of all non-itemized sales of investments, as well as the total of all sales.

The second of the two divided schedules would be the new Schedule 4—Sale of Fixed Assets.

As in the case of new Schedule 3, the Department proposes to add two new columns to Schedule 4—Sale of Fixed Assets. The first new column entitled ''Name and Address of Purchaser (A)'' would disclose the purchasers of fixed assets from the labor organization. A second column ''Date (C)'' would disclose the date of the sale. The other columns (Description (if land or buildings, give location); Cost; Book Value; Gross Sales Price; and Amount Received) would remain the same but would be designated with different letters, to accommodate the two new columns. The columns would thus read ''Name and Address of Purchaser (A); Description (if land or buildings, give location) (B); Date of Sale (C); Cost (D); Book Value (E); Gross Sales Price (F); and Amount Received (G).'' These additions would provide members with information necessary to determine that the sale was transacted at fair market value and at arm's length, thereby helping prevent interested parties from unjustly enriching themselves by purchasing labor organization assets at below-market price.

With regard to fixed assets, the Department proposes that the union be required to identify automobiles individually by make, model, year, and Vehicle Identification Number (VIN). This information would be listed under existing Column A (Description). This would allow the union members and the Department to know, when considered in light of other publicly-available information, if the sale of these assets is consistent with fair market value.

In reports filed, there is often ambiguity as to the asset itself and the terms of its sale. For instance, one labor organization in its latest Form LM–2

[14] For investments sold over a registered exchange, no purchaser identity would be required. This exception is for bona fide market transactions over a registered securities exchange.

reported that it had sold ''automobiles'' for $14,700. The (unknown number of) automobiles had a cost of $85,996 and a book value of $76,397. Another labor organization sold an automobile with a cost of $62,645 and a book value of $43,850 for $14,000. In these situations, it cannot be determined whether the labor organization received fair market value for the items that it sold, whether an insider benefited from these transactions, or whether the union's officials are properly managing the labor organization's finances.

Schedule 4—Purchase of Investments and Fixed Assets. Under this schedule, a labor organization currently must report details of the purchases by the labor organization of U.S. Treasury securities, marketable securities, other investments, and fixed assets, including those fixed assets that were expensed.

The Department proposes to divide this schedule into new Schedule 5—Purchase of Investments and new Schedule 6—Purchase of Fixed Assets.

The current Schedule 4—Purchase of Investments and Fixed Assets does not allow the user to easily distinguish between investments and assets and does not allow the Department to electronically compare beginning-of-year investments, add purchases and subtract sales, to determine end-of-year investments. The schedule does not provide labor organization members with adequate information to enable them to determine whether a particular purchase of an investment or asset was transacted at fair market value and at arm's length. As with sales of investments and fixed assets, the Department proposes to break this schedule into two: Schedule 5—Purchase of Investments and Schedule 6—Purchase of Fixed Assets.

In the new Schedule 5—Purchase of Investments, the Department proposes to add two new columns. The first new column entitled ''Name and Address of Seller or Financial Management Firm (A)'' would disclose the identity of the seller of investments to the labor organization. A second new column would disclose the date of the purchase. The column titled: (Description (if land or buildings, give location) would be changed to ''Description.'' The remaining columns (Cost; Book Value; Gross Sales Price; and Cash Paid) would remain the same but would be designated with different letters, to accommodate the two new columns.

Likewise, to new Schedule 6—Purchase of Fixed Assets, the Department proposes to add two new columns. The first new column entitled ''Name and Address of Seller (A)'' would disclose the identity of the seller of investments to the labor organization. A second new column would disclose the date of the purchase. The other columns (Description (if land or buildings, give location)); Cost; Book Value; Gross Sales Price; and Amount Received) would remain the same but would be designated with different letters, to accommodate the two new columns.

These changes would provide information that, coupled with publicly-available information, can be used to determine that all such purchases were transacted at fair market value and at arm's length, thereby helping to prevent parties from unjustly enriching themselves by selling investments to a labor organization at above-market price. The Department's review of data filed on the current Form LM–2 has demonstrated that the current form does not provide labor organization members with a clear understanding of the entities that are receiving, in some cases, hundreds of thousands of dollars of the labor organization members' money. For instance, one labor organization listed on one line of its report disbursements of $259,173,494, another labor organization reported disbursements of $94,353,190, and another labor organization reported disbursements of $90,037,862. These reports provide only a description of the asset or investment, its cost, book value, and cash paid. None of the reports, however, disclosed the identity of the parties that sold these assets to these labor organizations. As a result, the members of these labor organizations are not in a position to know whether these sums of money were well-spent. The proposed changes help ensure the disclosure of any potential conflicts of interest between the seller and the labor organization.

The schedules would total all individually itemized transactions and would provide the sum of the purchases from itemized individual sellers and the sum of all other purchases of investments and fixed assets as well as the total of all purchases. This would allow the union members and the Department to know if purchase of these assets is consistent with fair market value.

Schedule 5—Investments. The Department proposes no substantive change to this schedule. The schedule would be renumbered to Schedule 7—Investments.

Schedule 6—Fixed Assets. The Department proposes no substantive change to this schedule. The schedule would be renumbered to Schedule 8—Fixed Assets.

Schedule 7—Other Assets. The Department proposes no substantive change to this schedule. The schedule would be renumbered to Schedule 9—Other Assets.

Schedule 8—Accounts Payable Aging Schedule. The Department proposes no substantive change to this schedule. The schedule would be renumbered to Schedule 10—Accounts Payable Aging Schedule. Under this schedule, currently, the labor organization must report (1) individual accounts that are valued at $5,000 or more and that are 90 days or more past due or were liquidated, reduced, or written off during the reporting period; and (2) the total aggregated value of all other accounts. The Department proposes to reduce the burden by raising the threshold to $7,500. Accounts below this threshold need not be individually reported. This change would decrease the burden on the filing party.

Schedule 9—Loans Payable. The Department proposes no substantive change to this schedule. The Department proposes to renumber this schedule to Schedule 11—Loans Payable.

Schedule 10—Other Liabilities. The Department proposes no substantive change to Schedule 10. The Department proposes to renumber this schedule to Schedule 12—Other Liabilities.

Schedule 11—All Officers and Disbursements to Officers. Under this schedule, the labor organization currently must list all the labor organization's officers and report all salaries and other direct and indirect disbursements to officers during the reporting period. The filer must also report the percentage of time spent by each officer in the functional categories provided, *e.g.,* ''representational activities,'' ''union administration,'' etc.

The Department proposes to renumber this schedule to Schedule 13—All Officers and Disbursements to Officers.

The Department proposes two revisions to this schedule. First, the Department proposes to eliminate functional reporting of union officer time. This would increase the readability of the form and reduce the burden on the regulated community. The Form LM–2 requires unions to report total disbursements in five functional categories and then itemize those disbursement if they reach a $5,000 threshold. Unions estimate the time spent by each union officer and employee on different duties, based on the categories of activities represented by the Form LM–2 schedules and reported as a percentage of work time, totaling 100 percent. For example, a

union officer may report that 60 percent of her time went to ''Representational Activities,'' 30 percent went to ''Union Administration,'' and 10 percent went to ''Political Activities and Lobbying.'' The Department proposes to eliminate the functional disbursement categories in the current Schedule 11, but will maintain the $5,000 threshold. Eliminating functional reporting for union officers would be accomplished by eliminating Line (I) from Schedule 11—All Officers and Disbursements to Officers.

When the Department imposed this requirement, ''[t]he Department believe[d] that requiring unions to report the estimated amount of time expended by their officers and employees will provide useful information to their members.'' 68 FR 58405. With the benefit of experience, the Department now understands that functional reporting of this sort provides the agency little value with respect to enforcing and administering the LMRDA, as the canvassing of the investigators revealed. The Department did not foresee that the data would be difficult to audit.

By removing officer and employee functional reporting, total disbursements to officers and employees would not show on Statement B. To address this, the Department proposes to add two new items, in which these sums would be reported. Item 70—Officers. This item will report on one line the total disbursed to officers. The software will automatically enter into this item the total from Schedule 13—All Officers and Disbursements to Officers. Previously the total from Schedule 13 was divided among the functional disbursements categories in proportion to the percentage of time reported to have been spent on those categories.

Item 71—Employees. This item will report on one line the total disbursed to employees. The software will automatically enter into this item the total from Schedule 14—Disbursements to Employees. Previously the total from Schedule 14 was divided among the functional disbursements categories in proportion to the percentage of time reported to have been spent on those categories.

Second, the Department proposes to eliminate the reporting exception for indirect disbursements for travel-related expenses when payment is made by the labor organization directly to the provider or through a credit arrangement. For example, when a union, through its credit arrangements, is billed directly and pays the airline bills of an officer, the union currently does not have to include this amount as part of the disbursements made to the particular officer. *See* current Form LM–2 Instructions at p. 18. Eliminating this exception would provide a more accurate picture of total disbursements received by labor organization officers and employees.

More specifically, a labor organization does not need to report a certain type of disbursement in current Schedule 11—All Officers and Disbursements to Officers. To be specific, a labor organization does not need to report ''[i]ndirect disbursements for temporary lodging (room rent charges only) or transportation by public carrier necessary for conducting official business while the officer is in travel status away from his or her home and principal place of employment with the labor organization if payment is made by the labor organization directly to the provider or through a credit arrangement.'' Current Form LM–2 Instructions at p. 18.

A ''direct disbursement'' to an officer is a payment made by the labor organization to the officer in the form of cash, property, goods, services, or other things of value. An ''indirect disbursement'' to an officer is a payment made by the labor organization to another party for cash, property, goods, services, or other things of value received by or on behalf of the officer. Such payments include those made through a credit arrangement under which charges are made to the account of the labor organization and are paid by the labor organization.

The distinction between reporting of direct and indirect disbursements has existed for more than 40 years. The distinction, which was not in the first set of Form LM–2 instructions, was established because of the difficulties then faced by unions in reconstructing documentation for certain payments for their prior fiscal year. Because of this difficulty, organizations were allowed to report such disbursements as functional expenses of the organization rather than as disbursements to particular officials. This distinction remained in the instructions and was not revisited by the Department despite changes in data reporting and record retention methods over the intervening decades that substantially reduced the burden of tracking and reporting disbursements. This issue was not addressed in the 2002–2003 rulemaking. In the 2009 rulemaking, this exception was eliminated. *See* 74 FR 3678, 3687. The Department proposes to again eliminate this distinction.

That payment for an official's travel and lodging expenses is made by credit card does not reduce the significance of the expense to a labor organization member, yet the current Form LM–2 treats the method of payment as significant. Travel and lodging expenses for a particular officer may raise questions among the membership for various reasons. The choice of transportation by public carrier (airplane, train, or bus) and the level of accommodation (first-class or coach) may be significant to a member. Lodging choices may run from a motor inn to a five-star hotel.

Where options are available, the officer's choice of accommodation may be significant to a member. However, the mode of payment now controls whether a labor organization member knows the full extent of disbursements made for a particular official of the labor organization. Although the specifics of the travel would not appear on the Form LM–2 LF, members would have a better understanding of the total amount of disbursements made to or on behalf of a particular official. Through this more complete reporting, members of the labor organization would be better able to determine whether such disbursements warrant further scrutiny, including review of the underlying documentation maintained by the labor organization.

Schedule 12—Disbursements to Employees. Under this schedule, a labor organization must report all direct and indirect disbursements to employees of the labor organization during the reporting period. The union must also report the percentage of time spent by each employee in provided categories. Disbursements to individuals other than officers who receive lost time payments are also included even if the labor organization does not otherwise consider them to be employees or does not make any other direct or indirect disbursements to them.

The Department proposes to renumber this schedule to Schedule 14—Disbursements to Employees. The proposed substantive changes to this schedule are identical to two of the changes to Schedule 11 for all officers and disbursements to officers, above, and the supporting reasons for the proposed changes are the same as described above for those changes. The Department, however, does not propose to obtain contact information for union employees.

The Department proposes two revisions to this schedule. First, the Department proposes to eliminate functional reporting of union-employee time. This would increase the readability of the form and reduce burden on the regulated community.

Second, the Department proposes to eliminate a currently available reporting exception. This exception is for indirect disbursements for temporary lodging or public transportation necessary for conducting official business while the employee is in travel status when payment is made by the labor organization directly to the provider or through a credit arrangement. *See* current Form LM–2 Instructions at p.18. This would provide a more accurate picture of total compensation received by labor organization employees.

Schedule 13—Membership Status. On Schedule 13, a union currently must report in Column (A) the categories of membership tracked by the reporting labor organization. The union must define each category of membership in Item 69 (Additional Information). The union should include a description of the members covered by the category and indicate whether the members pay full dues. In Column (B), the labor organization must enter the number of members for each of the membership categories listed in column (A).

The Department proposes to renumber Schedule 13—Membership Status to Schedule 15— Membership Status. The union would define each category of membership in renumbered Item 75 (Additional Information).

The Department also proposes to require reporting of retired members. Retired members do not necessarily share the same interests nor have the same voting rights as working members. Separately identifying this membership status would aid the members in understanding the composition of their union and assist the Department when supervising elections.

Detailed Summary Page: The current detailed summary page contains information from Schedule 14 through Schedule 19. The summary page provides members with a snapshot of the labor organization's activities. Members may then use this snapshot to determine whether further analysis of the individual itemized schedules is required. There is no burden associated with the summary page because the software would automatically enter the totals in the appropriate lines of the summary schedules as the labor organization fills out the individual itemization schedules.

The proposed detailed summary pages will reflect the order and the contents of the schedules they summarize. The first set of detailed summary pages reflect receipts and will consist of Schedule 16—Dues and Agency Fees (Item 36); Schedule 17—Per Capita Tax (Item 37); Schedule 18—Fees, Fines, Assessments, Work Permits (Item 38); Schedule 19—Sales of Supplies (Item 39); Schedule 20—Rents (Item 42); Schedule 21—On Behalf of Affiliates for Transmittal to Them (Item 47); Schedule 22—From Members for Disbursement on Their Behalf (Item 48); and Schedule 23—Other Receipts (Item 49).

The second set of detailed summary pages reflect disbursements and will consist of Schedule 24—Contract Administration and Negotiation (Item 51); Schedule 25—Organizing (Item 52); Schedule 26—Political Activities (Item 53); Schedule 27—Lobbying (Item 54); Schedule 28— Contributions, Gifts, and Grants (Item 55); Schedule 29—General Overhead (Item 56); and Schedule 30—Union Administration (Item 57).

Schedule 14—Other Receipts. The Department proposes to renumber this schedule to schedule 23—Other Receipts, with no substantive change.

Schedule 15—Representational Activities. As discussed above, the Department proposes to divide Schedule 15—Representational Activities into two schedules: Schedule 24—Contract Negotiation and Administration and Schedule 25—Organizing.

Under current Schedule 15—Representational Activities, a labor organization must report its direct and indirect disbursements to all entities and individuals during the reporting period associated with preparation for, and participation in, the negotiation of collective bargaining agreements and the administration and enforcement of the agreements made by the labor organization. The union must also report disbursements associated with efforts to become the exclusive bargaining representative for any unit of employees, or to keep from losing a unit in a decertification election or to another labor organization, or to recruit new members.

The Department proposed in 2002 the use of two schedules, one for contract negotiation and administration and one for organizing. *See* 67 FR 79280, 79288 (2002). Specifically, the NPRM proposed a Schedule 15 (Contract Negotiation and Administration) and a separate Schedule 16 (Organizing).

The 2002 proposed schedule for contract negotiation and administration called for reporting of disbursements for preparation for, and participation in, the negotiation of collective bargaining agreements and the administration and enforcement of collective bargaining agreements, including the administration and arbitration of union member grievances.

The 2002 proposed schedule for organizing required reporting of disbursements for activities in connection with becoming the exclusive bargaining representative for any unit of employees, or to keep from losing a unit in a decertification election or to another labor organization, or to recruit new members.

Based on comments received from labor organizations and others, the Department decided in the 2003 final rule not to include the separate category for reporting organizing disbursements and to require that disbursements for organizing be reported in combination with contract negotiation and administration disbursements in a single Schedule entitled ''Representational Activities.''

The Department consolidated the two schedules because it agreed with the commenters that organizing strategies deserve a level of protection. By combining the categories, the Department also met the concerns expressed by the building trades unions that they would be unable to allocate precise amounts to contract negotiations and organizing efforts. Specifically, several labor organizations, including the Building and Construction Trades Department of the AFL– CIO (BCTD), commented that it simply is not possible in the construction industry to separate disbursements made in connection with organizing efforts from disbursements made for contract negotiations and administration.[15] In this regard, they referred to section 8(f) of the National Labor Relations Act (29 U.S.C. 158(f)). This section provides, inter alia, that it is not an unfair labor practice for a construction industry employer to enter into pre-hire collective bargaining agreements with a labor organization whose majority status has not previously been established and which agreement requires membership in the union as a condition of employment. In these ''top down'' bargaining situations, the BCTD explained, the terms and conditions of employment are negotiated and agreed upon before any employees express support for or actually become members of the union.

The BCTD and others expressed the view that it is not possible in these situations to separate disbursements into contract negotiations differentiated from organizing. Further complicating the situation for building trades unions, these unions assert, is the fact that often these same unions also engage in traditional ''bottom up'' organizing. For such purposes, these unions would have to separately allocate disbursements for

[15] The BCTD is now known as NABTU, for the North America's Building Trades Union.

organizing and contract negotiations. Several commenters who supported the proposal to establish the organizing schedule argued that union members needed detailed information on their union's organizing activities to enable them to accurately assess their union's overall success or failure in its organizing efforts. The commenters argued that if separate allocations cannot be made in the pre-hire situation arising pursuant to section 8(f) of the NLRA, but separate allocations could be made for other traditional organizing efforts by the same union, a member would at best get an incomplete picture and at worst an inaccurate and misleading impression of the union's disbursements and overall effectiveness in organizing.

The Department believes it should not have consolidated these two schedules. Organizing and contract negotiation and administration are discrete activities. Arguably, one is akin to sales to new customers and the other to service for existing ones. Contract negotiation and administration benefit directly the members at the organized worksite. Organizing may generally strengthen the union but its benefits to the organized members are attenuated. Union members would benefit from knowing how much in disbursements goes to organizing, as compared to how much goes to contract administration and negotiation. Reasonable minds might differ over which should be the union's priority: Organizing or contract negotiation and administration. But absent information as to what balance among the two the union is striking, debate becomes largely academic. By breaking out these two discrete activities into two discrete schedules, however, union members can better determine whether the priorities the union accords to each is consistent with the opinion of the members.

Contrary to the Department's 2003 conclusion, consolidating into a single schedule may not be necessary to protect organizing. Specifically, labor unions currently disclose union organizing activity on the Form LM–2. Labor unions regularly report itemized disbursements on organizing activity on Schedule 14—Other Receipts, Schedule 15—Representational Activities, and Schedule 18—General Overhead. Within these schedules, Column B requires labor unions to identify the type of business or job classification of the entity or individual to which the union disbursed $5,000 or more during the reporting period. In Schedules 14, 15, and 18, labor unions frequently report ''organizing services'' as the type of business or job classification to which the union disbursed funds. Organizing disbursements are already disclosed by reporting unions.

Furthermore, in 2003 the Department implemented a special procedure for reporting confidential information on the Form LM–2, which, in part, was created to protect organizing efforts. When reporting confidential information labor organizations need not itemize the receipt or disbursement of certain expenditures that would be adverse to the union's legitimate interests. Labor unions may use the confidentiality exemption to avoid itemizing receipts or disbursements for the following information involving organizing: (1) Information that would identify individuals paid by the union to work in a non-union bargaining unit in order to assist the union in organizing employees, provided that such individuals are not employees of the union who receive more than $10,000 in the aggregate in the reporting year from the union and (2) information that would expose the reporting union's prospective organizing strategy. The confidentiality exemption provides an additional layer of protection to labor unions from disclosing itemized disbursements that could be detrimental to the success of organizing efforts.

In order to minimize any impact of reporting on the success of organizing efforts, however, neither the name of the employer nor the specific bargaining unit that is the subject of the organizing activity would need to be identified in the proposed schedule.

The Department also believes that in 2003 it should have recognized that a pre-hire agreement is merely a unique form of a collective bargaining agreement. As with section 9(a) collective bargaining agreements, a pre-hire agreement is a contract that is the result of a negotiation between a union and employer, which establishes the terms and conditions of employment for bargaining unit employees.

The principal difference between the two types of agreements is that an 8(f) pre-hire agreement permits collective bargaining activity prior to a union obtaining majority support from employees. In addition, an employee may be required to join the 8(f) union within seven days from the start of work.

These distinct qualities of pre-hire agreements show there is minimal need for a labor union to disburse funds to recruit new members or become the exclusive bargaining representative by obtaining majority support of the employees—key characteristics of organizing expenses. Pre-hire agreements are agreed upon by unions and employers via the collective bargaining process, not the organizing efforts of a labor union.

For the purposes of reporting disbursements on the Form LM–2 LF, the Department proposes that labor unions must consider the negotiation of 8(f) pre-hire agreements as collective bargaining activity.

Schedule 16—Political Activities and Lobbying. As discussed above, the Department proposes to divide Schedule 16—Political Activities and Lobbying into two schedules: Schedule 26— Political Activities and Schedule 27—Lobbying.

Under current Schedule 16—Political Activities and Lobbying, the labor organization must report its direct and indirect disbursements to all entities and individuals during the reporting period associated with political disbursements or monetary contributions. A political disbursement or contribution is one that is intended to influence the selection, nomination, election, or appointment of anyone to a federal, state, or local executive, legislative, or judicial public office, or office in a political organization, or the election of presidential or vice presidential electors, and support for or opposition to ballot referenda. It does not matter whether the attempt succeeds. The labor organization must include disbursements for communications with members (or agency fee paying nonmembers) and their families for registration, get-out-the vote, and voter education campaigns; the expenses of establishing, administering, and soliciting contributions to union segregated political funds (or PACs); disbursements to political organizations as defined by the IRS in 26 U.S.C. 527; and other political disbursements.

Political activities differ considerably from lobbying in terms of their purpose and their significance to union members. Political activities, in the form of campaign contributions, may be more likely to be subject to abuse because of the amount of money changing hands. It further stands to reason that there may be internal, and rank-and-file, disagreements with union-backed political positions on candidates. *Cf. Janus* v. *AFSCME, Council 31,* 138 S. Ct. 2448, 2461 (2018) (''Janus refused to join the Union because he opposes many of the policy positions that it advocates'' (internal punctuation omitted)). Combining lobbying with political activities masks the total spent on lobbying and the total spent on political activity and campaigning. If a union spends $1,000,000 on lobbying and political activities, the $1,000,000

could be perceived or characterized by the union as monies well spent on representing members. The union might not be able to make that argument, however, if it spent $50,000 on lobbying and $950,000 on political activity.

Lobbying is more germane to the core function of a labor organization: improving working conditions. Members have the right to know how much of their dues monies are going to political activities and how much are going to lobbying. The current consolidated schedule obscures this information, to the detriment of interested union members.

The 2002 Notice of Proposed Rulemaking, which introduced functional reporting categories, proposed to have separate schedules for political activities and lobbying. Upon review of the comments received, the Department instead combined the categories in its final rule. 68 FR 58374, 58397 (2005). One reason for combining the two categories was a prediction that little money would otherwise be reported in each schedule: ''Further, the Department's decision to combine the two Schedules will increase the likelihood that the Schedule will be used to report a sufficient amount of information to prove useful to union members.'' *Id.* at 58398. This prediction proved untrue. The total amount of disbursements reported in Schedule 16—Political Activities and Lobbying for all FY16 filers was $741,357,982. For FY17, the total was $628,643,192. For FY18, the figure was $747,169,805. In a review of 20 major unions, several unions reported spending more on political activities and lobbying than on union administration. These 20 unions spent $218,205,729 on political activities and lobbying, while spending $155,815,458 on contributions, gifts, and grants, and $281,824,428 on union administration. One union reported spending more on political activities and lobbying, $17,764,359, than on representational activities, $3,791.442. All told, 9.7 percent of the spending on the five functional categories (Representational Activities; Political Activities and Lobbying; Contributions, Gifts, and Grants; General Overhead, and Union Administration) of these 20 unions was spent on political activities and lobbying. There are strong indications, therefore, that substantial sums are disbursed for political activities and for lobbying.

The 2003 final rule also chose to consolidate into a single schedule the two activities because requiring the separate reporting of ''political activity'' and ''lobbying'' is made difficult by the requirement that time estimates of union officials be recorded in 10 percent increments of total work time. 68 FR 58398.This objection is no longer well-founded because the Department proposes to eliminate functional reporting of union officer and union employee time.

The Department based its previous decision to consolidate the schedule on the perception that distinguishing between ''political activities,'' in the election-specific sense of that term, and ''lobbying'' is ''not always easy.'' 68 FR 58398. The Department still agrees with this sentiment, but now posits that it cuts in favor of dividing the schedules. Having reviewed the ''purpose'' line of numerous reports over the years, the Department has found that the purpose and nature of the disbursement are often not discernable. A union member's inability to determine the purpose of an expenditure and whether an expenditure is lobbying or political activity is a failure of transparency that this proposed rule would address. As between the union and its members, the union is in a better position to know and disclose the nature of the disbursement. Additionally, separate regimes exist for reporting political activities versus lobbying activities at both the state and federal level showing that these categories are in fact distinct and could be separated for reporting purposes.[16]

Federal law treats lobbying as a discrete activity. At the federal level, the Lobbying Disclosure Act (LDA) imposes registration and reporting obligations on individuals and entities that lobby various federal officials once certain thresholds have been exceeded. 2 U.S.C. 1601 *et seq.* The LDA applies to any entity that lobbies, whether 501(c)(3), 501(c)(4), union or for-profit. The term ''lobbying activities'' means lobbying contacts and efforts in support of such contacts, including preparation and planning activities, research, and other background work that is intended, at the time it is performed, for use in contacts, and coordination with the lobbying activities of others. 2 U.S.C. 1602(7). The term ''lobbying contact'' means any oral or written communication (including an electronic communication) to a covered executive branch official or a covered legislative branch official that is made on behalf of a client with regard to—(i) the formulation, modification, or adoption of federal legislation (including legislative proposals); (ii) the formulation, modification, or adoption of a federal rule, regulation, Executive Order, or any other program, policy, or position of the United States Government; (iii) the administration or execution of a federal program or policy (including the negotiation, award, or administration of a federal contract, grant, loan, permit, or license); or (iv) the nomination or confirmation of a person for a position subject to confirmation by the Senate. 2 U.S.C. 1602(8). As labor organizations already must separately report lobbying activities under the LDA, they should be able to separate out this activity from other activities, like political activities.

Schedule 17—Contributions, Gifts, and Grants. The schedule would be renumbered to Schedule 28—Contributions, Gifts, and Grants, with no substantive changes.

Schedule 18—General Overhead. The schedule would be renumbered to Schedule 29— General Overhead, with no substantive changes.

Schedule 19—Union Administration. The schedule would be renumbered to Schedule 30— Union Administration, with no substantive changes.

Schedule 20—Benefits. The schedule would be renumbered to Schedule 31—Benefits. The schedule would no longer contain benefits information for union officers and union employees, as this information would appear next to their names, as discussed above, in proposed Schedule 11—All Officers and Disbursements to Officers and proposed Schedule 12—Disbursements to Employees.

New Schedules. The Department proposes to add new schedules that coincide with the items of cash receipts listed on Statement B—Receipts and Disbursements. These schedules represent new requirements that labor organizations itemize the individual categories of receipts aggregated to $5,000 from any one source. The labor organization would be required to complete a separate itemization schedule for each individual or entity from which the labor organization has received $5,000 or more. Each transaction from that individual or entity would be accompanied by information about the individual, the purpose of the payment, the date of the payment, and the amount of the payment. The total amount received from the individual or entity, both itemized and non-itemized, would be

[16] A 501(c)(3) tax exempt organization is subject to restrictions on lobbying and political activities. 26 U.S.C. 501(c)(3). Engaging in any political activities may result in revocation of tax-exempt status, and imposition of certain excise taxes. Lobbying may not represent a ''substantial part'' of the activities of an organization exempt under Section 501(c)(3). Under the substantial part test, codified in part in Section 1.501(c)(3)–1(c)(3)(ii) of the Treasury Regulations, an organization's tax-exempt status will not be at risk because of lobbying unless it exceeds the ''substantial part'' limitation.

included at the bottom of the itemized schedule. The totals from each itemized schedule would then be added together and that number would be entered in the appropriate item on Statement B.

These proposed additional schedules correspond to the following categories of receipts:

- Dues and Agency Fees (Item 36);
- Per Capita Tax (Item 37);
- Fees, Fines, Assessments, Work Permits (Item 38);
- Sales of Supplies (Item 39);
- Rents (Item 42);
- On Behalf of Affiliates for Transmittal to Them (Item 47); and
- From Members for Disbursement on Their Behalf (Item 48).

These schedules will provide additional information, by these receipt categories, of aggregated receipts of $5,000 or more. This proposed change is consistent with the information currently provided on disbursements.

Currently, Form LM–2 filers report on Statement B only the total amount received from dues and agency fees; per capita taxes; fees, fines, assessments, work permits; sales of supplies; interest; dividends; rents; receipts on behalf of affiliates for transmittal to them; and receipts from members for disbursement on their behalf. In some instances, these line items exceed $30 million. For example, one labor organization stated that it received over $298 million in per capita taxes and another received over $33 million in rent. Little useful information can be discerned from these totals alone. The new Form LM–2 LF would require itemization of certain of these categories from the largest unions.

The lack of itemization of most receipts on the current Form LM–2 makes it easier for wrongdoers to embezzle money from labor organization accounts. In one case, an eight-count felony indictment charged a union treasurer with taking the union's dues checks from the employer of the union members. Instead of depositing the checks into the union's bank account, the union treasurer endorsed the checks and deposited them into his own personal bank account under false pretenses. According to the indictment, the combined value of the property stolen amounted to $18,720. Even if the individual checks had been in amounts of $5,000 or more, however, rank and file members would have been unable to detect the conversion because the current Form LM–2 requires the disclosure of only the yearly total received in dues checks, not the reporting of individual checks received from employers. The proposed form would contain itemized information for each check that is $5,000 or more and disclose whether other checks aggregate to $5,000 or more. If receipt checks, either alone or in combination, aggregate to $5,000 or more, the labor organization would disclose this on the form. The change would address this problem, which extends to all the various reporting categories on the current form and not merely the receipt of dues payments, because now receipts-side embezzlements would be harder to hide.

By providing itemization of receipts, labor organizations would better disclose to their members and the public a full accounting of all funds received and the identity of individuals and entities with whom the labor organization does business. The Department could use this information to determine the purpose of any receipt from one source in an amount of $5,000 or more. Knowing the purpose of a receipt would help identify possible diversion. Labor organization members could ensure that money they paid to the organization for disbursements on their behalf is accounted for on the Form LM–2 LF. If there is no itemized receipt in new Schedule 22—From Members for Disbursement on their Behalf for payments of $5,000 or more or the receipt is less than expected, then the member would know that the money was not properly reported and may pursue other avenues to determine what has happened to the funds. The new Schedules 16 through 22 would be as follows:

Schedule 16—Dues and Agency Fees (new schedule);

Schedule 17—Per Capita Tax (new schedule);

Schedule 18—Fees, Fines, Assessments, and Work Permits (new schedule);

Schedule 19—Sale of Supplies (new schedule);

Schedule 20—Rents (new schedule);

Schedule 21—Receipts on Behalf of Affiliates for Transmittal to Them (new schedule); and

Schedule 22—Receipts from Members for Disbursement on Their Behalf (new schedule).

Under the current Form LM–2, receipts listed under the above-listed categories on Statement B are not itemized on a separate schedule for aggregate amounts that meet or exceed the threshold. The only itemized receipts are ''Other Receipts.'' ''Other Receipts'' that meet or exceed the threshold are itemized on the current Schedule 14. Proposed Schedules 16 through 22 would include the same information that is currently required on Schedule 14 for ''Other Receipts.''

New Schedule 32—Foreign Transactions. The Department seeks comment on whether to establish a Schedule 32—Foreign Transactions on the Form LM–2 LF if the labor union engages in a transaction with a foreign entity or a foreign individual. The labor organization would report any individual receipt of $5,000 or more, or total receipts from any single entity or individual that aggregate to $5,000 or more during the reporting period, derived from a foreign entity or individual. These transactions would also appear in the functional categories of Schedules 24 through 31 but this schedule would permit the union members to know whether the union is conducting transactions with foreign entities or individuals. It is a growing concern for many American workers to have their jobs outsourced overseas. Union members and prospective members have a right to know if their collective bargaining representative has an interest in a non-American workforce. In 2019 alone, one national union sent $931,830 to unions, law firms, and consultants at foreign addresses. Although the payees were identified by functional category, there is not one single location where a union member can find out whether the labor union is engaging in significant foreign transactions.[17] The Department requests comments from interested parties in union transactions with foreign entities or individuals.

The confidentiality exemption. Additionally, the Department requests comments on whether to modify, narrow, or eliminate the confidentiality exception in the Form LM–2 instructions. Currently, the following information is subject to special reporting privileges under the confidentiality exception: (1) Information that would identify individuals paid by the union to work in a non-union facility in order to assist the union in organizing employees, provided that such individuals are not employees of the union who receive more than $10,000 in the aggregate from the union in the reporting year; (2) information that would expose the reporting union's prospective organizing

[17] Form 990, Schedule F, is used by an organization that files Form 990, Return of Organization Exempt From Income Tax, to provide information on its activities conducted outside the United States by the organization at any time during the tax year. Activities conducted outside the United States include grants and other assistance, program-related investments, fundraising activities, unrelated trade or business, program services, investments, or maintaining offices, employees, or agents for the purpose of conducting any such activities in regions outside the United States. See Instructions for Form 990, Schedule F.

strategy; (3) information that would provide a tactical advantage to parties with whom the reporting union or an affiliated union is engaged or would be engaged in contract negotiations; (4) information pursuant to a settlement that is subject to a confidentiality agreement, or that the union is otherwise prohibited by law from disclosing; and (5) information in those situations where disclosure would endanger the health or safety of an individual. If the receipt or disbursement fits within one of the above broad categories, then the labor organization need not itemize the receipt or disbursement. Instead it may include the receipt or disbursement in the aggregated total on Line 3 of Summary Schedules 23—Other Receipts, 24—Contract Negotiations and Administration, 25—Organizing, or 30—Union Administration, as appropriate.

There are legitimate reasons why a union may wish to utilize these five categories. But the current broad confidentiality exception makes it impossible to ascertain from reviewing the form the actual purpose and payer/payee of many receipts and disbursements. For example, one labor organization did not identify the name of the payee, date of disbursement, or the amount of the transaction for more than 46 percent of its disbursements. This labor organization reported $5,931,513 in disbursements on Schedule 15, Line 5 (All Other Disbursements). In Item 69, the labor organization stated that it had excluded certain confidential information from Schedule 15, but included the information in the totals. This same labor organization's total disbursements were $12,811,076. On a related matter, the Department's review of Form LM–2 filings has found that many major receipts and disbursements that do not qualify for the confidentiality exception, 68 FR 58499–500, are being included on Line 3 (total All Other Receipts) of Summary Schedule 14—Other Receipts or on Line 5 (total All Other Disbursements) of Summary Schedules 15—Representational Activities or 19—Union Administration. Labor organizations are usually describing the general type of information that was omitted from the schedule in Item 69—Additional Information, but the name of the payer/payee, date, and amount of the transaction(s) are not included. A member now can obtain specific information about these confidential transactions only by requesting such information directly from the labor organization.

The Department seeks comment on whether all transactions greater than $5,000 should be identified by amount and date in the relevant schedules. If, on the other hand, a confidentiality exemption should be retained, the Department seeks comments on the scope of the exemption. Commenters can provide their views on whether the five current categories should be retained in their current form, modified, or eliminated.

Employer Identification Number. The Department invites comment on whether to require the disclosure of the EIN for vendors that received payments that trigger itemized disclosure ($5,000 or more) on new schedules 24 through 30. This would require an additional column on these schedules and would give the Department and the members visibility into year-over-year payments to the same organizations. The use of ''Doing Business As'' designations and name changes would no longer hinder a member from determining the union's involvement with the same vendors year after year. It would allow a member to determine whether a vendor or payee is a business affiliated with a union officer, for example, because the business could be identified.

Whistleblower Provisions. The Department seeks comment on whether to add an item asking, ''Does the Organization have a written whistleblower policy?'' to the informational items. Federal law prohibits tax exempt organizations from retaliating against employees who expose wrongdoing with regard to their employer's financial management and accounting practices. In Form 990, the IRS asks if the organization has written policies on the handling of whistleblowers. *See* Exempt Organizations Annual Reporting Requirements—Governance (Form 990, Part VI). Many states have also enacted laws to protect whistleblowers from retaliation at the workplace.[18] Employers, including labor organizations, benefit from a process for addressing complaints, as it provides an opportunity for the union to improve its practices. Also, adopting a whistleblower protection policy signals to employees and to union members that the union values transparency and accountability. The Department generally invites comments on whether other good governance questions should be asked.

D. Proposed Revisions to Form LM–2

To increase transparency, the Department proposes revisions to the Form LM–2, which would be applicable to labor organization with annual receipts of $250,000 to $7,999,999. Many of the changes and rationale mirror those of the Form LM–2 LF, described above. For brevity, the Department refers to those changes and rationales, and incorporates them by reference, rather than repeating them verbatim.[19]

On the Form LM–2, the Department proposes to add ''(d) TRUSTEESHIP'' with a checkbox to Item 3. The checkbox would indicate that the report is being filed by a labor organization for a subordinate labor organization that it has placed in trusteeship.

With regard to Item 10—Trust or Other Fund, the Department proposes to redesignate the current Item 10 as Item 10(a).

The Department also proposes a new Item 10(b), concerning payments from more than one union. Item 10(b) would ask whether, during the reporting period, an officer or employee who was paid $10,000 or more by the reporting organization also received $10,000 or more as an officer or employee of another labor organization in gross salary, allowances, and other direct and indirect disbursements during the reporting period. If the answer is ''Yes,'' the labor organization would provide

[18] *See e.g.,* Ala. Code §§ 25–8–57, 36–26A–1 to –26A–7; Alaska Stat. Ann. §§ 18.60.089, 18.60.095, 39.90.100–150; Ariz. Rev. Stat. Ann. §§ 23–425, 38–531–534; Ark. Code Ann. § 16–123–108; Cal. Lab. Code § 1102.5–1106; Colo. Rev. Stat. §§ 24–50.5–101 to –107, 24–114–101 to–103; Conn. Gen. Stat. §§ 4–61dd(e), 31–51m; Del. Code Ann. §§ 5115, 1701–1708; Fla. Stat. §§ 112.3187–.31895; Ga. Code Ann. § 45–1–4; Haw. Rev. Stat. §§ 378–61 to –69; Idaho Code Ann. § 6–2101 to –2109; 20 Ill. Comp. Stat. 415/19c.1, 740 Ill. Comp. Stat. 174/10–174/40; Ind. Code §§ 4–15–10–4, 22–5–3–3, 36–1–8–8; Iowa Code Ann. §§ 70A.28–.29; Kan. Stat. Ann. § 75–2973; Ky. Rev. Stat. Ann. §§ 61.101–.103, 338.121, 338.991; La. Rev. Stat. §§ 30:2027, 42:1169; Me. Rev. Stat. Ann. tit. 26 §§ 831–840; Md. Code Ann. State Personnel and Pensions §§ 5–301 to –314, State Finance and Procurement § 11–301 to –306; Mass. Gen. Laws ch. 149 § 185; Mich. Comp. Laws § 15.361–.369; Miss. Code Ann. §§ 25–9–171 to –177; Mo. Rev. Stat. § 105.055; Neb. Rev. Stat. §§ 81–2701 to –2711, 48–1114; Nev. Rev. Stat. §§ 281.611–.671, 618.445; N.H. Rev. Stat. Ann. §§ 98–E:1–4, 275–E:1–9; N.J. Stat. Ann. §§ 34:19–1 to –14; N.M. Stat. Ann. § 50– 9–25, 10–16C–1 to –6; N.Y. Labor Law §§ 740, 741, N.Y. Civ. Serv. Law § 75–b(2); N.C. Gen. Stat. §§ 126–84 to –88; N.D. Cent. Code § 34–11.1–04; Ohio Rev. Code §§ 124.341, 4113.52; Okla. Stat. tit. 74 § 840–2.5; Or. Rev. Stat. §§ 654.062, 659A.199–.236; R.I. Gen. Laws §§ 28–50–1 to –9; S.C. Code Ann. §§ 8–27–10 to –60, 41–15–510 to –520; Tenn. Code Ann. §§ 50–1–304, 50–3–106, 50–3–106, 8–50–116; Tex. Gov't Code Ann. §§ 554.001–.010, Tex. Lab. Code Ann. § 21.055; Utah Code Ann. §§ 67–21–1 to –10; Vt. Stat. Ann. tit. 3, §§ 971–978, tit. 21, § 231; Wash. Rev. Code §§ 42.40.010–.910, 49.60.210(2); W. Va. Code § 6C–1–1 to –8, 21–3A–13; Wis. Stat. §§ 230.80–.89; Wyo. Stat. Ann. §§ 9–11–103, 27–11–109(e). *See* Robert J. Nobile, *Human Resources Guide,* § 5:169 (selected state whistleblower statutes) (July 2020 update).

[19] The Department notes below where variations between the proposed Form LM–2 LF and the proposed Form LM–2 exist.

additional information in Item 75—Additional Information. This additional information would require the union to list the name of the officer, amount paid, entity that made the payment, and file number of the entity.

The Department proposes to revise Item 13 (Losses or Shortages) to clarify that reporting is required if the filer is aware the labor organization has experienced and/or discovered a shortage of funds. Currently Item 13 asks, ''During the reporting period did the labor organization discover any loss or shortage of funds or other assets?'' As revised, Item 13 would provide, ''During the reporting period did the labor organization experience and/or discovered any loss or shortage of funds or other assets?''

With regard to Item 18 (Changes in Constitution and Bylaws), the Department proposes to redesignate the current Item 18 as Item 18(a). The Department proposes a new Item 18(b). This item would require labor organizations to provide the dates of their constitution and bylaws.

Statement A—Assets and Liabilities

Items 22 through 35 listed under Statement A—Assets and Liabilities will adopt the same schedules proposed in the LM–2 LF.

Statement B—Receipts and Disbursements

With regard to Items 36 through 50 listed under ''Cash Receipts,'' the Department does not propose additional schedules to those items that currently do not have schedules. This will avoid imposing the burden of itemizing cash receipts on smaller unions, which have fewer resources to invest in tracking and reporting financial information. However, items with schedules will adopt the schedule numbers proposed in the LM–2 LF.

The Department proposes to divide Item 43—Sale of Investments and Fixed Assets into two items. Item 43 would be renamed Item 43—Sale of Investments. Item 43 is currently supported by Schedule 3—Sale of Investments and Fixed Assets. It would be supported by a new Schedule 3—Sale of Investments. The Department proposes a new Item 44—Sale of Fixed Assets, which would be supported by a new Schedule 4—Sale of Fixed Assets.

On Schedule 3—Sale of Investments, labor organizations would report receipts from the sale of investments. On, Schedule 4—Sale of Fixed Assets, the labor organization would report receipts from the sale of fixed assets.

In the new Schedule 3—Sale of Investments, the Department proposes to add two new columns. The first new column, entitled ''Name and Address of Purchaser or Financial Management Firm (A),'' would disclose the purchasers of investments from the labor organization. A second column ''Date (C)'' would disclose the date of the sale. The other existing columns would remain the same but would be designated with different letters. The columns would thus read, in order, ''Name and Address of Purchaser or Financial Management Firm (A); Description (B); Date of Sale (C); Cost (D); Book Value (E); Gross Sales Price (F); and Amount Received (G).''

The Department proposes to add two new columns to new Schedule 4—Sale of Fixed Assets. The first new column entitled ''Name and Address of Purchaser (A)'' would disclose the purchasers of fixed assets from the labor organization. A second column ''Date (C)'' would disclose the date of the sale. The columns would thus read ''Name and Address of Purchaser (A); Description (if land or buildings, give location) (B); Date of Sale (C); Cost (D); Book Value (E); Gross Sales Price (F); and Amount Received (G).'' With regard to fixed assets, the Department proposes that the union would be required to identify automobiles individually by make, model, year, and Vehicle Identification Number (VIN). This information would be listed under existing Column A (Description).

Proposed Items 51 through 72 listed under ''Cash Disbursements'' will adopt the same schedules proposed in the LM–2 LF, except where indicated below.

The Department proposes to divide Item 50—Representational Activities into two items. Item 50 would be renumbered Item 51 and renamed Item 51—Contract Negotiation and Administration. There would be a new Item 52—Organizing. The schedule, currently numbered Schedule 15, would be split in two and renumbered Schedule 17 and Schedule 18. The first would be designated Schedule 17—Contract Negotiation and Administration. The second would be Schedule 18—Organizing.

The Department proposes to divide Item 51—Political Activities and Lobbying into two items. Item 51 would be renumbered Item 53 and renamed Item 53—Political Activities. There would be a new Item 54—Lobbying. Current Schedule 16—Political Activities and Lobbying would be split. It would be replaced by a new Schedule 19—Political Activities and a new Schedule 20—Lobbying. On Schedule 19, labor organizations would report disbursements for political activities. On Schedule 20, the labor organization would report lobbying disbursements.

The Department proposes no substantive change to Item 52, which would be renumbered Item 55—Contributions, Gifts, and Grants. This item was previously supported by Schedule 17 and would now be supported by renumbered Schedule 21—Contributions, Gifts, and Grants, without substantive change.

The Department proposes no substantive change to Item 53, which would be renumbered Item 56—General Overhead. This item was previously supported by Schedule 18 and would now be supported by renumbered Scheduled 22—General Overhead, without substantive change.

The Department proposes no substantive change to Item 54, which would be renumbered Item 57—Union Administration. This item was previously supported by Schedule 19 and would now be supported by renumbered Schedule 23—Union Administration, without substantive change.

Item 55 would be renumbered Item 58—Benefits, and not substantively changed. This item was previously supported by Schedule 20 and would now be supported by renumbered Schedule 24—Benefits, without substantive change.

The Department proposes to divide Item 60—Purchase of Investments and Fixed Assets into two items: Item 63—Purchase of Investments and Item 64—Purchase of Fixed Assets. The Department proposes to divide Schedule 4—Purchase of Investments and Fixed Assets into two. The first would be a new Schedule 5—Purchase of Investments. The second would be a new Schedule 6—Purchase of Fixed Assets.

The Department proposes to add two new columns to new Schedule 5—Purchase of Investments. The first new column entitled ''Name and Address of Seller or Financial Management Firm (A)'' would disclose the identity of the seller of investments to the labor organization. A second column ''Date (C)'' would disclose the date of the purchase. The other columns ((Cost (B); Book Value (C); Gross Sales Price (D); and Amount Received (E)) would remain the same but would be designated with different letters, to accommodate the two new columns. The columns would thus read ''Name and Address of seller or Financial Management Firm (A); Description (B); Date of Purchase (C); Cost (D); Book Value (E); Gross Sales Price (F); Cash Paid (G).''

The Department proposes to add two new columns to Schedule 6—Purchase of Fixed Assets. The first new column entitled ''Name and Address of Purchaser (A)'' would disclose the identity of the seller of investments to the labor organization. A second column ''Date (C)'' would disclose the date of the purchase. The columns would thus read ''Name and Address of Seller (A); Description (if land or buildings, give location) (B); Date of Purchase (C); Cost (D); Book Value (E); Gross Sales Price (F); and Amount Received (G).'' The Department proposes that the union would be required to identify automobiles individually by make, model, year, and Vehicle Identification Number (VIN). This information would be listed under existing Column A (Description).

Schedule 11—All Officers and Disbursements to Officers would be renumbered Schedule 13— All Officers and Disbursements to Officers. In this schedule, the Department proposes to eliminate functional reporting of union officer time by removing Line (I).

Schedule 12—Disbursements to Employees will be renumbered Schedule 14—Disbursements to Employees. The Department proposes to eliminate functional reporting of union employee time by removing Line (I).

The Department also proposes to renumber Schedule 13—Membership Status to Schedule 15—Membership Status. The Department proposes to require reporting of retired members.

The confidentiality exemption. Similar to the discussion above, in section C. Proposed Form LM–2 LF the Department requests comments on whether modify, narrow, or eliminate the confidentiality exemption in the Form LM–2 instructions. The Department seeks comment on whether all transactions greater than $5,000 should be identified by amount and date in the relevant schedules. If, on the other hand, a confidentiality exemption should be retained, the Department seeks comments on the scope of the exemption. Commenters can provide their views on whether the five current categories should be retained in their current form, modified, or eliminated.

Filing Threshold. The Department seeks comment on whether to raise the threshold for filing the Form LM–2 from its current $250,000 level. Shortly after the LMRDA was enacted in 1959, the threshold for filing the Form LM–2 was set by the Secretary at $20,000. The threshold was raised by the Secretary in 1962 to $30,000 and again in 1981 to $100,000. It was set at $250,000 by regulation in 2003. If any of these levels were now adjusted for inflation, the amount would be greater than the current threshold of $250,000. The Department seeks comment on whether to raise the threshold to $300,000. Although the overwhelming majority (78.5%) of all reporting labor organizations are currently exempt from filing Form LM–2, changing the threshold to $300,000 would reduce the recordkeeping and reporting burden for approximately 273 labor organizations. Taking such action, would however, reduce the amount of information available to their 441,247 members.

The Department will continue its past practice of periodically assessing the appropriateness of the filing threshold to ensure that it is relevant in terms of the current economy and universe of labor organizations. The Department invites comments on the proposal to raise the threshold for filing the Form LM–2 to $300,000.

E. Effective Date

The Department proposes that its rule take effect 30 days after publication and apply prospectively to labor organizations' fiscal years beginning on or after the effective date of a final rule promulgated after this notice of proposed rulemaking.

IV. Regulatory Procedures

Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Review)

Under Executive Order (E.O.) 12866, the Office of Management and Budget (OMB)'s Office of Information and Regulatory Affairs (OIRA) determines whether a regulatory action is significant and, therefore, subject to the requirements of the E.O. and OMB review.[20] Section 3(f) of E.O. 12866 defines a ''significant regulatory action'' as an action that is likely to result in a rule that (1) has an annual effect on the economy of $100 million or more, or adversely affects in a material way 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) creates serious inconsistency or otherwise interferes with an action taken or planned by another agency; (3) materially alters the budgetary impacts of entitlement grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the E.O. OMB has determined that this rule is significant under section 3(f) of E.O. 12866.

E.O. 13563 directs agencies to propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs; the regulation is tailored to impose the least burden on society, consistent with achieving the regulatory objectives; and in choosing among alternative regulatory approaches, the agency has selected those approaches that maximize net benefits. E.O. 13563 recognizes that some benefits are difficult to quantify and provides that, where appropriate and permitted by law, agencies may consider and discuss qualitatively values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts.

A. Background and Need for Regulatory Action

Every labor organization subject to the LMRDA, the Civil Service Reform Act (CSRA) standards of conduct regulations, or the Foreign Service Act (FSA) must file a financial report, Forms LM–2, LM–3, or LM–4 Labor Organization Annual Report. The three forms vary in the level of financial details that must be reported. The filing requirements are determined by the total annual receipts of the union. The Forms LM–2, LM–3, and LM–4 Labor Organization Annual Report serve as the primary means by which the operations of unions can be monitored by union members and the general public. Accordingly, the Forms LM–2, LM–3, and LM–4 Labor Organization Annual Report are essential to the Department's enforcement, research, and policy formulation programs and are a source of information and data for use by other federal agencies, Congress, and the private sector in assessing union economic trends and policies.

As discussed earlier in this preamble, the Forms were last revised in 2003. The revisions to the Form LM–2 made by the Department in 2003 helped to fulfill the LMRDA's reporting mandate. However, based upon the Department's experience since 2003 and after input from OLMS field offices, the Department believes that further modifications to Form LM–2 and the introduction of the Form LM–2 LF are necessary. The proposed enhancements, as more fully described elsewhere in this preamble, would ensure that information is reported in such a way as to meet the objectives of the LMRDA by providing labor organization members with useful data that will enable them to be responsible and effective participants in the democratic governance of their labor organizations. The proposed changes are

[20] See 58 FR 51735 (October 4, 1993).

designed to provide the Department, members of labor organizations, and the public with additional and more detailed information about the financial activities of labor organizations than is available through the current reporting.

B. Costs of the Form LM–2 LF and LM–2 Reports for Labor Organizations

As discussed below in the Paperwork Reduction Act section, the Forms LM–2 LF, and LM–2 reports will be filed by existing Forms LM–2 report filing labor organizations. The Department estimates that it receives annually 4,850 Form LM–2 reports. The proposed rule would not add any new filing labor organizations to this universe, although the Department does expect to see a change in the number of Form LM–2 reports received, with the addition of the Form LM–2 LF for those filers with total annual receipts of $8 million or more. The Department expects to see a decrease in Form LM–2 reports, to 4,440 reports, since 410 of the current Form LM–2 reports derive from filers with $8 million or more in total annual receipts. Consequently, the Department expects to see 410 Form LM–2 LF and 4,440 Form LM–2 reports.

In the first year, the Department estimates that all 4,850 filers, including both the 410 Form LM–2 LF filers, who were previously required to file a Form LM–2, and the remaining 4,440 LM–2 filers will spend 15 minutes familiarizing themselves with the revised and new forms.[21] They will also face 32.5 hours in nonrecurring recordkeeping burden and 44.3 in nonrecurring reporting burden hours, in order to adapt accounting systems for new and revised schedules.[22]

On an annual basis, including the first year, the 410 Form LM–2 LF filers will spend an additional 66.5 hours on average filing the new Form LM–2 LF. The remaining 4,440 Form LM–2 filers, who will continue to file a Form LM–2, will spend an additional 16.5 hours on average annually filing the revised Form LM–2.

Using FY 18 Form LM–2 filings, inflated to 2019 dollars,[23] and 2019 BLS statistics,[24] the weighted average hourly wage for Form LM–2 filers includes: $38.23 for an accountant, $20.65 for a bookkeeper or clerk, $25.85 for a Form LM–2 filing union secretary-treasurer or treasurer, and $30.03 for the Form LM–2 filing president, respectively. The weighted average hourly wage is $36.77.[25] To account for fringe benefits and overhead costs, as well as any other unknown costs or increases in the wage average, the average hourly wage has been multiplied by 1.63, so the fully loaded hourly wage is $59.94 ($36.77 × 1.63).[26]

Applying the above average wage rates to the burden hour changes, the Department estimates that the new Form LM–2 LF will produce $3,527,799 in new costs during the first year and $1,634,264 in new costs each subsequent year. For the revised Form LM–2, the Department estimates that filers will incur $24,896,798 in new costs during the first year and $4,391,204 in new costs each subsequent year.

C. Summary of Costs

The Department projects that this rule will produce total first-year costs of $28,424,597 and total subsequent year costs of $6,025,469. The Department projects that the 10-year annualized cost will be $8,574,848 using a 3 percent discount rate and $9,005,965 using a 7 percent discount rate. As required under E.O. 13771, the Department projects that the annualized perpetual cost in 2016 dollars using a 7 percent discount rate is $5,027,703 beginning in 2021.

D. Benefits

As explained more fully elsewhere in the preamble to this proposed rulemaking, the Department proposes enhancements to the Form LM–2, and proposes to introduce the Form LM–2 LF, to provide additional information to labor organization members, the Department, and the public about the financial activities of labor organizations. Specifically, the proposed enhancements seek to protect union assets from union and management corruption, and to aid union members in the governance of their unions.

The complexity of labor organizations has increased considerably since the LMRDA was originally passed in 1959. This increase in complexity warrants enhanced reporting and disclosure. The balance between wages/salaries paid to workers and their ''other compensation'' has changed significantly during this time. For example, in 1966, more than 80 percent of total compensation consisted of wages and salaries, with less than 20 percent representing benefits. U.S. Department of Labor, Report on the American Workforce (2001) 76, 87. By 2019, wages had dropped to 70.1 percent of total compensation and benefits had grown to 29.9 percent of the compensation package. U.S. Department of Labor, Bureau of Labor Statistics Chart on Total Benefits, available at *https://data.bls.gov/cgi-bin/surveymost?cu.*

This increased complexity heightens the risk for union and management corruption. For example, a recent investigation of auto industry corruption involving the United Auto Workers International Union (UAW) in Detroit, Michigan, and a city automaker produced multiple criminal convictions in the United States District Court for the Eastern District of Michigan. The joint investigations conducted by OLMS, the Department of Labor's Office of Inspector General, the Federal Bureau of Investigation, and the Internal Revenue Service centered on a conspiracy involving Fiat Chrysler executives bribing labor officials to influence labor negotiations. Violations included conspiracy to violate the Labor Management Relations Act for paying and delivering over $1.5 million in prohibited payments and things of value to UAW officials, receiving prohibited payments and things of value from others acting in the interest of Fiat Chrysler, failing to report income on individual tax returns, conspiring to defraud the United States by preparing and filing false tax returns for the UAW-Chrysler National Training Center that concealed millions of dollars in prohibited payments directed to UAW officials, and deliberately providing

[21] In estimating ''familiarization'' time, an individual is not expected to read the instructions to the form, which would take more than 15 minutes. Rather, the individual would need only determine what the rule does, generally, and whether it applies to a particular organization. This information will be easily gleaned from the OLMS website and other compliance assistance materials. The non-recurring reporting and recordkeeping burden (*e.g.,* for the LM–2 LF, the 32.5 hours in nonrecurring recordkeeping burden and 44.3 in nonrecurring reporting burden hours) would include time reading the instructions.

[22] For more details, see the Paperwork Reduction Act section below.

[23] According to the Employment Cost Index, total compensation increased by approximately 2.8 percent annually from 2018 to 2019, see *https://data.bls.gov/timeseries/CIU1010000000000A.*

[24] See 2019 Bureau of Labor Statistics (BLS) data available at: *https://www.bls.gov/oes/2019/may/oes_nat.htm.*

[25] The weighted average calculates the wage rate per hour weighted according to the percentage of time that the Form LM–2's completion will demand of each official/employee: 90 percent of the Form LM–2 burden hours will be completed by an accountant, 5 percent by the bookkeeper, 4 percent by the union's treasurer/secretary-treasurer, and 1 percent by the union president.

[26] The use of 1.63 accounts for 17 percent for overhead and 46 percent for fringe. In the case of the 46 percent for fringe, see the following link to BLS data showing that wages and salaries represent 68.6 percent (.686) of compensation (*https://www.bls.gov/news.release/ecec.t02.htm*). Dividing total compensation by the 68.6 percent represented by wages and salaries is equivalent to a 1.46 multiplier. Adding a 17 percent multiplier (.17) for overhead equals 1.63.

misleading and incomplete testimony in the federal grand jury.

While labor organizations have grown more complex, heightening the need for more detailed or in-depth financial reporting, labor organization members today are better educated, more empowered, and more familiar with financial data and transactions than ever before. Labor organization members, no less than consumers, citizens, or creditors, expect access to relevant and useful information in order to make fundamental investment, career, and retirement decisions, evaluate options, and exercise legally guaranteed rights.

By increasing and enhancing the reporting requirements, the Department can reduce the risk of corruption, while improving the informed decision making of labor organizations' members.

E. Regulatory Alternatives

The Department considered a number of alternatives to the proposed rule. One alternative, not to engage in this rulemaking, was rejected because the Act's goals are not being met. As explained in the preamble, members of labor organizations cannot accurately determine from the current Form LM–2 the value of the benefits officials of labor organizations are receiving. OLMS cannot readily tell whether a union is in trusteeship and cannot cross check for compliance with filing a Form LM–15 Trusteeship Report. Forgoing this rulemaking would mean union members would not gain a full understanding of all the compensation union officers are receiving, including from other labor organizations. The financial condition of the union's strike fund would remain undisclosed. Labor organization disbursements would be comingled, rather than separated and itemized, making the disbursements more difficult to understand. Specifically, these disbursements include purchases and sales of fixed assets (and names of such purchasers and sellers); political activities and lobbying; and contract administration and organizing. Finally, certain receipts of the largest labor organizations would not be itemized, diminishing the utility of the information reported. Members need this information to make informed decisions on the governance of their labor organizations.

Another alternative would be to limit all the new reporting requirements to labor organizations with receipts over $8,000,000. But this would hinder the members of 4,440 smaller unions from accurately determining the value of the benefits officials of labor organizations are receiving. It would prevent OLMS from readily telling whether a union is in trusteeship or from cross checking for compliance with filing a Form LM–15 Trusteeship Report. It would not give union members a full understanding of all the compensation union officers are receiving, including from other labor organizations. Finally, it would comingle information that is best understood when viewed separately; specifically, purchases and sales of fixed assets (and names of such purchasers and sellers); political activities and lobbying; and contract administration and organizing.

Another alternative would be to phase in the effective date for the Form LM–2 changes and provide smaller Form LM–2 filers with additional lead time to modify their recordkeeping systems to comply with the new reporting requirements. The Department has concluded that a three-month period for all Form LM–2 filers to adapt to the new reporting requirements should provide sufficient time to make the necessary adjustments. OLMS also plans to provide compliance assistance to any labor organization that requests it.

Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601 *et seq.,* establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.'' Public Law 96–354. To achieve that objective, the RFA requires agencies promulgating proposed and final rules to prepare a certification and a statement of the factual basis supporting the certification, when drafting regulations that will not have a significant economic impact on a substantial number of small entities. The RFA requires the consideration of the impact of a regulation on a wide range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule would have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 603. If the determination is that it would, the agency must prepare a regulatory flexibility analysis as described in the RFA. *Id.* However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. *See* 5 U.S.C. 605. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

According to the Small Business Administration, organizations under NAICS 813930 are considered small entities if they have average annual receipts of less than $8 million.[27] For this analysis, based on previous standards utilized in other regulatory analyses, the threshold for significance is 3 percent of annual receipts, while a substantial number of small entities would be 20 percent.

The Department certifies that this proposed rule will not have a significant impact on a substantial number of small entities. The analysis that follows serves as the factual basis for this certification. The Department invites interested persons to submit comments and data that may further inform this analysis.

All numbers used in the analysis were based on 2019 data taken from the Office of Labor-Management Standards e.LORS data base, which contains records of all labor organizations that have filed LMRDA reports with the Department and Bureau of Labor Statistics wage data.

(1) Reasons for and Objectives of the Proposed Rulemaking

As discussed in the ''Background and Need for Regulatory Action'' section of the Regulatory Impact Analysis above, this rule seeks to enhance the Form LM–2 Labor Organization Annual Report to improve the quality of the data collected and ensure that information is reported in such a way as to meet the objectives of the LMRDA by providing labor organization members with useful data that will enable them to be responsible and effective participants in the democratic governance of their labor organizations. The proposed changes, including the introduction of the Form LM–2 LF, are designed to provide the Department, members of labor organizations, and the public with additional and more detailed information about the financial activities of labor organization than is available through the current reporting. These changes are tailored to minimize reporting costs for small unions, while collecting the most information from the largest and most financially complex unions.

(2) Description and Estimate of the Number of Small Entities

For this analysis, a small union is defined as one in which annual receipts

[27] *See https://www.sba.gov/document/support--table-size-standards.*

are less than $8 million. The Department estimates that it receives annually 22,175 Forms LM–2, LM–3, and LM–4 reports (4,850 Form LM–2 reports, 10,600 Form LM–3 reports, and 6,725 Form LM–4 reports), of which 410 filings come from unions with $8 million or more in receipts and 21,765 filings come from unions with less than $8 million in receipts. This proposed rule impacts 4,850 labor organizations subject to the LMRDA, CSRA standards of conduct regulations, or FSA, who currently file a Form LM–2. Of these organizations, 4,440 have annual receipts of less than $8 million. The remaining 17,325 unions with annual receipts of less than $8 million file the Forms LM–3 or LM–4, to which this rule does not propose changes. The data cited for the following calculations came from a query of the Department's database containing all submitted Form LM–2, Form LM–3, and Form LM–4 union financial disclosure reports for FY 2015–2019. It returned a list of each such filer along with various discrete informational fields, including each filer's annual receipts information, which was used to identify all of the filers with less than $8 million in annual receipts that inform this RFA analysis.

(3) The Projected Reporting and Recordkeeping Costs and Requirements

As discussed previously in the ''Costs of the Form LM–2 LF and LM–2 Reports for Labor Organizations'' section of the Regulatory Impact Analysis and in the Paperwork Reduction Act analysis above, this rule introduces a new Form LM–2 LF for the 410 filers with $8 million or more in annual receipts, and adds new provisions and reporting requirements to the existing Form LM–2 for the 4,440 filers with less than $8 million in annual receipts.

Using FY 18 Form LM–2 filings, inflated to 2019 dollars,[28] and 2019 BLS statistics,[29] the weighted average hourly wage for Form LM–2 filers includes: $38.23 for an accountant, $20.65 for a bookkeeper or clerk, $25.85 for a Form LM–2 filing union secretary-treasurer or treasurer, and $30.03 for the Form LM–2 filing president, respectively. The weighted average hourly wage is $36.77.[30] To account for fringe benefits and overhead costs, as well as any other unknown costs or increases in the wage average, the average hourly wage has been multiplied by 1.63, so the fully loaded hourly wage is $59.94 ($36.77 × 1.63).[31]

The average cost per respondent to complete the Form LM–2 is $5,607 in the first year and $989 in each subsequent year.

As mentioned earlier, for this analysis, a small union is defined as one in which annual receipts are less than $8 million.

A threshold of 3 percent of revenues has been used in prior rulemakings for the definition of significant economic impact. *See, e.g.,* 79 FR 60634 (October 7, 2014, Establishing a Minimum Wage for Contractors) and 81 FR 39108 (June 15, 2016, Discrimination on the Basis of Sex). This threshold is also consistent with thresholds used by other agencies. *See, e.g.,* 79 FR 27106 (May 12, 2014, Department of Health and Human Services rule stating that, under its agency guidelines for conducting regulatory flexibility analyses, actions that do not negatively affect costs or revenues by more than three percent annually are not economically significant). The Department believes that its use of a 3 percent of revenues significance criterion is appropriate.

The Department believes that its use of a 20 percent of affected small business entities substantiality criterion is appropriate given prior rulemakings.

As demonstrated by the tables below, this rule will not have a substantial impact on a significant number of small entities.

SIGNIFICANT IMPACT ON SMALL UNIONS IN THE FIRST YEAR—$8 MILLION SIZE STANDARD

Size (by receipts)	Number of small unions affected	Average annual receipts	Average new burden per union	New burden as % of annual receipts	% of small unions affected	Number of small unions subject to significant impact *	% of small unions subject to significant impact **
$5M–$8M	240	$6,303,788	$5,607	0.09	1.1		
$2.5M–$4.99M	584	3,527,359	5,607	0.16	2.7		
$1M–$2.49M	1,094	1,596,511	5,607	0.35	5.0		
$500K–$999,999	1,107	719,143	5,607	0.78	5.1		
$250K–$499,999	1,173	357,283	5,607	1.57	5.4		
$10K–$249,999	10,796	61,856	102	0.16	49.6		
Less than $10K	6,771	2,790	38	1.377	31.1		
Total	21,765				100	0	0.0

* The Revenue test for significant impact on small unions is set at 3% for this rule.
** The standard for substantial number is set at 20% of small unions overall for this rule.

[28] According to the Employment Cost Index, total compensation increased by approximately 2.8 percent annually from 2018 to 2019, see *https://data.bls.gov/timeseries/CIU1010000000000A.*

[29] See 2019 Bureau of Labor Statistics (BLS) data available at: *https://www.bls.gov/oes/2019/may/oes_nat.htm.*

[30] The weighted average calculates the wage rate per hour weighted according to the percentage of time that the Form LM–2's completion will demand of each official/employee: 90 percent of the Form LM–2 burden hours will be completed by an accountant, 5 percent by the bookkeeper, 4 percent by the union's treasurer/secretary-treasurer, and 1 percent by the union president.

[31] The use of 1.63 accounts for 17 percent for overhead and 46 percent for fringe. In the case of the 46 percent for fringe, see the following link to BLS data showing that wages and salaries represent 68.6 percent (.686) of compensation (*https://www.bls.gov/news.release/ecec.t02.htm*). Dividing total compensation by the 68.6 percent represented by wages and salaries is equivalent to a 1.46 multiplier. Adding a 17 percent multiplier (.17) for overhead equals 1.63.

SIGNIFICANT IMPACT ON SMALL UNIONS IN SUBSEQUENT YEARS—$8 MILLION SIZE STANDARD

Size (by receipts)	Number of small unions affected	Average annual receipts	Average new burden per union	New burden as % of annual receipts	% of small unions affected	Number of small unions subject to significant impact *	% of small unions subject to significant impact **
$5M–$8M	240	$6,303,788	$989	0.02	1.1		
$2.5M–$4.99M	584	3,527,359	989	0.03	2.7		
$1M–$2.49M	1,094	1,596,511	989	0.06	5.0		
$500K–$999,999	1,107	719,143	989	0.14	5.1		
$250K–$499,999	1,173	357,283	989	0.28	5.4		
$10K–$249,999	10,796	61,856	18	0.03	49.6		
Less than $10K	6,771	2,790	7	0.24	31.1	0	
Total	21,765				100	0	0.0

* The Revenue test for significant impact on small unions is set at 3% for this rule.
** The standard for substantial number is set at 20% of small unions overall for this rule.

(4) Duplicative, Overlapping, and Conflicting Rules

The Department is aware of a proposed rule that would, if promulgated, overlap with the provisions contained in this proposed rule. On December 17, 2019, the Department proposed a rule governing intermediate bodies that are composed of public sector organizations but are subordinate to national or international labor organizations covered by the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA or Act). See 84 FR 68842. Under the proposal such intermediate bodies would be covered by the LMRDA and be required to file the applicable annual union financial reports. If that proposal were to become final, those intermediate bodies—as newly regulated entities—would be affected by the instant rulemaking.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based companies to compete with foreign-based companies in domestic and export markets.

Paperwork Reduction Act

This statement is prepared in accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 (PRA). *See* 5 CFR 1320.9. The rule implements an information collection that meets the requirements of the PRA in that (1) the information collection has practical utility to labor organizations, their members, other members of the public, and the Department; (2) the rule does not require the collection of information that is duplicative of other reasonably accessible information; (3) the provisions reduce to the extent practicable and appropriate the burden on labor organizations that must provide the information, including small labor organizations; (4) the form, instructions, and explanatory information are written in plain language that will be understandable by reporting labor organizations; (5) the disclosure requirements are implemented in ways consistent and compatible, to the maximum extent practicable, with the existing reporting and recordkeeping practices of labor organizations that must comply with them; (6) this preamble informs labor organizations of the reasons that the information will be collected, the way in which it will be used, the Department's estimate of the average burden of mandatory compliance, the fact that all information collected will be made public, and the fact that they need not respond unless the form displays a currently valid OMB control number; (7) the Department has explained its plans for the efficient and effective management and use of the information to be collected, to enhance its utility to the Department and the public; (8) the Department has explained why the method of collecting information is ''appropriate to the purpose for which the information is to be collected''; and (9) the changes implemented by this rule make extensive, appropriate use of information technology ''to reduce burden and improve data quality, agency efficiency and responsiveness to the public.'' *See* 5 CFR 1320.9; 44 U.S.C. 3506(c).

Concurrent with the publication of this proposed rule, the Department is submitting an associated information collection request to the Office of Management and Budget for approval.

A. Summary

The Department proposes to promulgate a rule that updates and revises 29 CFR part 403 in order to establish a Form LM–2 LF, and to improve the Form LM–2 Annual Report in the interest of labor organization financial integrity and transparency.

Currently, unions must file one of three types of annual financial reports based on the total annual receipts of the union. The annual financial reports vary in the level of detail that must be reported. Form LM–2 is the most detailed report. Unions with total annual receipts of $250,000 or more and subordinate labor organizations held in trusteeship file this report, which discloses certain information items and financial activities in separate line items under assets, liabilities, receipts, and disbursements. Supporting schedules detail loans, investments, payments to officers and employees, and other data. Disbursements are reported in specified categories (Representational Activities; Political Activities and Lobbying; Contributions, Gifts and Grants; General Overhead; and Union Administration). Certain transactions that equal or aggregate to $5,000 are separately itemized.

Form LM–3, a less-detailed report, may be filed by unions with total annual receipts of less than $250,000 (if not in trusteeship). It requires the reporting of certain information items, has fewer financial items than the Form LM–2, and has no supporting schedules or itemization.

Form LM–4, an abbreviated two-page report, may be filed by unions with annual financial receipts of less than

$10,000 (if not in trusteeship). It requires the reporting of a limited number of information items and five financial details.

Simplified annual financial reports may be filed by parent unions on behalf of subordinate labor organizations with no assets, liabilities, receipts, or disbursements and that meet certain other conditions.

The Secretary has authority to implement the reporting provisions by regulation. ''The Secretary shall have authority to issue, amend, and rescind rules and regulations prescribing the form and publication of reports required to be filed under this title and such other reasonable rules and regulations (including rules prescribing reports concerning trusts in which a labor organization is interested) as he may find necessary to prevent the circumvention or evasion of such reporting requirements.'' *See* 29 U.S.C. 438.

B. Form LM–2 LF

The Department proposes a new Form LM–2 LF. It would track the existing Form LM–2 except as follows. In new Item 3(d), the union would report whether it was in trusteeship. New Item 10(b) would require the labor organization to report whether certain officers or employees received payment from another labor organization. New Item 11(c) would ask whether the union has a separate strike fund and, if so, provide information on the fund. New Item 18(b) would require reporting of the date of the labor organization's current constitution and bylaws.

Under the proposal, four schedules would be divided in two and become eight schedules. Specifically, the Department proposes to divide Schedule 3—Sale of Investments and Fixed Assets into two schedules. The first would be a new Schedule 3—Sale of Investments. The second would be new Schedule 4—Sale of Fixed Assets.

In the new Schedule 3—Sale of Investments, the Department proposes to add two new columns. The first new column, entitled ''Name and Address of Purchaser or Financial Management Firm (A),'' would disclose the purchasers of investments from the labor organization. A second column ''Date (C)'' would disclose the date of the sale. The other columns (Description (if land or buildings, give location); Cost; Book Value; Gross Sales Price; and Amount Received) would remain the same but would be designated with different letters, to accommodate the two new columns.

The second part of the divided schedule would be the new Schedule 4—Sale of Fixed Assets. As in the case of new Schedule 3, the Department proposes to add two new columns to Schedule 4—Sale of Fixed Assets. The first new column entitled ''Name and Address of Purchaser'' would disclose the purchasers of fixed assets from the labor organization. A second column ''Date (C)'' would disclose the date of the sale. In addition, the Department proposes that the union would be required to identify automobiles individually by make, model, year, and Vehicle Identification Number (VIN). This information would be listed under existing Column A (Description).

Current Schedule 4 will also be divided. Under current Schedule 4—Purchase of Investments and Fixed Assets, a labor organization must report details of the purchases by the labor organization of U.S. Treasury securities, marketable securities, other investments, and fixed assets, including those fixed assets that were expensed. As with sale of investments and fixed assets, the Department proposes to break this schedule into two: New Schedule 5—Purchase of Investments and new Schedule 6—Purchase of Fixed Assets.

In the new Schedule 5—Purchase of Investments, the Department proposes to add two new columns. The first new column entitled ''Name and Address of Seller or Financial Management Firm (A)'' would disclose the identity of the seller of investments to the labor organization. A second new column ''Date (C)'' would disclose the date of the purchase.

Likewise, to new Schedule 6—Purchase of Fixed Assets, the Department proposes to add two new columns. The first new column entitled ''Name and Address of Seller (A)'' would disclose the identity of the seller of fixed assets to the labor organization. A second new column ''Date (C)'' would disclose the date of the purchase. In addition, the Department proposes that the union would be required to identify automobiles individually by make, model, year, and VIN. This information would be listed under existing Column A (Description).

The Department proposes to divide Schedule 15—Representational Activities into two and renumber them Schedule 24 and Schedule 25. The first would be designated new Schedule 24—Contract Negotiation and Administration. The second would be new Schedule 25—Organizing.

In addition, Schedule 16—Political Activities and Lobbying would be renumbered and divided into two schedules. On new Schedule 26, labor organizations would report disbursements for political activities. On new Schedule 27, the labor organization would report lobbying disbursements.

The Department proposes to add new schedules that coincide with the items of cash receipts listed on Statement B. Stated otherwise, seven categories of receipts are currently reported as seven aggregate, lump sums. Under this proposal, they would by supported by schedules. These schedules represent new requirements that labor organizations itemize the individual categories of receipts aggregated to $5,000 or more from any one source. The labor organization would be required to complete a separate itemization schedule for each individual or entity from which the labor organization has received $5,000 or more. Each transaction from that individual or entity would be accompanied by information about the individual, the purpose of the payment, the date of the payment, and the amount of the payment. The total amount received from the individual or entity, both itemized and non-itemized, would be included at the bottom of the itemized schedule. The totals from each itemized schedule would then be added together and that number would be entered in the appropriate item on Statement B.

These additional schedules correspond to the following categories of receipts:

- Dues and Agency Fees;
- Per Capita Tax;
- Fees, Fines, Assessments, Work Permits;
- Sales of Supplies;
- Rents;
- On Behalf of Affiliates for Transmittal to Them; and
- From Members for Disbursement on Their Behalf.

The Department seeks comment on whether to require for Form LM–2 LF a Schedule 32—Foreign Transactions. It would require reporting if the labor union engages in a transaction with a foreign entity or a foreign individual. The labor organization would report any individual receipt of $5,000 or more or total receipts from any single entity or individual that aggregate to $5,000 or more during the reporting period derived from a foreign entity or individual.

The Department proposes to retain its current itemization transaction threshold. Specifically, schedules 14 through 19 on the Form LM–2 are currently subject to itemization. These schedules reflect various services provided to union members by the union. All ''major'' disbursements during the reporting period in the

various schedules must be separately itemized. A major disbursement includes (1) any individual disbursement of $5,000 or more; or (2) total disbursements to any single entity or individual that aggregate to $5,000 or more during the reporting period. All other disbursements in these schedules are aggregated.

The Department proposes to renumber schedules 14 through 19 as schedules 23 through 30. (The two extra schedules are the result of dividing into two the schedules for Representational Activities and Political Activities and Lobbying.) As in the current Form LM–2, under these newly renumbered schedules, all ''major'' disbursements during the reporting period in the various categories would be separately identified. As proposed, a major disbursement would include (1) any individual disbursement of $5,000 or more or (2) total disbursements to any single entity or individual that aggregate to $5,000 or more during the reporting period. All other disbursements in these schedules would continue to be aggregated.

The Department seeks comment on whether to narrow, modify or eliminate a confidentiality exemption for reporting certain information.

C. Form LM–2 Revised

The Department proposes to revise Form LM–2. It would mirror the existing Form LM–2 except as follows. In new Item 3(d), the union would report whether it was in trusteeship. In new Item 10(b), the union would provide whether it has a trust and, if so, provide information on the trust. New Item 10(c) would require the labor organization to report whether certain officers or employees received payment from another labor organization. New 18(b) would require reporting of the date of the labor organization's constitution and bylaws.

Under this proposal, four schedules would be divided in two and become eight schedules. The Department proposes to divide Schedule 3—Sale of Investments and Fixed Assets into two schedules: New Schedule 3—Sale of Investments and new Schedule 4—Sale of Fixed Assets.

In the new Schedule 3—Sale of Investments, the Department proposes to add two new columns. The first new column, entitled ''Name and Address of Purchaser or Financial Management Firm (A),'' would disclose the purchasers of investments from the labor organization. A second column ''Date (C)'' would disclose the date of the sale. The other columns (Description (if land or buildings, give location); Cost; Book Value; Gross Sales Price; and Amount Received) would remain the same but would be designated with different letters, to accommodate the two new columns. The other columns (Description (if land or buildings, give location) (A); Cost (B); Book Value (C); Gross Sales Price (D); and Amount Received (E)) would remain the same but would be designated with different letters, to accommodate the two new columns.

The second of the two divided schedules would be the new Schedule 4—Sale of Fixed Assets. As in the case of new Schedule 3, the Department proposes to add two new columns to Schedule 4—Sale of Fixed Assets. The first new column entitled ''Name and Address of Purchaser (A)'' would disclose the purchasers of fixed assets from the labor organization. A second column ''Date (C)'' would disclose the date of the sale. In addition, the Department proposes that the union would be required to identify automobiles individually by make, model, year, and VIN. This information would be listed under existing Column A (Description).

Current Schedule 4 will also be divided. The Department proposes to divide Schedule 4—Purchase of Investments and Fixed Assets into two schedules: New Schedule 5—Purchase of Investments and new Schedule 6—Purchase of Fixed Assets. Under current Schedule 4—Purchase of Investments and Fixed Assets, a labor organization must report details of the purchases of U.S. Treasury securities, marketable securities, other investments, and fixed assets, including those fixed assets that were expensed. As with sale of investments and fixed assets, the Department proposes to break this schedule into two: New Schedule 5—Purchase of Investments and new Schedule 6—Purchase of Fixed Assets.

In the new Schedule 5—Purchase of Investments, the Department proposes to add two new columns. The first new column entitled ''Name and Address of Seller or Financial Management Firm (A)'' would disclose the identity of the seller of investments to the labor organization. A second new column ''Date (C)'' would disclose the date of the purchase.

Likewise, to new Schedule 6—Purchase of Fixed Assets, the Department proposes to add two new columns. The first new column entitled ''Name and Address of Seller (A)'' would disclose the identity of the seller of fixed assets to the labor organization. A second new column ''Date (C)'' would disclose the date of the purchase. In addition, the Department proposes that the union would be required to identify automobiles individually by make, model, year, and VIN. This information would be listed under existing Column A (Description).

The Department proposes to divide Schedule 15—Representational Activities into two, and renumber them Schedule 24 and Schedule 25. The first would be designated new Schedule 24—Contract Negotiation and Administration. The second would be new Schedule 25—Organizing.

In addition, Schedule 16—Political Activities and Lobbying would be renumbered and divided into two schedules. On new Schedule 26, labor organizations would report disbursements for political activities. On new Schedule 27, the labor organization would report lobbying disbursements.

The Department seeks comment on whether to raise the threshold for filing the Form LM–2 from its current $250,000 level to $300,000. Although the overwhelming majority (78.5%) of all reporting labor organizations are currently exempt from filing Form LM–2, changing the threshold to $300,000 would reduce the recordkeeping and reporting burden for approximately 273 labor organizations.

D. Hours To Complete and File Form LM–2 LF and LM–2 Reports

In sum, the proposed rule would create a new Form LM–2 LF, which the Department estimates would impose an additional 66.5 burden hours, for a total of 596.75 burden hours; the Form LM-2 changes would impose an additional 16.5 burden hours, for a total of 546.5 hours.[32]

The Form LM–2 LF

As explained, the Form LM–2 LF would establish 12 new schedules. In the 2003 Form LM–2 final rule, the Department estimated that the new disbursement schedules would result in 5 hours of new burden, 4.4 hours of recordkeeping burden, and 0.6 hours of reporting burden. See 68 FR 58439, Table 4 (Summary of Average Additional First Year Burden for the Revised Form LM–2). The Department applies this 5 hours per schedule burden to each of the 12 new schedules in the Form LM–2 LF, resulting in 60

[32] Additionally, the Department estimates that all Form LM–2 and Form LM–2 LF filers would face a one-time 15-minute familiarization burden. See the Form T–1 final rule at 85 FR 13437. Further, the Department estimates that these filers would face 32.5 hours in nonrecurring recordkeeping burden and 44.3 in nonrecurring reporting burden hours, in order to adapt accounting systems for new and revised schedules. See the 2003 Form LM–2 final rule, 68 FR 58439, Table 4.

additional reporting hours for the form. Additionally, while the proposed Form LM–2 LF would create new columns for benefits on the officer and employee schedules, the proposed changes would also remove the functional reporting requirements, resulting in no net gain in burden for those schedules.

In new Item 10(b), the union will provide whether it has a trust and, if so, provide information on the trust. New Item 10(c) will require the labor organization to report whether certain officers or employees received payment from another labor organization. New Item 11(c) will ask whether the union has a separate strike fund and, if so, provide information on the fund. New Item 18(b) will require reporting of the dates of the labor organization's current constitution and bylaws. Each one of these items will add .25 hours to the burden, resulting in an additional hour of burden.

In each of two new schedules, two new columns will be added. Each of these columns will add 0.50 hours of burden, for a total of two hours of additional burden.

Finally, experience with the Form LM–2 in previous rulemakings indicates that a labor organization will spend 15 minutes a year training new staff; 60 minutes preparing the download; 90 minutes preparing and testing the data file; and 60 minutes editing, validating and importing the data. See the Form T–1 final rule, 85 FR 13435. In total, the Department estimates 596.75 burden hours for the new Form LM–2 LF (the 530 hours associated with the current Form LM–2 and the 66.75 hours associated with the additional schedules and reporting requirements).

Form LM–2

For the Form LM–2, the Department proposes adding four new schedules, at an estimated five burden hours per schedule or 20 total hours. However, the Department also proposes to eliminate functional reporting for the officer disbursements Schedule 11 and employee disbursement Schedule 12. The Department estimates that these changes result in 5 hours of burden savings per each of these forms, for a total of 10 hours of savings. Subtracting these 10 hours from the 20 hours resulting from the new schedules equals an estimated 10 additional burden hours for the Form LM–2.

In each of two schedules, two new columns will be added. Each of these columns will add 0.50 hours of burden, for a total of two hours of additional burden.

In new Item 10(b), the union will provide whether it has a trust and, if so, provide information on the trust. New Item 10(c) will require the labor organization to report whether certain officers or employees received payment from another labor organization. New 18(b) will require reporting of the dates of the labor organization's current constitution and bylaws. Each one of these items will add .25 hours to the burden, resulting in an additional 0.75 hours of burden.

Further, experience with the Form LM–2 in previous rulemakings indicates that a labor organization will spend 15 minutes a year training new staff; 60 minutes preparing the download; 90 minutes preparing and testing the data file; and 60 minutes editing, validating and importing the data. See the Form T–1 final rule, 85 FR 13435. In total, the Department estimates an additional 16.5 burden hours for a total of 546.5 hours for the revised Form LM–2 (the 530 hours associated with the current Form LM–2 and the 16.5 hours associated with the additional schedules and reporting requirements).

E. Estimated Number of Form LM–2 LF, LM–2, LM–3, and LM–4 Reports

The Department currently estimates that it receives annually 22,175 Form LM–2, LM–3, and LM–4 reports (4,850 Form LM–2 reports, 10,600 Form LM–3 reports, and 6,725 Form LM–4 reports).[33] The proposed rule would not add any new reports to this universe, although the Department does expect to see a change in the number of Form LM–2 reports received, with the addition of the Form LM–2 LF for those filers with total annual receipts of $8 million or more. The Department would expect to see a decrease in Form LM–2 reports, to 4,440 reports, since 410 of the current Form LM–2 reports derive from filers with $8 million or more in total annual receipts. Consequently, the Department would expect 410 Form LM–2 LF reports.

F. Total Burden Hours

The current Form LM–2 requires 530 burden hours; the current Form LM–3 requires 103 hours; and the current Form LM–4 requires 9 hours.[34] In sum, the proposed rule would create a new Form LM–2 LF, which the Department estimates would impose 66.75 new burden hours, for a total of 596.75 additional burden hours; and the Form LM–2 changes would impose an additional 16.5 burden hours.

For the new Form LM–2 LF, since the Department estimates 410 reports submitted, the total recurring burden hours comes to 244,667.5 hours (410 reports × 596.75 hours per report). For the Form LM–2, since the Department estimates 4,440 revised reports submitted, the total additional, recurring burden hours comes to 73,260 hours (4,440 × 16.5).

The total additional, recurring burden hours imposed by the proposed rule is 317,927.5.

G. Conclusion

As the proposed rule requires an information collection, the Department is submitting, contemporaneous with the publication of this notice, an information collection request (ICR) to revise the Paperwork Reduction Act (PRA) clearance to address the clearance term. A copy of this ICR, with applicable supporting documentation, including among other items a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the *RegInfo.gov* website at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201907-1245-001* (this link will only become active on the day following publication of this document) or from the Department by contacting Andrew Davis on 202–693–0123 (this is not a toll-free number)/email: *OLMS-Public@dol.gov.*

Type of Review: Revision of a currently approved collection.

Agency: Office of Labor-Management Standards.

Title: Labor Organization and Auxiliary Reports.

OMB Number: 1245–0003.

Affected Public: Private Sector—labor organizations.

Total Estimated Number of Responses: 31,686.

Frequency of Response: Varies.

Estimated Total Annual Burden Hours: 4,472,819.

Estimated Total Annual Other Burden Cost: $0.

List of Subjects in 29 CFR Parts 402, 403, and 408

Labor organization, Trusts, Reporting and recordkeeping requirements.

Accordingly, for the reasons discussed in the preamble, the Department proposes to amend parts 402, 403, and 408 of title 29, chapter IV of the Code of Federal Regulations as set forth below:

[33] See OLMS Historical Filing Data at *https://www.dol.gov/olms/regs/compliance/filing_data.htm.* The Department averaged reports received over the five-year period, FYs 15–19.

[34] See the Form LM–2, LM–3, and LM–4 Instructions at *https://www.dol.gov/olms/regs/compliance/LM2_3_4.htm.*

PART 402—LABOR ORGANIZATION INFORMATION REPORTS

■ 1. The authority citation for part 402 continues to read as follows:

Authority: Secs. 201, 207, 208, 73 Stat. 524, 529 (29 U.S.C. 431, 437, 438); Secretary's Order No. 03–2012, 77 FR 69376, November 16, 2012.

■ 2. Amend § 402.5 by revising paragraph (a) to read as follows:

§ 402.5 Terminal reports.

(a) Any labor organization required to file reports under the provisions of this part, which ceases to exist by virtue of dissolution or any other form of termination of its existence as a labor organization, or which loses its identity as a reporting labor organization through merger, consolidation or otherwise, shall file a report containing a detailed statement of the circumstances and effective date of such termination or loss of reporting identity, and if the latter, such report shall also state the name and mailing address of the labor organization into which it has been consolidated, merged, or otherwise absorbed. Such report shall be submitted on Form LM–2 or Form LM–2 LF in connection with the terminal financial report required by § 403.5 and shall be signed by the president and treasurer, or corresponding principal officers, of the labor organization at the time of its termination or loss of reporting identity and, together with a copy thereof, shall be filed with the Office of Labor-Management Standards within 30 days of the effective date of such termination or loss of reporting identity, as the case may be.

* * * * *

PART 403—LABOR ORGANIZATION ANNUAL FINANCIAL REPORTS

■ 3. The authority citation for part 403 continues to read as follows:

Authority: Secs. 201, 207, 208, 301, 73 Stat. 524, 529, 530 (29 U.S.C. 431, 437, 438, 461); Secretary's Order No. 03–2012, 77 FR 69376, November 16, 2012.

■ 4. Amend § 403.2 by revising paragraphs (d)(2), (d)(3) introductory text, and (d)(3)(i) through (iii) to read as follows:

§ 403.2 Annual financial report.

* * * * *

(d) * * *

(2) A separate report shall be filed on Form T–1 for each such trust within 90 days after the end of the labor organization's fiscal year in the detail required by the instructions accompanying the form and constituting a part thereof, and shall be signed by the president and treasurer, or corresponding principal officers, of the labor organization. Only the parent labor organization (*i.e.,* the national/international or intermediate labor organization) must file the Form T–1 report for covered trusts in which both the parent labor organization and its affiliates satisfy the financial or managerial domination test set forth in paragraph (d)(1)(i) of this section. The affiliates must continue to identify the trust in their Form LM–2 Labor Organization Annual Report or Form LM–2 LF Labor Organization Annual Report Long Form, and include a statement that the parent labor organization will file a Form T–1 report for the trust.

(3) No Form T–1 should be filed for any trust (or a plan of which the trust is part) that:

(i) Meets the statutory definition of a labor organization and already files a Form LM–2, LM–2 LF, Form LM–3, Form LM–4, or simplified LM report;

(ii) The LMRDA exempts from reporting;

(iii) Meets the definition of a subsidiary organization pursuant to Part X of the instructions for the Form LM–2 Labor Organization Annual Report or Part (X) of the instructions for the Form LM–2 LF Labor Organization Annual Report Long Form;

* * * * *

■ 5. Revise § 403.3 to read as follows:

§ 403.3 Form of annual financial report—detailed report.

(a) Every labor organization shall, except as expressly provided otherwise in this part, file an annual financial report as required by § 403.2, prepared on United States Department of Labor Form LM–2, ''Labor Organization Annual Report,'' in the detail required by the instructions accompanying the form and constituting a part thereof.

(b) If a labor organization has gross annual receipts totaling $8,000,000 or more for its fiscal year it shall file the annual financial report called for in section 201(b) of the Act on United States Department of Labor Form LM–2 LF entitled ''Labor Organization Annual Report Long Form,'' in accordance with the instructions accompanying such form and constituting a part thereof.

■ 6. Amend § 403.5 by revising paragraphs (a) and (b) to read as follows:

§ 403.5 Terminal financial report.

(a) Any labor organization required to file a report under the provisions of this part, which during its fiscal year loses its identity as a reporting labor organization through merger, consolidation, or otherwise, shall, within 30 days after such loss, file a terminal financial report with the Office of Labor-Management Standards, on Form LM–2, LM–2 LF, LM–3, or LM–4, as may be appropriate, signed by the president and treasurer or corresponding principal officers of the labor organization immediately prior to the time of its loss of reporting identity.

(b) Every labor organization which has assumed trusteeship over a subordinate labor organization shall file within 90 days after the termination of such trusteeship on behalf of the subordinate labor organization a terminal financial report with the Office of Labor-Management Standards, on Form LM–2 or Form LM–2 LF and in conformance with the requirements of this part.

* * * * *

■ 7. Amend § 403.8 by revising paragraph (b)(1) to read as follows:

§ 403.8 Dissemination and verification of reports.

* * * * *

(b)(1) If a labor organization is required to file a report under this part using the Form LM–2 or Form LM–2 LF and indicates that it has failed or refused to disclose information required by the Form concerning any disbursement, or receipt not otherwise reported on Statement B, to an individual or entity in the amount of $5,000 or more, or any two or more disbursements, or receipts not otherwise reported on Statement B, to an individual or entity that, in the aggregate, amount to $5,000 or more, because disclosure of such information may be adverse to the organization's legitimate interests, then the failure or refusal to disclose the information shall be deemed ''just cause'' for purposes of paragraph (a) of this section.

* * * * *

PART 408—LABOR ORGANIZATION TRUSTEESHIP REPORTS

■ 8. The authority to part 408 continues to read as follows:

Authority: Secs. 202, 207, 208, 73 Stat. 525, 529 (29 U.S.C. 432, 437, 438); Secretary's Order No. 03–2012, 77 FR 69376, November 16, 2012.

■ 9. Revise § 408.5 to read as follows:

§ 408.5 Annual financial report.

During the continuance of a trusteeship, the labor organization which has assumed trusteeship over a subordinate labor organization, shall file with the Office of Labor-Management Standards on behalf of the subordinate labor organization the annual financial report and any Form T–1 reports

required by part 403 of this chapter, signed by the president and treasurer or corresponding principal officers of the labor organization which has assumed such trusteeship, and the trustees of the subordinate labor organization on Form LM–2 or Form LM–2 LF.

■ 10. Revise § 408.7 to read as follows:

§ 408.7 Terminal trusteeship financial report.

Each labor organization which has assumed trusteeship over a subordinate labor organization shall file within 90 days after the termination of such trusteeship on behalf of the subordinate labor organization a terminal financial report, and one copy, with the Office of Labor-Management Standards, on Form LM–2 or Form LM–2 LF and in conformance with the requirements of part 403 of this chapter.

Andrew D. Auerbach,

Acting Director, Office of Labor-Management Standards.

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

BILLING CODE 4510–86–P

U.S. Department of
Office of Labor-Management Standards
Washington, DC 20210

FORM LM-2 LABOR ORGANIZATION ANNUAL REPORT

Form Approved
Office of Management and Budget
No. xxxx-xxxx
Expires xx-xx-xxxx

MUST BE USED BY LABOR ORGANIZATIONS WITH $250,000 to $7,999,999 IN TOTAL ANNUAL RECEIPTS AND LABOR ORGANIZATIONS IN TRUSTEESHIP

This report is mandatory under P.L. 86-257, as amended. Failure to comply may result in criminal prosecution, fines, or civil penalties as provided by 29 U.S.C. 439 or 440.

READ THE INSTRUCTIONS CAREFULLY BEFORE PREPARING THIS REPORT.

For Official Use Only	1. FILE NUMBER	2. PERIOD COVERED MO DAY YEAR From Through	3. (a) AMENDED — If this is an amended report, checkhere: ☐ (b) HARDSHIP — If filing under hardship procedures check here: ☐ (c) TERMINAL — If this is a terminal report, check here: ☐ (d) TRUSTEESHIP—If the Labor Organization is under trusteeship, check here: ☐

4. AFFILIATION OR ORGANIZATION NAME		8. MAILING ADDRESS (Type or print in capital letters.)	
		First Name	Last Name
5. DESIGNATION (Local, Lodge, etc.)	6. DESIGNATION NUMBER	P.O. Box - Building and Room Number	
7. UNIT NAME (if any)		Number and Street	
		City	
9. Are your organization's records kept at its mailing address? Yes ☐ No ☐ (If "No," provide address in Item 75.)		State	ZIP Code + 4

75. ADDITIONAL INFORMATION (Text entered will appear on last page of form. To enter comments, press the "General Additional Information" button.)

Each of the undersigned, duly authorized officers of the above labor organization, declares, under penalty of perjury and other applicable penalties of law, that all of the information submitted in this report (including the information contained in any accompanying documents) has been examined by the signatory and is, to the best of the undersigned's knowledge and belief, true, correct, and complete. (See Section VI on penalties in the instructions.)

76. SIGNED:_____ PRESIDENT (If other title, see instructions.)

____ / ____ / ____ Date (____) ____ — ____ Telephone Number

77. SIGNED:_____ TREASURER (If other title, see instructions.)

____ / ____ / ____ Date (____) ____ — ____ Telephone Number

COMPLETE ITEMS 10 THROUGH 21

FILE NUMBER:

10 (a) During the reporting period did the labor organization create or participate in the administration of a trust or other fund or organization, as defined in the instructions, which provides benefits for members or their beneficiaries?

Yes ☐ No ☐

10 (b) During the reporting period did an officer or employee paid $10,000 or more by the labor organization also receive $10,000 or more as an officer or employee of another labor organization in gross salaries, allowances, and other direct and indirect disbursements?

Yes ☐ No ☐

11(a). During the reporting period did the labor organization have a political action committee (PAC) fund?

Yes ☐ No ☐

11(b). During the reporting period did the labor organization have a subsidiary organization as defined in Section X of these Instructions?

Yes ☐ No ☐

12. During the reporting period did the labor organization have an audit or review of its books and records by an outside accountant or by a parent body auditor/representative?

Yes ☐ No ☐

13. During the reporting period did the labor organization experience and/or discover any loss or shortage of funds or other assets? (Answer "Yes" even if there has been repayment or recovery.)

Yes ☐ No ☐

14. What is the maximum amount recoverable under the labor organization's fidelity bond for a loss caused by any officer, employee or agent of the labor organization who handled union funds?

☐

15. During the reporting period did the labor organization acquire or dispose of any assets in any manner other than by purchase or sale?

Yes ☐ No ☐

16. Were any of the labor organization's assets pledged as security or encumbered in any other way at the end of the reporting period?

Yes ☐ No ☐

17. Did the labor organization have any contingent liabilities at the end of the reporting period?

Yes ☐ No ☐

18 (a) During the reporting period did the labor organization have any changes in its constitution and bylaws, other than rates of dues and fees, or in practices/procedures listed in the instructions?

Yes ☐ No ☐

(b) Enter the date of the labor organization's current Constitution and Bylaws ☐

19 What is the date of the labor organization's next regular election of officers? ☐

20 How many members did the labor organization have at the end of the reporting period? (Total from the Members Line of Schedule 15) ☐

21. What are the labor organization's rates of dues and fees? (Enter a minimum and maximum if more than one rate applies for any line.)

Rates of Dues and Fees

Dues/Fees	Amount		Unit	Minimum	Maximum
(a) Regular Dues/Fees		per			
(b) Working Dues/Fees		per			
(c) Initiation Fees		per			
(d) Transfer Fees		per			
(e) Work Permits		per			

If the answer to any of the above questions is "Yes," provide details in Item 75 (Additional Information) as explained in the instructions for each item.

FILE NUMBER:

STATEMENT A – ASSETS AND LIABLITIES

Complete Schedules 1 Through 24 Before Completing Statement A

ASSETS

ASSETS	Schedule Number	Start of Reporting Period (A)	End of Reporting Period (B)
22. Cash			
23. Accounts Receivable	1		
24. Loans Receivable	2		
25. U.S. Treasury Securities			
26. Investments	7		
27. Fixed Assets	8		
28. Other Assets	9		
29. TOTAL ASSETS			

LIABILITIES

LIABILITIES	Schedule Number	Start of Reporting Period (C)	End of Reporting Period (D)
30. Accounts Payable	10		
31. Loans Payable	11		
32. Mortgages Payable			
33. Other Liabilities	12		
34. TOTAL LIABILITIES			

35. NET ASSETS (Item 29 Less Item 34)		

FILE NUMBER:

STATEMENT B – RECEIPTS AND DISBURSEMENTS

Complete Schedules 1 Through 24 Before Completing Statement B

Item CASH RECEIPTS	SCH #	AMOUNT
36. Dues and Agency Fees		
37. Per Capita Tax		
38. Fees, Fines, Assessments, Work Permits		
39. Sale of Supplies		
40. Interest		
41. Dividends		
42. Rents		
43. Sale of Investments	3	
44. Sale of Fixed Assets	4	
45. Loans Obtained	11	
46. Repayments of Loans Made	2	
47. On Behalf of Affiliates for Transmittal to Them		
48. From Members for Disbursement on Their Behalf		
49. Other Receipts	16	
50. TOTAL RECEIPTS		

Item CASH DISBURSEMENTS	SCH #	AMOUNT
51. Contract Administration and Negotiation	17	
52. Organizing	18	
53. Political Activities	19	
54. Lobbying	20	
55. Contributions, Gifts, and Grants	21	
56. General Overhead	22	
57. Union Administration	23	
58. Benefits	24	
59. Per Capita Tax		
60. Strike Benefits		
61. Fees, Fines, Assessments, etc.		
62. Supplies for Resale		
63. Purchase of Investments	5	
64. Purchase of Fixed Assets	6	
65. Loans Made	2	
66. Repayment of Loans Obtained	11	
67. To Affiliates of Funds Collected on Their Behalf		
68. On Behalf of Individual Members		
69. Direct Taxes		
70. Officers	13	
71. Employees	14	
72. Subtotal		
73. Withholding Tax and Payroll Deductions		
73a. Total Withheld		
73b. Less Total Disbursed		
73c. Total Withheld But Not Disbursed		
74. TOTAL DISBURSEMENTS (Line 72 – 73c)		

SCHEDULE 1 – ACCOUNTS RECEIVABLE AGING SCHEDULE

FILE NUMBER:

Entity or Individual Name (A)	Total Account Receivable (B)	90 - 180 Days Past Due (C)	180+ Days Past Due (D)	Liquidated Account Receivable (E)
1.				
2.				
3.				
4.				
5.				
6.				
7.				
8.				
9.				
10.				
11.				
12.				
13.				
14.				
15.				
16.				
17.				
18.				
19.				
20.				
21.				
22.				
23.				
24.				
25.				
Total of all itemized accounts receivable				
Totals from all other accounts receivable				
Totals (Total of Column (B) will be automatically entered in Item 23, Column (B))				

SCHEDULE 2 – LOANS RECEIVABLE

FILE NUMBER:

List below loans to officers, employees, or members which at any time during the reporting period exceeded $250 and list all loans to business enterprises regardless of amount. (A)	Loans Outstanding at Start of Period (B)	Loans Made During Period (C)	Repayments Received During Period		Loans Outstanding at End of Period (E)
			Cash (D)(1)	Other Than Cash (D)(2)	
1. Name: _____ Purpose: _____ Security: _____ Terms of Repayment: _____					
2. Name: _____ Purpose: _____ Security: _____ Terms of Repayment: _____					
3. Name: _____ Purpose: _____ Security: _____ Terms of Repayment: _____					
4. Name: _____ Purpose: _____ Security: _____ Terms of Repayment: _____					
Total of loans not listed above					
Totals of all lines above					

Totals will be automatically entered In ……Item 24……Item 65……Item 46……Item 75……tem 24
Column (A) with Explanation Column (B)

SCHEDULE 3 – SALE OF INVESTMENTS

FILE NUMBER:

Name and Address of Purchaser or Financial Management Firm (A)	Description (B)	Date of Sale (C)	Cost (D)	Book Value (E)	Gross Sales Price (F)	Amount Received (G)
1.						
2.						
3.						
4.						
5.						
6.						
7.						
8.						
9.						
10.						
11.						
12.						
Total of all lines (D)-(G) above						
			Less Reinvestments			
		(The total from Net Sales Line will be automatically entered in Item 43.)	**Net Sales**			

SCHEDULE 4 – SALE OF FIXED ASSETS

FILE NUMBER:

Name and Address of Purchaser (A)	Description (if land or buildings, give location) (B)	Date of Sale (C)	Cost (D)	Book Value (E)	Gross Sales Price (F)	Amount Received (G)
1.						
2.						
3.						
4.						
5.						
6.						
7.						
8.						
9.						
10.						
11.						
12.						
Total of all lines(D)-(G) above						
			Less Reinvestments			
		(The total from Net Sales Line will be automatically entered in Item 44.)	**Net Sales**			

SCHEDULE 5 – PURCHASE OF INVESTMENTS

FILE NUMBER:

Name and Address of Seller or Financial Management Firm (A)	Description (B)	Date of Purchase (C)	Cost (D)	Book Value (E)	Gross Sales Price (F)	Cash Paid (G)
1.						
2.						
3.						
4.						
5.						
6.						
7.						
8.						
9.						
10.						
11.						
12.						
Total of all lines above						
			Less Reinvestments			
		(The total from Net Sales Line will be automatically entered in Item 63.)	**Net Sales**			

SCHEDULE 6– PURCHASE OF FIXED ASSETS

FILE NUMBER:

Name and Address of Seller (A)	Description (if land or buildings, give location) (B)	Date of Purchase (C)	Cost (D)	Book Value (E)	Gross Sales Price (F)	Amount Received (G)
1.						
2.						
3.						
4.						
5.						
6.						
7.						
8.						
9.						
10.						
11.						
12.						
Total of all lines above						
			Less Reinvestments			
		(The total from Net Sales Line will be automatically entered in Item 64.)	**Net Sales**			

SCHEDULE 7 – INVESTMENTS

FILE NUMBER:

Description (A)	Amount (B)
Marketable Securities	
A. Total Cost	
B. Total Book Value	
C. List each marketable security which has a book value over $5,000 and exceeds 5% of Line B.	
(1)	
(2)	
(3)	
(4)	
Other Investments	
D. Total Cost	
E. Total Book Value	
F. List each other investment which has a book value over $5,000 and exceeds 5% of Line E. Also, list each subsidiary for which separate reports are attached.	
(1)	
(2)	
(3)	
(4)	
(5)	
G. Total of Lines B and E (Total from Line G will be automatically entered in Item 26, Column (B))	

SCHEDULE 8 –FIXED ASSETS

FILE NUMBER:

Description (A)	Cost or Other Basis (B)	Total Depreciation or Amount Expensed (C)	Book Value (D)	Value (E)
A. Land (give location)				
1.				
2.				
3.				
B. Buildings (give location)				
1.				
2.				
3.				
C. Automobiles and Other Vehicles				
D. Office Furniture and Equipment				
E. Other Fixed Assets				
F. **Totals of Lines A through E** (Column (D) Total will be automatically entered in Item 27, Column (B))				

SCHEDULE 9 – OTHER ASSETS

FILE NUMBER:

Description (A)	Book Value (B)
1.	
2.	
3.	
4.	
5.	
6.	
7.	
8.	
9.	
10.	
11.	
12.	
13.	
14.	
Total (Total will be automatically entered in Item 28, Column (B))	

SCHEDULE 10 – ACCOUNTS PAYABLE AGING SCHEDULE

FILE NUMBER:

Entity or Individual Name (A)	Total Account Payable (B)	90 - 180 Days Past Due (C)	180+ Days Past Due (D)	Liquidated Account Payable (E)
1.				
2.				
3.				
4.				
5.				
6.				
7.				
8.				
9.				
10.				
11.				
12.				
13.				
14.				
15.				
16.				
17.				
18.				
19.				
20.				
21.				
22.				
23.				
24.				
25.				
Total of all Itemized Accounts Payable				
Total from all other accounts payable				
Totals (Total for Column (B) will be automatically entered in Item 30, Column (D))				

SCHEDULE 11 – LOANS PAYABLE

FILE NUMBER:

Source of Loans Payable at Any Time During the Reporting Period (A)	Loans Owed at Start of Period (B)	Loans Obtained During Period (C)	Repayment Made During Period		Loans Owed at End of Period (E)
			Cash (D)(1)	Other Than Cash (D)(2)	
1.					
2.					
3.					
4.					
5.					
6.					
7.					
8.					
9.					
10.					
11.					
12.					
13.					
Total Loans Payable					

Totals will be automatically entered in Column (C) ……Item 31……Item 45……Item 66……Item 75 with Explanation……tem 31 Column (D)

SCHEDULE 12 – OTHER LIABILITIES

FILE NUMBER:

Description (A)	Amount at End of Period (B)
1.	
2.	
3.	
4.	
5.	
6.	
7.	
8.	
9.	
10.	
11.	
12.	
13.	
Total Other Liabilities (Total will be automatically entered in Item 33, Column (D))	

SCHEDULE 13 – ALL OFFICERS AND DISBURSEMENT TO OFFICERS

FILE NUMBER:

	(A) Name Last, First, MI	(B) Title	(C) Status	(D) Gross Salary Disbursements (before any deductions)	(E) Allowances Disbursed	(F) Disbursements for Official Business	(G) Other Disbursements not reported in (D) through (F)	(H) Total
1 A								
B								
C								
2 A								
B								
C								
3 A								
B								
C								
4 A								
B								
C								

TOTAL OFFICER DISBURSEMENTS					
LESS DEDUCTIONS					
NET DISBURSEMENTS					

SCHEDULE 14 – DISBURSEMENTS TO EMPLOYEES

FILE NUMBER:

	(A) Name Last, First, MI	(B) Title	(C) Other Payer	(D) Gross Salary Disbursements (before any deductions)	(E) Allowances Disbursed	(F) Disbursements for Official Business	(G) Other Disbursements not reported in (D) through (F).	(H) Total
1 A								
B								
C								
2 A								
B								
C								
3 A								
B								
C								
4 A								
B								
C								

TOTAL RECEIVED BY ALL OTHER EMPLOYEES MAKING $10,000 OR LESS					

TOTAL EMPLOYEE DISBURSEMENTS					
LESS DEDUCTIONS					
NET DISBURSEMENTS					

SCHEDULE 15 – MEMBERSHIP STATUS

FILE NUMBER:

Category of Membership (A)	Number (B)	Voter Eligibility (C)
1.		Yes
2.		Yes
3.		Yes
4.		Yes
5.		Yes
6.		Yes
7.		Yes
Members (Total of all lines above)		
Agency Fee Payers*		
Total Members/Fee Payers (Total of Members and Fee Payers Lines)		
*Agency Fee Payers are not considered members of the labor organization		

DETAILED SUMMARY PAGE - SCHEDULES 16 THROUGH 23

Complete Itemization Pages BEFORE the Detailed Summary Page

FILE NUMBER:

SCHEDULE 16 OTHER RECEIPTS	1. Named Payer Itemized Receipts		Item 49
	2. Named Payer Non-Itemized Receipts		
	3. All Other Receipts		
	4. Total Receipts *(add Lines 1 through 3)*		
SCHEDULE 17 CONTRACT ADMINISTRATION AND NEGOTIATION	1. Named Payee Itemized Disbursements		Item 51
	2. Named Payee Non-Itemized Disbursements		
	3. To Officers		
	4. To Employees		
	5. All Other Disbursements		
	6. Total Disbursements *(add Lines 1 through 5)*		
SCHEDULE 18 ORGANIZING	1. Named Payee Itemized Disbursements		Item 52
	2. Named Payee Non-Itemized Disbursements		
	3. To Officers		
	4. To Employees		
	5. All Other Disbursements		
	6. Total Disbursements *(add Lines 1 through 5)*		
SCHEDULE 19 POLITICAL ACTIVITIES	1. Named Payee Itemized Disbursements		Item 53
	2. Named Payee Non-Itemized Disbursements		
	3. To Officers		
	4. To Employees		
	5. All Other Disbursements		
	6. Total Disbursements *(add Lines 1 through 5)*		

SCHEDULE 20 LOBBYING	1. Named Payee Itemized Disbursements		Item 54
	2. Named Payee Non-Itemized Disbursements		
	3. To Officers		
	4. To Employees		
	5. All Other Disbursements		
	6. **Total Disbursements** *(add Lines 1 through 5)*		
SCHEDULE 21 CONTRIBUTIONS, GIFTS, AND GRANTS	1. Named Payee Itemized Disbursements		Item 55
	2. Named Payee Non-Itemized Disbursements		
	3. To Officers		
	4. To Employees		
	5. All Other Disbursements		
	6. **Total Disbursements** *(add Lines 1 through 5)*		
SCHEDULE 22 GENERAL OVERHEAD	1. Named Payee Itemized Disbursements		Item 56
	2. Named Payee Non-Itemized Disbursements		
	3. To Officers		
	4. To Employees		
	5. All Other Disbursements		
	6. **Total Disbursements** *(add Lines 1 through 5)*		
SCHEDULE 23 UNION ADMINISTRATION	1. Named Payee Itemized Disbursements		Item 57
	2. Named Payee Non-Itemized Disbursements		
	3. To Officers		
	4. To Employees		
	5. All Other Disbursements		
	6. **Total Disbursements** *(add Lines 1 through 5)*		

SCHEDULE 16 – OTHER RECEIPTS

FILE NUMBER:

Complete Itemization Pages BEFORE the Detailed Summary Page

Name and Address (A)	Purpose (C)	Date (D)	Amount (E)
(B) Type or Classification			
	Total Itemized Transactions with this Payee/Payer		
	Total Non-Itemized Transactions with this Payee/Payer		
	Total of All Transactions with this Payee/Payer for This Schedule		

SCHEDULE 17 – CONTRACT NEGOTIATION ADMINISTRATION

FILE NUMBER:

Complete Itemization Pages BEFORE the Detailed Summary Page

Name and Address (A)	Purpose (C)	Date (D)	Amount (E)
(B) Type or Classification			
	Total Itemized Transactions with this Payee/Payer		
	Total Non-Itemized Transactions with this Payee/Payer		
	Total of All Transactions with this Payee/Payer for This Schedule		

SCHEDULE 18 – ORGANIZING

FILE NUMBER:

Complete Itemization Pages BEFORE the Detailed Summary Page

Name and Address (A)	Purpose (C)	Date (D)	Amount (E)
(B) Type or Classification			
	Total Itemized Transactions with this Payee/Payer		
	Total Non-Itemized Transactions with this Payee/Payer		
	Total of All Transactions with this Payee/Payer for This Schedule		

SCHEDULE 19 – POLITICAL ACTIVITIES

FILE NUMBER:

Complete Itemization Pages BEFORE the Detailed Summary Page

Name and Address (A)	Purpose (C)	Date (D)	Amount (E)
(B) Type or Classification			
	Total Itemized Transactions with this Payee/Payer		
	Total Non-Itemized Transactions with this Payee/Payer		
	Total of All Transactions with this Payee/Payer for This Schedule		

SCHEDULE 20 – LOBBYING

FILE NUMBER:

Complete Itemization Pages BEFORE the Detailed Summary Page

Name and Address (A)	Purpose (C)	Date (D)	Amount (E)
(B) Type or Classification			
	Total Itemized Transactions with this Payee/Payer		
	Total Non-Itemized Transactions with this Payee/Payer		
	Total of All Transactions with this Payee/Payer for This Schedule		

SCHEDULE 21 – CONTRIBUTIONS, GIFTS, AND GRANTS

FILE NUMBER:

Complete Itemization Pages BEFORE the Detailed Summary Page

Name and Address (A)	Purpose (C)	Date (D)	Amount (E)
(B) Type or Classification			
	Total Itemized Transactions with this Payee/Payer		
	Total Non-Itemized Transactions with this Payee/Payer		
	Total of All Transactions with this Payee/Payer for This Schedule		

SCHEDULE 22 – GENERAL OVERHEAD

FILE NUMBER:

Complete Itemization Pages BEFORE the Detailed Summary Page

Name and Address (A)	Purpose (C)	Date (D)	Amount (E)
(B) Type or Classification			
	Total Itemized Transactions with this Payee/Payer		
	Total Non-Itemized Transactions with this Payee/Payer		
	Total of All Transactions with this Payee/Payer for This Schedule		

SCHEDULE 23 – UNION ADMINISTRATION

FILE NUMBER:

Complete Itemization Pages BEFORE the Detailed Summary Page

Name and Address (A)	Purpose (C)	Date (D)	Amount (E)
(B) Type or Classification			
	Total Itemized Transactions with this Payee/Payer		
	Total Non-Itemized Transactions with this Payee/Payer		
	Total of All Transactions with this Payee/Payer for This Schedule		

SCHEDULE 24 – BENEFITS

FILE NUMBER:

Description (A)	To Whom Paid (B)	Amount (C)
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		
11.		
12.		
13.		
14.		
15.		
16.		
17.		
18.		
19.		
20.		
21.		
22.		
Total of all lines above (Total will be automatically entered in Item 58.)		

75. ADDITIONAL INFORMATION SUMMARY

FILE NUMBER:

Public reporting burden for this collection of information is estimated to average 548.5 hours per response. For filers who have subsidiary organizations, as defined in Section X of these instructions, an additional public reporting burden is estimated to average 88 hours per response. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining data needed, and completing and reviewing the collection of information. Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number. Reporting of this information is mandatory and is required by the Labor-Management Reporting and Disclosure Act of 1959, as amended, for the purpose of public disclosure. As this is public information, there are no assurances of confidentiality. If you have any comments regarding this estimate or any other aspect of this information collection, including suggestions for reducing this burden, please send them to the U.S. Department of Labor, Office of Labor-Management Standards, Division of Interpretations and Standards, Room N-5609, 200 Constitution Avenue, NW, Washington, DC 20210.

INSTRUCTIONS FOR FORM LM-2 LABOR ORGANIZATION ANNUAL REPORT

GENERAL INSTRUCTIONS

I. WHO MUST FILE

Every labor organization subject to the Labor-Management Reporting and Disclosure Act, as amended (LMRDA), the Civil Service Reform Act (CSRA), or the Foreign Service Act (FSA) must file a financial report, Form LM-2 Long Form (Form LM-2 LF), Form LM-2, LM-3, or LM-4, each year with the Office of Labor-Management Standards (OLMS) of the U.S. Department of Labor. These laws cover labor organizations that represent employees who work in private industry, employees of the U.S. Postal Service, and most Federal government employees. Labor organizations that include or represent only state, county, or municipal government employees are not covered by these laws and, therefore, are not required to file. If you have a question about whether the labor organization is required to file, contact the nearest OLMS field office listed at the end of these instructions.

II. WHAT FORM TO FILE

Every labor organization subject to the LMRDA, CSRA, or FSA with total annual receipts of $8,000,000 or more must file the Form LM-2 LF.

Labor organizations with total annual receipts between $250,000 and $7,999,999 must file Form LM-2.

Labor organizations with total annual receipts of less than $250,000 may file the simplified Form LM-3, if not in trusteeship as defined in Section IX (Labor Organization In Trusteeship) of these instructions. Labor organizations with total annual receipts of less than $10,000 may file the abbreviated annual report Form LM-4, if not in trusteeship.

The term “total annual receipts” means all financial receipts of the labor organization during its fiscal year, regardless of the source, including receipts of any special funds as described in Section VIII (Funds To Be Reported) or as described in Section X (Labor Organizations With Subsidiary Organizations). Receipts of an LMRDA section 3(l) trust in which the labor organization is interested (as described in Information Item 10(a)) should not be included in the total annual receipts of the labor organization when determining which form to file, unless the 3(l) trust is a subsidiary organization of the union.

III. WHEN TO FILE

Form LM-2 must be filed within 90 days after the end of the labor organization's fiscal year (12-month reporting period). The law does not authorize the Department to grant an extension of time for filing reports. The penalties for delinquency are described in Section VI (Officer Responsibilities and Penalties) of these instructions.

If the labor organization went out of existence during its fiscal year, a terminal financial report must be filed within 30 days after the date it ceased to exist. See Section XII (Labor Organizations That Have Ceased to Exist) of these instructions for information on filing a terminal financial report.

IV. HOW TO FILE

Form LM-2 must be submitted electronically to

the Department. Form LM-2 filers will be able to file reports in paper format only if they assert a temporary hardship exemption or apply for and are granted a continuing hardship exemption.

If you have difficulty navigating the software, or have questions about its functions and features, call the OLMS Help Desk at: (866) 401-1109. You may also send questions via e-mail to OLMS-Public@dol.gov.

TEMPORARY HARDSHIP EXEMPTION:

If a labor organization experiences unanticipated technical difficulties that prevent the timely preparation and submission of an electronic filing, the organization may file Form LM-2 in paper format by the required due date. An electronic format copy of the filed paper format document shall be submitted to the Department within ten business days after the required due date. Indicate in Item 3 (Amended, Hardship Exempted, or Terminal Report) that the labor organization is filing under the hardship exemption procedures. Unanticipated technical difficulties that may result in additional delays should be brought to the attention of the OLMS Division of Interpretations and Standards, which can be reached at the address below, by emailat OLMS-Public@dol.gov, by phone at 202-693-0123, or by fax at 202-693-1340.

Note: If either the paper filing or the electronic filing is not received in the timeframe specified above, the report will be considered delinquent.

V. PUBLIC DISCLOSURE

The LMRDA requires that the Department make labor organization financial reports available for inspection by the public. Reports may be viewed and downloaded from the OLMS Web site at www.unionreports.gov. Copies of reports and union constitutions and bylaws can also be ordered at the same Web site. Reports may also be examined and copies purchased at the OLMS Public Disclosure Room at the following address:

U.S. Department of Labor
Office of Labor-Management Standards
200 Constitution Avenue, NW
Room N-1519
Washington, DC 20210

VI. OFFICER RESPONSIBILITIES AND PENALTIES

The president and treasurer or the corresponding principal officers of the labor organization required to sign Form LM-2 are personally responsible for its filing and accuracy. Under the LMRDA, officers are subject to criminal penalties for willful failure to file a required report and for false reporting. False reporting includes making any false statement or misrepresentation of a material fact while knowing it to be false, or for knowingly failing to disclose a material fact in a required report or in the information required to be contained in it or in any information required to be submitted with it.

The reporting labor organization and the officers required to sign Form LM-2 are also subject to civil prosecution for violations of the filing requirements. Section 210 of the LMRDA (29 U.S.C. 440) provides that "whenever it shall appear that any person has violated or is about to violate any of the provisions of this title, the Secretary may bring a civil action for such relief (including injunctions) as may be appropriate."

Under the CSRA and FSA and implementing regulations, false reporting and failure to report may result in administrative enforcement action and litigation. The officers responsible for signing Form LM-2 are also subject to criminal penalties for false reporting and perjury under Sections 1001 of Title 18 and 1746 of Title 28 of the United States Code.

VII. RECORDKEEPING

The officers required to file Form LM-2 are responsible for maintaining records that will provide in sufficient detail the information and data necessary to verify the accuracy and completeness of the report. The records must be kept for at least 5 years after the date the report is filed. Any record necessary to verify, explain or clarify the report must be retained, including, but not limited to, vouchers, worksheets, receipts, applicable resolutions, and any electronic documents, including recordkeeping software, used to complete, read, and file thereport.

VIII. FUNDS TO BE REPORTED

The labor organization must report financial information on Form LM-2 for all funds of the labor organization. Include any special purpose funds or accounts, such as strike funds, vacation funds, and scholarship funds even if they are not part of the labor organization's general treasury.

All labor organization political action committee (PAC) funds are considered to be labor organization funds. However, to avoid duplicate

reporting, PAC funds that are kept separate from your labor organization's treasury are not required to be included in your organization's Form LM-2 if publicly available reports on the PAC funds are filed with a Federal or state agency.

Your organization is required to report financial information about any "subsidiary organizations." Financial information about your organization and its subsidiary organizations may be combined on a single Form LM-2 or you may attach to your Form LM-2 report the regular annual report of the financial condition and operations of the subsidiary organization with a signed certification by an independent public accountant, as described in Section X (Labor Organizations With Subsidiary Organizations).

If combining the information concerning subsidiary organizations, be sure to include the requested information and amounts for the subsidiary organizations as well as for all other assets of your union in all items.

SPECIAL INSTRUCTIONS FOR CERTAIN ORGANIZATIONS

IX. LABOR ORGANIZATIONS IN TRUSTEESHIP

Any labor organization that has placed a subordinate labor organization in trusteeship is responsible for filing the subordinate's annual financial report. This obligation includes the requirement to file Form T-1 for any trusts in which the subordinate labor organization is interested. See Form LM-2 Instructions, Part XI, Item 10 (Trusts or Funds), as well as the Form T-1 for further information. A trusteeship is defined in section 3(h) of the LMRDA (29 U.S.C. 402) as "any receivership, trusteeship, or other method of supervision or control whereby a labor organization suspends the autonomy otherwise available to a subordinate body under its constitution or bylaws."

Annual financial reports filed for any labor organization in trusteeship must be filed on Form LM-2. The report must be signed by the president and treasurer or corresponding principal officers of the labor organization that imposed the trusteeship. The trustees of the subordinate labor organization must also sign and date Form LM-2. To add signature blocks, click on the "Add Signature Block" button on the bottom of page 1.

X. LABOR ORGANIZATIONS WITH SUBSIDIARY ORGANIZATIONS

The labor organization must disclose assets, liabilities, receipts, and disbursements of a subsidiary organization.

Within the meaning of these instructions, a subsidiary organization is defined as any separate organization of which the ownership is wholly vested in the reporting labor organization or its officers or its membership, which is governed or controlled by the officers, employees, or members of the reporting labor organization, and which is wholly financed by the reporting labor organization. A subsidiary organization is considered to be wholly financed if the initial financing was provided by the reporting labor organization even if the subsidiary organization is currently wholly or partially self-sustaining. An example of a subsidiary organization is a building corporation which holds title to a building; the labor organization owns the building corporation, selects the officers, and finances the operation of the building corporation.

A labor organization is required to report financial information for each of its subsidiary organizations using one of the following methods:

Method (1) — Consolidate the financial information for the subsidiary organization and the labor organization on a single Form LM-2.

Method (2) — File, with the labor organization's Form LM-2, the regular annual report of the financial condition and operations of the subsidiary organization, accompanied by a statement signed by an independent public accountant certifying that the financial report presents fairly the financial condition and operations of the subsidiary organization and was prepared in accordance with generally accepted accounting principles.

Financial information reported separately for subsidiary organizations under method (2) must include the name of the subsidiary organization and the name and file number of the labor organization as shown on its Form LM-2. The financial report of the subsidiary organization must cover the same reporting period as that used by the reporting labor organization.

When method (2) is used and the subsidiary

organization is an investment, the financial interest of the reporting labor organization in the subsidiary organization must be reported in Item 26 (Investments) and in Schedule 7 (Investments) of the labor organization's Form LM-2. When method (2) is used and the subsidiary organization is of a non-investment nature, the financial interest of the reporting labor organization in the subsidiary organization must be reported in Item 28 (Other Assets) and in Schedule 9 (Other Assets) of the labor organization's Form LM-2.

The same type of information required on Form LM-2 regarding disbursements to officers and employees and loans made by labor organizations must also be reported with respect to the subsidiary organization. In method (1) the information relating to the subsidiary organization must be combined with that of the labor organization and reported on the labor organization's Form LM-2 on Schedule 13 (All Officers and Disbursements to Officers) and Schedule 14 (Disbursements to Employees) and Statement A, Item 24 (Loans Receivable) and Schedule 2 (Loans Receivable) in the detail required by the instructions. If method (2) is used, an attachment must be submitted containing the information required by the instructions for Schedules 2, 13, and 14.

The information regarding loans made by the subsidiary organization must include in Schedule 2 (Loans Receivable) a listing of the names of each officer, employee, or member of the labor organization and each officer or employee of the subsidiary organization whose total loan indebtedness to the subsidiary organization, to the labor organization, or to both at any time during the reporting period exceeded $250. However, if method (2) is used, the amount reported by the subsidiary organization should be only the amount owed to the subsidiary organization.

The annual financial report must also include on Schedule 13 (All Officers and Disbursements to Officers) all disbursements made by the subsidiary organization to or on behalf of its officers and officers of the labor organization. The report must also list on Schedule 14 (Disbursements to Employees) the name and position of the subsidiary organization's employees whose total gross salaries, allowances, and other disbursements from the subsidiary organization, the reporting labor organization, and any affiliates were more than $10,000. However, if method (2) is used, only the disbursements of the subsidiary organization for its employees should be reported.

XI. COMPLETING FORM LM-2

INTRODUCTION

Most pages have a "Save & Calculate" button to total and transfer data to fields in various parts of the form. You may click on one or more of these buttons as you fill out the form at any time.

You may click on the "Validate Form" button at any time to check for errors. This action will generate an "Errors Page" listing any errors that will need to be corrected before you will be able to sign the form. Clicking on the signature lines will also perform the validation function.

INFORMATION ITEMS 1–9

Items 1, 2, and 4-8 are "pre-filled" items. These fields are filled in by the software based on information you entered when you accessed and downloaded the form from our Web site. You cannot edit the information pre-filled in Items 1, 2, and 4-7.

1. FILE NUMBER — The software will enter the labor organization's 6-digit file number here and at the top of each page of Form LM-2. This is the number you entered when you downloaded Form LM-2. If the number is incorrect, you must download another copy of the form using the correct number. If the labor organization does not have the number on file and cannot obtain the number from prior reports filed with the Department, the number can be obtained from the OLMS Web site at www.unionreports.gov, or by contacting the nearest OLMS field office.

2. PERIOD COVERED — The software will enter the beginning and ending dates of the period covered by this report. These are the dates you entered when you downloaded Form LM-2. If the dates are incorrect, you must download another form using the correct dates.

If the labor organization changed its fiscal year, the ending date in Item 2 should be the labor organization's new fiscal year ending date and the labor organization should indicate in Item 75 (Additional Information) that the report is for a period of less than 12 months because its fiscal year has changed. For example, if the labor organization's fiscal year ending date changes from June 30 to December 31, a report must be

filed for the partial year from July 1 to December
31. Thereafter, the labor organization's annual report should cover a full 12-month period from January 1 to December 31.

3. AMENDED, HARDSHIP EXEMPTED, TERMINAL, OR TRUSTEESHIP REPORT — Do not complete this item unless this report is an amended, hardship exempted, terminal, or trusteeship report. Select Item 3(a) if the labor organization is filing an amended report correcting a previously filed report. Select Item 3(b) if the labor organization is filing under the hardship exemption procedures defined in Section IV. Select Item 3(c) if the labor organization has gone out of business by disbanding, merging into another labor organization, or being merged and consolidated with one or more labor organizations to form a new labor organization, and this is the labor organization's terminal report. Be sure the date the labor organization ceased to exist is entered in Item 2 (Period Covered) after the word "Through." See Section XII (Labor Organizations That Have Ceased to Exist) of these instructions for more information on filing a terminal report. Select Item 3(d) if the report is being filed by a labor organization for a subordinate labor organization that it has placed in trusteeship.

4. AFFILIATION OR ORGANIZATION NAME — The software accesses this information from the OLMS database and will enter the name of the national or international labor organization that granted the labor organization a charter. "Affiliates," within the meaning of these instructions, are labor organizations chartered by the same parent body, governed by the same constitution and bylaws, or having the relationship of parent and subordinate. For example, a parent body is an affiliate of all of its subordinate bodies, and all subordinate bodies of the same parent body are affiliates of each other.

If the labor organization has not reported such an affiliation, the software will enter the name of the labor organization as currently identified in the labor organization's constitution and bylaws or other organizational documents.

This item cannot be edited by the filer. If the labor organization needs to change this information, contact OLMS at (202) 693-0124.

5. DESIGNATION — The software will enter the specific designation that is used to identify the labor organization, such as Local, Lodge, Branch, Joint Board, Joint Council, District Council, etc. This field cannot be edited by the filer.

6. DESIGNATION NUMBER — The software will enter the number or other identifier, if any, by which the labor organization is known. This field cannot be edited by the filer.

7. UNIT NAME — The software will enter any additional or alternate name by which the labor organization is known, such as "Chicago Area Local." This field cannot be edited by the filer.

8. MAILING ADDRESS — The software accesses the union's mailing address on record in the OLMS database and enters it in Item 8. The first and last name of the person, if any, to whom such mail should be sent and any building and room number should be included. These fields can be edited.

9. PLACE WHERE RECORDS ARE KEPT — If the records required to be kept by the labor organization to verify this report are kept at the address reported in Item 8 (Mailing Address), answer "Yes." If not, answer "No" and provide in Item 75 (Additional Information) the address where the labor organization's records are kept.

INFORMATION ITEMS 10–21

Answer Items 10 through 21 as instructed. Select the appropriate box for those questions requiring a "Yes" or "No" answer; do not leave both boxes blank. Enter a single "0" in the boxes for items requiring a number or dollar amount if there is nothing to report.

10. TRUSTS OR FUNDS — Answer "Yes" to Item 10(a), if the labor organization has an interest in a trust or other fund as defined in 29 U.S.C. 402(l). A trust in which a labor organization is interested is a trust or other fund as defined in Section 3(l) of the LMRDA (29 U.S.C. 402(l)) as

> ...a trust or other fund or organization (1) which was created or established by a labor organization, or one or more of the trustees or one or more members of the governing body of which is selected or appointed by a labor organization, and (2) a primary purpose of which is to provide benefits for the members of such labor organization or their beneficiaries.

The determination whether a particular entity is a trust in which a labor organization is interested will be based on the facts in each case.

The labor organization must also file a Form T-1 Trust Annual Report annually for each trust in which it is interested, as defined in the LMRDA at 29 U.S.C. 402(l), if the labor organization alone, or in combination with other labor organizations, either

appoints or selects a majority of the members of the trust's governing board; or

contributes greater than 50% of the trust's receipts during the one-year reporting period.

Any contributions made pursuant to a collective bargaining agreement shall be considered the labor organization's contributions. See the Form T-1 Instructions for available exemptions and further information.

Additionally, in the Form LM-2 report, provide in Item 75 (Additional Information) the full name, address, and purpose of each trust or other fund. If the union is required to file a Form T-1 report regarding the trust, indicate in Item 75 and, if filed, report the Form T-1 file number. Also indicate in Item 75 whether the labor organization has or will file the report, or if a parent organization or other organization has or will file on the labor organization's behalf. If the labor organization will file the Form T-1 on behalf of other labor organizations, identify the other organizations in Item 75. Also include in Item 75 the fiscal year ending date for any trust for which a Form T-1 is filed if the trust's fiscal year is different from that of the labor organization. Further, if a report has been filed for the trust or other fund under the Employee Retirement Income Security Act of 1974 (ERISA), report in Item 75 (Additional Information) the ERISA file number (Employer Identification Number — EIN) and plan number, if any.

If no Form T-1 is filed because financial information is already available as a result of the disclosure requirements of a Federal statute other than ERISA or LMRDA, list the name of any government agency, such as the Internal Revenue Service (IRS), with which the trust files a publicly available report, and the relevant file number of the trust, or otherwise indicate where the relevant report may be viewed. See Instructions for Form T-1, Trust Annual Report, for guidance on reporting the assets, liabilities, receipts, disbursements, and other information about these entities.

Answer "Yes" to Item 10(b), if an officer or employee paid $10,000 or more by the reporting labor organization also received $10,000 or more as an officer or employee of another labor organization in gross salaries, allowances, and other direct and indirect disbursements during the reporting period. If the labor organization answered "Yes" to 10(b), provide in Item 75 (Additional Information) the name of the officer, the amount paid, what labor organization made the payment, and the file number of that labor organization.

11. POLITICAL ACTION COMMITTEE FUNDS AND SUBSIDIARY ORGANIZATIONS — If the labor organization answered "Yes" to Item 11(a), in reference to a political action committee, provide in Item 75 (Additional Information) the full name of each separate political action committee (PAC) and list the name of any government agency, such as the Federal Election Commission or a state agency, with which the PAC has filed a publicly available report, and the relevant file number of the PAC. (PAC funds kept separate from the labor organization's treasury need not be included in the labor organization's Form LM-2 if publicly available reports on the PAC funds are filed with a Federal or state agency.)

If the labor organization answered "Yes" to Item 11(b), in reference to a subsidiary organization, provide in Item 75 (Additional Information) the name, address, and purpose of each subsidiary organization. Indicate whether the information concerning its financial condition and operations is included in this Form LM-2 or in a separate report. See Section X of these instructions for information on reporting subsidiary organizations.

12. AUDIT OR REVIEW OF BOOKS AND RECORDS — If the labor organization answered "Yes" to Item 12, indicate in Item 75 (Additional Information) whether the audit or review was performed by an outside accountant or a parent body auditor/representative. If an outside accountant performed the audit or review, provide the name of the accountant or accounting firm. Report any audit or review by an outside accountant or a parent body auditor/representative in which the labor organization's books and records were examined to verify their accuracy and validity. The term

"audit or review" does not include providing assistance in developing a bookkeeping system, providing routine bookkeeping services, or merely compiling information from the labor organization's books and records to prepare Form LM-2 or other financial reports. Also, do not answer "Yes" to Item 12 if an audit committee or trustees of the labor organization performed the audit or review.

13. LOSSES OR SHORTAGES — Answer "Yes" to Item 13 if the labor organization experienced and/or discovered a loss, shortage, or other discrepancy in its finances during the period covered. Describe the loss or shortage in detail in Item 75 (Additional Information), including such information as the amount of the loss or shortage of funds or a description of the property that was lost, how it was lost, and to what extent, if any, there has been an agreement to make restitution or any recovery by means of repayment, fidelity bond, insurance, or other means.

14. FIDELITY BOND — Enter the maximum amount recoverable for a loss caused by any officer, employee, or agent of the labor organization who handled the labor organization's funds. Enter "0" if the labor organization was not covered by a fidelity bond during the reporting period.

NOTE: If a labor organization has property and annual financial receipts that exceeded $5,000, each of the labor organization's officers, employees, and agents who handles funds or other property of the labor organization must be bonded. The amount of the bond must be at least 10% of the value of the funds handled by the individual during the last reporting period, up to a maximum bond of $500,000. The bond must be obtained from a surety company approved by the Secretary of the Treasury. If you have any questions or need more information about bonding requirements, contact the nearest OLMS field office.

15. ACQUISITION OR DISPOSITION OF ASSETS — If the labor organization answered "Yes" to Item 15, describe in Item 75 (Additional Information) the manner in which the labor organization acquired or disposed of the asset(s), such as donating office furniture or equipment to charitable organizations, trading in assets, writing off a receivable, or giving away other tangible or intangible property of the labor organization. Include the type of asset, its value, and the identity of the recipient or donor, if any. Also report in Item 75 the cost or other basis at which any acquired assets were entered on the labor organization's books or the cost or other basis at which any assets disposed of were carried on the labor organization's books. For example, assets may be entered on the labor organization's books at cost and carried at that value; carried at cost less accumulated depreciation; or carried at scrap value or other nominal value because the assets were fully depreciated or were expensed when purchased (that is, the cost was charged to current expenses rather than entered on the books and periodically depreciated).

For assets that were traded in, enter in Item 75 the cost, book value, and trade-in allowance.

16. PLEDGED OR ENCUMBERED ASSETS — If the labor organization answered "Yes" to Item 16, identify in Item 75 (Additional Information) all of the labor organization's assets pledged or encumbered in any way (such as those pledged as collateral for a loan) at the end of the reporting period. Also report in Item 75 their fair market value, and provide details of transactions related to the encumbrance.

17. CONTINGENT LIABILITIES — If the labor organization answered "Yes" to Item 17, describe in Item 75 (Additional Information) the transactions or events resulting in the contingent liabilities and include the identity of the claimant or creditor. Contingent liabilities are potential obligations that may or may not develop into actual liabilities in the future. Examples of a contingent liability are a loan co-signed by the labor organization, or a pending lawsuit that could result in the labor organization being ordered to pay damages or make other payments.

A pending administrative or judicial action is considered a contingent liability that must be reported in Item 17 if, in the opinion of legal counsel, it is reasonably possible that the labor organization will be required to make some payment. Such administrative or judicial actions must be reported as contingent liabilities regardless of whether or not the possible losses would have a materially adverse effect on the labor organization's financial condition. List in Item 75 each administrative or judicial action, including the case number, court, and caption.

18. CHANGES IN CONSTITUTION AND BYLAWS OR PRACTICES AND PROCEDURES — If the labor organization

answered "Yes" to Item 18(a) because the labor organization's constitution and bylaws were changed during the reporting period (other than rates of dues and fees), a dated copy of the new constitution and bylaws must be submitted to OLMS as an electronic attachment to the Form LM-2.

If the labor organization is governed by a uniform or model constitution and bylaws prescribed by the labor organization's parent national or international body, the labor organization's parent body may file the constitution and bylaws on the labor organization's behalf. If the parent body files a constitution and bylaws on the labor organization's behalf, answer "Yes" to Item 18(a) and state that fact in Item 75 (Additional Information). If the labor organization has any supplemental governing documents or has modified a model constitution and bylaws, the labor organization must file these documents.

If the labor organization answered "Yes" to Item 18(a) because the labor organization changed any of the practices/procedures listed below during the reporting period and the practices/procedures are not described in the labor organization's constitution or bylaws, the labor organization must file an amended Form LM-1 (Labor Organization Information Report) to update information on file with the Department:

- qualifications for or restrictions on membership;
- levying assessments;
- participating in insurance or other benefit plans;
- authorizing disbursement of labor organization funds;
- auditing financial transactions of the labor organization;
- calling regular and special meetings;
- authorizing bargaining demands;
- ratifying contract terms;
- authorizing strikes;
- disciplining or removing officers or agents for breaches of their trust;
- imposing fines and suspending or expelling members including the grounds for such action and any provision made for notice, hearing, judgment on the evidence, and appeal procedures;
- selecting officers and stewards and any representatives to other bodies composed of labor organizations' representatives;
- invoking procedures by which a member may protest a defect in the election of officers (including not only all procedures for initiating an election protest but also all procedures for subsequently appealing an adverse decision, e.g., procedures for appeals to superior or parent bodies, if any); and
- issuing work permits.

Information on obtaining Form LM-1 may be obtained from the OLMS Web site at www.olms.dol.gov or from any OLMS field office.

NOTE: Federal employee labor organizations subject solely to the Civil Service Reform Act or Foreign Service Act are not required to submit an amended Form LM-1 to describe revised or changed practices/procedures.

Report in Item 18(b) the dates of the labor organization's current Constitution and Bylaws.

19. NEXT REGULAR ELECTION — Enter the month and year of the labor organization's next regular election of general officers (president, vice president, treasurer, secretary, etc.). Do not report the date of any interim election to fill vacancies.

20. NUMBER OF MEMBERS — After Schedule 15 is completed and the "Save & Calculate" button is clicked, the software will enter the total number of members into Item 20.

21. DUES AND FEES — Enter the dues and fees established by the labor organization. If more than one rate applies, enter the minimum and maximum rates. Enter "0" where appropriate.

Line (a): Enter the regular dues, fees or other periodic payments that a member must pay to be in good standing in the labor organization, including the calendar basis for the payment (per month, per year, etc.). Include only the dues or fees of regular members and not dues or fees of members with special rates, such as apprentices, retirees, or unemployed members.

Line (b) If individuals covered by your organization's collective bargaining agreement(s) pay "working" dues in addition to their regular dues, enter the amount or percent of "working" dues, including the basis for the payment (per hour, per month, etc.).

Line (c): Enter the initiation fees required from new members.

Line (d): Enter the fees other than dues required

from transferred members. Such fees are those charged to persons applying for a transfer of membership to the labor organization from another labor organization with the same affiliation. Do not report fees charged to members transferring from one class of membership to another within the labor organization.

Line (e): If the labor organization issues work permits, enter the fees required and enter the calendar basis for the payment (per month, per year, etc.). Work permit fees are fees charged to nonmembers of the labor organization who work within its jurisdiction. Do not report as work permit fees those fees charged to nonmember applicants for membership pending acceptance of their membership application, or fees charged to persons applying for transfer of membership to the labor organization pending acceptance of their application for transfer.

FINANCIAL DETAILS

REPORT ONLY DOLLAR AMOUNTS

Report all amounts in dollars only. Round cents to the nearest dollar. Amounts ending in $.01 through $.49 should be rounded down. Amounts ending in $.50 through $.99 should be rounded up.

REPORTING CLASSIFICATIONS

Complete all items and lines on the form. Do not use different accounting classifications or change the wording of any item or line.

BEGINNING AND ENDING AMOUNTS

Entries in Schedules 2 and 11 and in Statement A must report amounts for both the start and the end of the reporting period. The amounts entered for the start of the reporting period on the labor organization's report should be identical to the amounts entered for the end of the reporting period on last year's report. If the amounts are not the same, fully explain the difference in Item 75 (Additional Information).

COMPLETE SCHEDULES FIRST

Complete Schedules 1 through 24 before completing Statements A and B. Be sure to complete all applicable lines in Schedules 1 through 24. As you complete the schedules, the software will transfer some of the totals to the appropriate items in Statements A and B. You must enter the remaining totals manually.

COMPLETE ALL ITEMS 22 THROUGH 72

Complete all items in Statement A and Statement B. Enter "0" where appropriate.

SCHEDULES 1 THROUGH 14

SCHEDULE 1 – ACCOUNTS RECEIVABLE AGING SCHEDULE

The labor organization must report 1) all accounts with an entity or individual that aggregate to a value of $7,500 or more and that are 90 days or more past due at the end of the reporting period or were liquidated, reduced or written off during the reporting period; and 2) the total aggregated value of all other accounts receivable.

If additional lines are needed, click the "Add More Accounts Receivable" button at the top of the schedule. The software will add lines to the schedule in increments of ten.

Column (A): Enter the name of each entity or individual with which the labor organization has an account receivable of $7,500 or more that is 90 days or more past due at the end of the reporting period or that was liquidated, reduced or written off during the reporting period without the receipt of cash sufficient to cover the total value of the account receivable.

Column (B): Enter the total amount of money owed to the labor organization by each listed entity or individual at the end of the reporting period. Enter on the "Total from all other accounts receivable" line the total amount of money owed to the labor organization in all other accounts receivable not required to be itemized in Schedule 1.

Click the "Save & Calculate" button at the top of the schedule and the software completes the "Total of all itemized accounts receivable" line" in Column (B) and enters the total accounts receivable in Column (B) and in Item 23, Column (B) of Statement A.

Column (C): Enter the total amount of money owed to the labor organization by each listed entity or individual at the end of the reporting period that is 90 to 180 days past due. Enter the total amount of money owed to the labor organization in all other accounts receivable (those of less than $7,500) that are 90 to 180

days past due and are not required to be itemized in Schedule 1 on the "Total from all other accounts receivable" line.

Click the "Save & Calculate" button at the top of the schedule and the software completes the "Total of all itemized accounts receivable" line in Column (C) and enters the total accounts receivable that were 90 to 180 days past due in Column (C).

Column (D): Enter the total amount of money owed to the labor organization by each listed entity or individual at the end of the reporting period that is more than 180 days past due. Enter the total amount of money owed to the labor organization in all other accounts receivable (those of less than $7,500 and not require to be itemized in Schedule 1) that are more than 180 days past due on the "Total from all other accounts receivable" line.

Click the "Save & Calculate" button at the top of the schedule and the software completes the "Total of all itemized accounts receivable" line in Column (D) and enters the total accounts receivable that were more than 180 days past due in Column (D).

Column (E): Enter the total amount of money owed to the labor organization by each entity or individual that was liquidated, reduced or written off during the reporting period by the reporting labor organization without the receipt of cash sufficient to cover the total value of the account receivable. Enter on the "Total from all other accounts receivable" line the total amount of money owed to the labor organization in all other accounts receivable (those of less than $7,500 and not required to be itemized in Schedule1) that was liquidated, reduced or written off during the reporting period by the reporting labor organization without the receipt of cash sufficient to cover the total value of the account receivable.

Click the "Save & Calculate" button at the top of the schedule and the software completes the "Total of all itemized accounts receivable" line in Column (E) and enters the total liquidated accounts receivable in Column (E).

Provide in Item 75 (Additional Information) all details and circumstances in connection with the liquidation, reduction or writing off of any account receivable, in accordance with the instructions for Item 15 (Acquisition or Disposition of Assets).

SCHEDULE 2 – LOANS RECEIVABLE

Report details of all direct and indirect loans (whether or not evidenced by promissory notes or secured by mortgages) owed to the labor organization at any time during the reporting period by individuals, business enterprises, benefit plans, and other entities including labor organizations. An example of an indirect loan is a disbursement by the labor organization to an educational institution for the tuition expense of an officer, employee, or member that must be repaid to the labor organization by that individual. Be sure to report all loans that were made and repaid in full during the reporting period. Do not include investments in corporate bonds or mortgages purchased on a block basis through a bank or similar institution that must be reported in Schedule 7 (Investments Other Than U.S. Treasury Securities).

NOTE: Advances, including salary advances, are considered loans and must be reported in Schedule 2 (Loans Receivable). However, advances to officers and employees of the labor organization for travel expenses necessary for conducting official business are not considered loans if the following conditions are met:

- The amount of an advance for a specific trip does not exceed the amount of expenses reasonably expected to be incurred for official travel in the near future, and the amount of the advance is fully repaid or fully accounted for by vouchers or paid receipts within 30 days after the completion or cancellation of the travel.
- The amount of a standing advance to an officer or employee who must frequently travel on official business does not unreasonably exceed the average monthly travel expenses for which the individual is separately reimbursed after submission of vouchers or paid receipts, and the individual does not exceed 60 days without engaging in official travel.

See the instructions for Schedules 9 (Other Assets), 13 (All Officers and Disbursements to Officers) and 14 (Disbursements to Employees) for reporting travel advances that meet these criteria.

If additional lines are needed, click the "Add More Loans Receivable" button at the top of the schedule. The software will add lines to the schedule in increments of ten.

Column (A): Enter the following information:

- The name of each officer, employee, or member whose total loan indebtedness to the labor organization, including any subsidiary organization, at any time during the reporting period exceeded $250, and the name of each business enterprise which had any loan indebtedness, regardless of amount, at any time during the reporting period;
- The purpose of each loan;
- The security given for each loan; and
- The terms of repayment for each loan.

For each officer or employee listed, indicate after each name either "O" (officer) or "E" (employee).

Column (B): Enter the loan amounts outstanding at the start of the reporting period from each listed individual and business enterprise. Enter the total of loans made to officers, employees, or members whose total individual loan indebtedness to the labor organization at any time during the reporting period did not exceed $250, and all loans, regardless of amount, made to other individuals and entities on the "Total of loans not listed above" line.

Click the "Save & Calculate" button at the top of the schedule and the software will enter the total for Column (B) on the "Total of all lines above" line in Schedule 2 and in Item 24 (Loans Receivable), Column (A) of Statement A.

Column (C): Enter the amount of loans made during the reporting period to each listed individual and business enterprise. Enter the total of all other loans made during the reporting period on the "Total of loans not listed above" line.

Click the "Save & Calculate" button at the top of the schedule and the software will enter the total for Column (C) on the "Total of all lines above" line in Schedule 2 and in Item 65 (Loans Made) of Statement B.

Columns (D)(1) and (D)(2): Enter the amount of loan repayments during the reporting period from each listed individual and business enterprise. Report in these columns only the portion of the payments applied toward principal; interest received must be reported in Item 40 (Interest). Use Column (D)(1) to report repayments received in cash. Use Column (D)(2) to report repayments made in a manner other than cash, such as repayments made by officers or employees by means of deductions from their salaries. Enter the amount of loan repayments from all other loans on the "Total of loans not listed above" line.

Click the "Save & Calculate" button at the top of the schedule and the software will enter the total for Columns (D)(1) and (D)(2) on the "Total of all lines above" line in Schedule 2 and the total from Column (D)(1) in Item 46 (Repayments of Loans Made) of Statement B. Explain in Item 75 (Additional Information) any non-cash amounts reported in Column (D)(2).

Column (E): Enter the loan amounts outstanding at the end of the reporting period for each listed individual and business enterprise.
Enter the total amount outstanding at the end of the reporting period for all other loans on the "Total of loans not listed above" line.

Click the "Save & Calculate" button at the top of the schedule and the software will enter the total for Column (E) on the "Total of all lines above" line in Schedule 2 and in Item 24 (Loans Receivable), Column (B) of Statement A. If any loans receivable were liquidated, reduced or written off during the reporting period, the reason and the amount must be reported in Item 75 (Additional Information).

NOTE: Section 503(a) of the LMRDA (29 U.S.C. 503) prohibits labor organizations from making direct or indirect loans to any officer or employee of the labor organization which results in a total indebtedness on the part of such officer or employee to the labor organization in excess of $2,000 at any time.

SCHEDULE 3 – SALE OF INVESTMENTS

Report details of the sale or redemption by the labor organization of U.S. Treasury securities, marketable securities, and other investments, during the reporting period. Include receipts from sales of mortgages that were purchased on a block basis through a bank or similar institution. Do not include the receipts from repayments by individual mortgagors, which must be reported in Schedule 2 (Loans Receivable) as loan repayments.

If additional lines are required click the "Add More Investments Sales" button at the top of the schedule. The software will add lines to the schedule in increments of ten.

Column (A): Enter the name and address of the purchasers of investments from the labor organization. If the sale was on a registered exchange, enter the name of the financial management firm.

Column (B): Enter a general description of the type of investment, such as U.S. Treasury securities, stocks, or bonds.

Column (C): Enter the date of the sale of each type of investment described in Column (B).

Column (D): Enter the total cost of each type of investment (including any transaction costs) described in Column (B).

Column (E): Enter the value at which the investments or fixed assets were shown on the labor organization's books.

Column (F): Enter the gross sales (or contract) price of the investments.

Column (G): Enter the net amount received from the sale of the investments. If the amount received during the reporting period is less than the amount due (gross sales price less any deductions for selling expenses and repayments of secured loans or mortgages), the additional amount due to the labor organization must be reported in Schedule 9 (Other Assets) with a description sufficient to identify the type of asset. However, if a mortgage or note is taken back, it must be reported as a new loan in Schedule 2 (Loans Receivable).

Click the “Save & Calculate” button at the top of the schedule and the software enters the totals for Columns (D) through (G) on the “Total of all lines above” line.

Enter the total amount from the sale or redemption of U.S. Treasury securities, marketable securities, or other investments that was promptly reinvested (i.e., "rolled over") in U.S. Treasury securities, marketable securities, or other investments during the reporting period on the “Less Reinvestments” line. Calculate the total amount reinvested by adding, for each investment, the lower of each investment's original cost or the amount received from the sale or redemption that was actually reinvested. If only a portion of the amount received was reinvested, only the reinvested portion may be included on the Less Reinvestments line. Interest and dividends received during the reporting period must be reported in Items 40 (Interest) and 41 (Dividends).

Click the “Save & Calculate” button at the top of the schedule and the software will enter the total ”Net Sales” in Column (G) and in Item 43 (Sale of Investments) of Statement B.

SCHEDULE 4 – SALE OF FIXED ASSETS

Report details of the sale or redemption by the labor organization of fixed assets, including those fixed assets that were expensed (that is, the cost of the asset was charged to current expenses, rather than entered on the books and periodically depreciated), during the reporting period.

If additional lines are required click the “Add More Fixed Assets Sales” button at the top of the schedule. The software will add lines to the schedule in increments of ten.

Column (A): Enter the name and address of the purchasers of fixed assets from the labor organization.

Column (B): Enter a general description of the type of fixed asset sold. If land or building were sold, enter the location of the property, including the street address, if appropriate. If an automobile was sold, individually identify the automobile by make, model, year, and Vehicle Identification Number (VIN).

Column (C): Enter the date of the sale of each fixed asset described in Column (B).

Column (D): Enter the total cost of each type of fixed asset described in Column (B).

Column (E): Enter the value of at which the fixed assets were shown on the labor organization’s books.

Column (F): Enter the gross sales (or contract) price of the fixed assets.

Column (G): Enter the net amount received from the sale of the fixed assets. If the amount received

during the reporting period is less than the amount due (gross sales price less any deductions for selling expenses and repayments of secured loans or mortgages), the additional amount due to the labor organization must be reported in Schedule 9 (Other Assets) with a description sufficient to identify the type of asset. However, if a mortgage or note is taken back, it must be reported as a new loan in Schedule 2 (Loans Receivable).

Click the "Save & Calculate" button at the top of the schedule and the software enters the totals for Columns (D) through (G) on the "Total of all lines above" line.

Click the "Save & Calculate" button at the top of the schedule and the software will enter the total "Net Sales" in Column (G) and in Item 43 (Sale of Investments) of Statement B.

SCHEDULE 5 – PURCHASE OF INVESTMENTS

Report details of the purchase by the labor organization of U.S. Treasury securities, marketable securities, and other investments during the reporting period.

If additional lines are needed, click the "Add Investments Purchases" button at the top of the schedule. The software will add lines to the schedule in increments of ten.

Column (A): Enter the name and address of the sellers of investments to the labor organization. If the sale was on a registered exchange, enter the name of the financial management firm.

Column (B): Enter a general description of the type of investment, such as U.S. Treasury securities, stocks, bonds, etc.

Column (C): Enter the date of the purchase of each investment described in Column (B).

Column (D): Enter the total cost of each type of investment (including any transaction costs) described in Column (B).

Column (E): Enter the value at which the investments were entered on the labor organization's books. If assets were traded in on assets purchased, answer Item 15 (Acquisition or Disposition of Assets) "Yes," and provide in Item 75 (Additional Information) the cost, book value, and trade-in allowance in accordance with the instructions for Item 15.

Column (F): Enter the gross sales (or contract) price of the investments.

Column (G): Enter the total amount disbursed for each type of investment purchased during the reporting period. Do not include any unpaid balance that must be reported in Schedule 11 (Loans Payable) or Item 32 (Mortgages Payable) of Statement A.

Click the "Save & Calculate "button at the top of the schedule and the software will enter the totals for Columns (D) through (G) on the "Total of all lines above" line.

Enter the total amount from the sale or redemption of U.S. Treasury securities, marketable securities, or other investments that was promptly reinvested (i.e., "rolled over") in U.S. Treasury securities, marketable securities, or other investments during the reporting period on the "Less Reinvestments" line. Calculate the total amount reinvested by adding, for each investment, the lower of each investment's original cost or the amount received from the sale or redemption that was actually reinvested. If only a portion of the amount received was reinvested, only the reinvested portion may be included on the Less Reinvestments line. Interest and dividends received during the reporting period must be reported in Items 40 (Interest) and 41 (Dividends). The total on the Less Reinvestments line must agree with the amount reported as Reinvestments on Schedule 3 (Sale of Investments).

Click the "Save & Calculate" button at the top of the schedule and the software will enter the "Net Purchases" in Column (F) and in Item 63 (Purchase of Investments) of Statement B.

SCHEDULE 6 – PURCHASE OF FIXED ASSETS

Report details of the purchase by the labor organization of fixed assets, including those fixed assets that were expensed (that is, the cost of the asset was charged to current expenses, rather than entered on the books and periodically depreciated), during the reporting period. Include disbursements for mortgages that were purchased on a block basis through a bank or similar institution. Purchases of fixed assets with a purchase price below $5,000 need not be reported.

If additional lines are needed, click the "Add

Fixed Assets Purchases" button at the top of the schedule. The software will add lines to the schedule in increments of ten.

Column (A): Enter the name and address of the sellers of fixed assets to the labor organization.

Column (B): Enter a general description of the type of fixed asset purchased, such as land, automobile, etc. If land or building were purchased, enter the location of the property, including the street address, if appropriate.

Column (C): Enter the date of the purchase of each fixed asset described in Column (B).

Column (D): Enter the total cost of each type of fixed asset (including any transaction costs) described in Column (B).

Column (E): Enter the value at which the fixed assets were entered on the labor organization's books. If assets were traded in on assets purchased, answer Item 15 (Acquisition or Disposition of Assets) "Yes," and provide in Item 75 (Additional Information) the cost, book value, and trade-in allowance in accordance with the instructions for Item 15.

Column (F): Enter the total amount disbursed for each type of fixed asset purchased during the reporting period. Do not include any unpaid balance that must be reported in Schedule 11 (Loans Payable) or Item 32 (Mortgages Payable) of Statement A.

Click the "Save & Calculate" button at the top of the schedule and the software will enter the totals for Columns (D) through (F) on the "Total of all Lines above" line.

SCHEDULE 7 – INVESTMENTS OTHER THAN U.S. TREASURY SECURITIES

Report details of all the labor organization's investments at the end of the reporting period, other than U.S. Treasury securities. Include mortgages purchased on a block basis and investments in any subsidiary organization not reported on a consolidated basis in accordance with method (1) explained in Section X of these instructions. Do not include savings accounts, certificates of deposit, or money market accounts, which must be reported in Item 22 (Cash) of Statement A.

Line A: Enter in Column (B) the total cost of all the labor organization's marketable securities including transaction costs such as brokerage commissions. Marketable securities are those for which current market values can be obtained from published reports of transactions in listed securities or in securities traded "over the counter," such as corporate stocks and bonds, stock and bond mutual funds, state and municipal bonds, and foreign government securities.

Line B: Enter in Column (B) the total book value of all the labor organization's marketable securities. Book value is the lower of cost or market value.

Line C: List in Column (A) each Marketable Security that has a book value over $5,000 and exceeds 5% of the total book value entered in Line B, Column (B) above and enter its book value in Column (B).

If additional lines are needed to complete Line C, click the "Add More Marketable Securities" button in the schedule. The software will add lines to the schedule in increments of ten.

Line D: Enter in Column (B) the total cost, including any transaction costs, of all the labor organization's other investments (that is, those that are not U.S. Treasury securities or marketable securities). Include mortgages purchased on a block basis.

Line E: Enter in Column (B) the total book value of such other investments. Book value is the lower of cost or market value.

Line F: List in Line F, Column (A) each Other Investment that has a book value over $5,000 and exceeds 5% of the total book value entered on in Column (B) above and enter its book value in Column (B).

If additional lines are needed to complete Line F, click the "Add More Marketable Securities" button in the schedule. The software adds lines to the schedule in increments of ten.

NOTE: If your organization has a subsidiary organization for which a separate report is being submitted in accordance with Section X of these instructions, the subsidiary organization must be reported in Schedule 7 if it is an investment. Enter in Line F the name of each subsidiary organization in Column (A) and its book value in Column (B).

If additional lines are required, click the Add

More Other Investments button on the top of the schedule. The software adds lines to the schedule in increments of ten.

Line G: Click the "Save & Calculate" button at the top of the schedule and the software will enter the total of Lines B and E on Line G and in Item 26 (Investments), Column (B) of Statement A.

SCHEDULE 8 – FIXED ASSETS

Report details of all fixed assets, such as land, buildings, automobiles and other vehicles, and office furniture and equipment owned by the labor organization at the end of the reporting period. Land and buildings must be itemized, whereas automobiles and other vehicles, and office furniture and equipment should be aggregated. Include fixed assets that were expensed (that is, the cost of the asset was charged to current expenses, rather than entered on the books and periodically depreciated), fully depreciated, or carried on the labor organization's books at scrap value or other nominal value.

Column (A): Enter under "Line A. Land (give location)" the location of any land and under "Line B. Buildings (give location)" the location of any buildings owned by the labor organization.

If additional lines are needed, click the "Add More Land Assets" button on Line A or the "Add More Building Assets" button on Line B, as applicable. The software will add lines to the schedule in increments of ten.

Column (B): Enter the cost or other basis of the fixed assets listed in Column (A).

Column (C): Enter the accumulated depreciation, if any, of the fixed assets (except land) listed in Column (A) whose cost or other basis is reported in Column (B). If the labor organization "expenses" fixed assets, also include in Column (C) the amount that the labor organization charged to expenses when the assets were purchased.

Column (D): Enter the amount at which the fixed assets listed in Column (A) are carried on the labor organization's books. Include the nominal amount, if any, at which fully depreciated assets are carried on the labor organization's books. The amount reported in Column (D) should be the difference between Columns (B) and (C).

Column (E): Enter the fair market value of land and of all assets listed in Column (A) that were expensed, fully depreciated, or depreciated to scrap value or nominal value. It is not necessary to secure a formal appraisal of the assets; a good faith estimate is sufficient. The value used for insurance purposes or for tax appraisals, for example, will normally be acceptable as representing the fair market value.
Click the "Save & Calculate" button at the top of the schedule and the software will enter the totals of Columns (B) through (E) on Line F, and the total on Line F, Column (D) in Item 27 (Fixed Assets), Column (B) of Statement A.

SCHEDULE 9 – OTHER ASSETS

Report details of all the labor organization's assets at the end of the reporting period other than Item 22 (Cash), Item 23 (Accounts Receivable), Item 24 (Loans Receivable), Item 25 (U.S. Treasury Securities), Item 26 (Investments), and Item 27 (Fixed Assets).

The labor organization's other assets must be described in Column (A) and may be classified by general groupings or bookkeeping categories, such as utility deposits, inventory of supplies for resale, or travel advances that are not required to be reported as loans as explained in the instructions for Schedule 2 (Loans Receivable), if the description is sufficient to identify the type of assets. Enter in Column (B) the value as shown on the labor organization's books of each asset or group of assets described in Column (A).

NOTE: If your organization has a subsidiary organization for which a separate report is being submitted in accordance with Section X of these instructions, the value of the subsidiary organization as shown on your organization's books must be reported in Schedule 9 if it is of a non-investment nature. Enter in Column (A) the name of any such subsidiary organization. Enter in Column (B) the value as shown on your organization's books of the net assets of any such subsidiary organization.

If additional lines are needed, click the "Add More Other Assets" button at the top of the schedule. The software will add lines to the schedule in increments of ten.

Click the "Save & Calculate" button at the top of the schedule and the software will enter the Total Other Assets in Column (B) of Schedule 9 and in Item 28 (Other Assets), Column (B) of Statement A.

SCHEDULE 10 – ACCOUNTS PAYABLE AGING SCHEDULE

The labor organization must report 1) individual accounts that are valued at $7,500 or more and that are 90 days or more past due at the end of the reporting period or were liquidated, reduced or written off during the reporting period; and 2) the total aggregated value of all other accounts.

If additional lines are needed, click the "Add More Accounts Payable Aging" button at the top of the schedule. The software will add lines to the schedule in increments of ten.

Column (A): Enter the name of each entity or individual with which the labor organization has an account payable of $7,500 or more that is 90 days or more past due at the end of the reporting period or that was liquidated, reduced or written off during the reporting period without the disbursement of cash sufficient to cover the total value of the account payable.

Column (B): Enter the total amount of money owed by the labor organization to each listed entity or individual at the end of the reporting period. Enter the total amount of money owed by the labor organization in all other accounts payable not required to be itemized in Schedule 10 on the "Totals from all other accounts payable" line.

Click the "Save & Calculate" button at the top of the schedule and the software will complete the "Total of all itemized accounts payable" line in Column (B) and enter the total accounts payable in Column (B) and in Item 30, Column (D) of Statement A.

Column (C): Enter the total amount of money owed by the labor organization to the listed entity or individual at the end of the reporting period that is 90 to 180 days past due. Enter the total amount of money owed by the labor organization in all other accounts payable (those of less than $7,500) that are 90 to 180 days past due on the "Totals from all other accounts payable" line.

Click the "Save & Calculate" button at the top of the schedule and the software will complete the "Total of all itemized accounts payable" line in Column (C) and enter the total accounts payable that were 90 to 180 days past due in Column (C).

Column (D): Enter the total amount of money owed by the labor organization to each entity or individual at the end of the reporting period that is more than 180 days past due. Enter the total amount of money owed by the labor organization in all other accounts payable (those of less than $7,500 and not required to be itemized in Schedule 10) that are more than 180 days past due and on the "Total from all other accounts payable" line.

Click the "Save & Calculate" button at the top of the schedule and the software will complete the "Total of all itemized accounts payable" line in Column (D) and enter the total accounts payable that were more than 180 days past due in Column (D).

Column (E): Enter the total amount of money owed by the labor organization to each entity or individual that was written off during the reporting period by the reporting labor organization without the disbursement of cash sufficient to cover the total value of the account payable. Enter the total amount of money owed by the labor organization in all other accounts payable (those of less than $7,500 and not required to be itemized in Schedule 10) that was written off during the reporting period by the reporting labor organization without the disbursement of cash sufficient to cover the total value of the account payable on the "Total from all other accounts payable" line.

Click the "Save & Calculate" button at the top of the schedule and the software will complete the "Total of all itemized accounts payable" line in Column (E) and enter the total liquidated accounts payable in Column (E).

Provide in Item 75 (Additional Information) all details and circumstances in connection with the writing off of the account payable, including the reason and amount.

SCHEDULE 11 – LOANS PAYABLE

Report details of all loans payable on which the labor organization owed money at any time during the reporting period except those secured by mortgages or similar liens on real property (land or buildings) that must be reported in Item 32 (Mortgages Payable) of Statement A.

If additional lines are needed, click the "Add More Loans Payable" button at the top of the schedule. The software will add lines to the schedule in increments of ten.

Column (A): Enter the name of each business enterprise to which a loan was payable. Also list the source of all other loans by general categories, such as labor organizations, individuals, etc.

Column (B): For each loan source listed in Column (A), enter the amount, if any, owed by the labor organization at the start of the reporting period.

Click the "Save & Calculate" button at the top of the schedule and the software will enter the total for Column (B) on the "Total of all above lines" line in Schedule 11 and in Item 31(Loans Payable), Column (C) of Statement A.

Column (C): For each loan source listed in Column (A), enter the amount, if any, obtained by the labor organization during the reporting period. If, due to discounting by a bank or for any other reason, the amount received from a loan was less than the face value of the note or the amount repayable, enter the amount actually received and explain in Item 75 (Additional Information).

Click the "Save & Calculate" button at the top of the schedule and the software will enter the total for Column (C) on the "Total of all above lines" line in Schedule 11 and in Item 45 (Loans Obtained) of Statement B.

Columns (D)(1) and (D)(2): For each loan source listed in Column (A), enter the amount, if any, that the labor organization repaid to the lender during the reporting period. Report only repayments of principal; interest paid must be reported in Schedule 31 (General Overhead). Use Column (D)(1) to report repayments made in cash. Use Column (D)(2) to report repayments made in a manner other than by cash, such as repayments made to a creditor by offsetting an amount owed by the creditor to the labor organization.

Click the "Save & Calculate" button at the top of the schedule and the software will enter the total for Columns (D)(1) and (D)(2) on the "Total of all above lines" line in Schedule 11 and the total for Column (D)(1) in Item 66 (Repayment of Loans Obtained) of Statement B. Explain in Item 75 (Additional Information) any non-cash amounts reported in Column (D)(2).

Column (E): For each loan source listed in Column (A), enter the balance, if any, that the labor organization owed the listed lender at the end of the reporting period. If any loans payable were written off during the reporting period, the reason and amount must be reported in Item 75 (Additional Information).

Click the "Save & Calculate button" at the top of the schedule and the software will enter the total for Column (E) on the "Total of all above lines" line in Schedule 11 and in Item 31 (Loans Payable), Column (D) of Statement A.

SCHEDULE 12 – OTHER LIABILITIES

Report details of all the labor organization's liabilities at the end of the reporting period other than Item 30 (Accounts Payable), Item 31 (Loans Payable), and Item 32 (Mortgages Payable) of Statement A.

Any portion of withheld taxes or any other payroll or other deductions, which have not been transmitted at the end of the reporting period, are liabilities of the labor organization and must be reported in Schedule 12. Payroll or other deductions that are retained by the labor organization (such as repayments of loans to officers or employees) must be fully explained in Item 75 (Additional Information).

The labor organization's other liabilities must be described in Column (A) and may be classified by general groupings or bookkeeping categories if the description is sufficient to identify the type of liability. List separately any payroll taxes withheld but not yet paid, other unpaid payroll taxes of the labor organization, such as FICA taxes, and any funds collected on behalf of affiliates or members and not disbursed by the end of the reporting period. Do not include reserves for special purposes (for example, "Reserve for Building Fund") that are actually an allocation of certain assets for specific purposes rather than a liability.

If additional lines are needed, click the "Add More Other Liabilities" button at the top of the schedule. The software will add lines to the schedule in increments of ten.

Enter in Column (B) the amount of each liability described in Column (A). Click the Save button at the top of the schedule and the software will enter the total in Column (B) of Schedule 12 and in Item 33 (Other Liabilities), Column (D) of Statement A.

SCHEDULE 13 – ALL OFFICERS AND DISBURSEMENTS TO OFFICERS

List all the labor organization's officers and report all salaries and other direct and indirect disbursements to officers during the reporting period.

If additional lines are required, click the “Add More Disbursements to Officers” button at the top of the schedule. The software will add lines to the schedule in increments of ten.

NOTE: A "direct disbursement" to an officer is a payment made by the labor organization to the officer in the form of cash, property, goods, services, or other things of value.

An "indirect disbursement" to an officer is a payment made by the labor organization to another party for cash, property, goods, services, or other things of value received by or on behalf of the officer. "On behalf of the officer" refers to a payment received by a party other than the officer or the labor organization for the personal interest or benefit of the officer. Such payments include those made through a credit arrangement under which charges are made to the account of the labor organization and are paid by the labor organization. For example, when a union, through its credit arrangements, is billed directly and pays the hotel bills of an officer who, during his workweek, resides at a hotel in the city where the union headquarters is located away from his legal residence in another city, the payments must be reported as disbursements to the officer.

Column (A): Enter in (A) the last name, first name, and middle initial of each person who held office in the labor organization at any time during the reporting period. Include all the labor organization's officers whether or not any salary or other disbursements were made to them or on their behalf by the labor organization. "Officer" is defined in section 3(n) of the LMRDA (29 U.S.C. 402) as "any constitutional officer, any person authorized to perform the functions of president, vice president, secretary, treasurer, or other executive functions of a labor organization, and any member of its executive board or similar governing body."

Column (B): Enter in (B) the title of the position each officer listed held during the reporting period. If an officer held more than one position during the reporting period, list each additional position and the dates on which the officer held the position in Item 75 (Additional Information).

Column (C): Use the drop-down menu to select the status of each officer: "N" for a new officer who took office during the reporting period; "P" for a past officer who was not in office at the end of the reporting period; or "C" for a continuing officer who was in office before the reporting period and was still in office at the end of the reporting period. If any officer was not elected at a regular election in accordance with the labor organization's constitution and bylaws or other governing documents on file with OLMS, explain the manner in which the officer was chosen in Item 75 (Additional Information).

Column (D): Enter the gross salary of each officer (before tax withholdings and other payroll deductions). Include disbursements for "lost time" or time devoted to union activities.

Column (E): Enter the total allowances made by direct and indirect disbursements to each officer on a daily, weekly, monthly, or other periodic basis. Do not include allowances paid on the basis of mileage or meals which must be reported in Column (F) or (G), as applicable.

Column (F): Enter all direct and indirect disbursements to each officer that were necessary for conducting official business of the labor organization, except salaries or allowances which must be reported in Columns (D) and (E), respectively.

Examples of disbursements to be reported in Column (F) include all expenses that were reimbursed directly to an officer, meal allowances and mileage allowances, expenses for officers' meals and entertainment, and various goods and services furnished to officers but charged to the labor organization. Such disbursements should be included in Column (F) only if they were necessary for conducting official business; otherwise, report them in Column (G). Also include in Column (F) travel advances that are not considered loans as explained in the instructions for Schedule 2 (Loans Receivable). Do not report the following disbursements in Schedule 13:

- Reimbursements to an officer for the purchase of investments or fixed assets, such as reimbursing an officer for a file cabinet purchased for office use, which must be reported in Schedule 5 (Purchase of Investments) and Schedule 6 (Purchase of Fixed Assets) and explained in Item 75 (Additional Information);

- Disbursements made by the labor organization to someone other than an officer as a result of transactions arranged by an officer in which property, goods, services, or other things of value were received by or on behalf of the labor organization rather than the officer, such as rental of offices and meeting rooms, purchase of office supplies, refreshments and other expenses of membership banquets or meetings, and food and refreshments for the entertainment of groups other than the officers and membership on official business;
- Office supplies, equipment, and facilities furnished to officers by the labor organization for use in conducting official business; and
- Maintenance and operating costs of the labor organization's assets, including buildings, office furniture, and office equipment; however, see "Special Rules for Automobiles" below.

Column (G): Enter all other direct and indirect disbursements to each officer. Include all disbursements for which cash, property, goods, services, or other things of value were received by or on behalf of each officer and were essentially for the personal benefit of the officer and not necessary for conducting official business of the labor organization.

Include in Column (G) all disbursements for transportation by public carrier between the officer's home and place of employment or for other transportation not involving the conduct of official business. Also, include the operating and maintenance costs of all the labor organization's assets (automobiles, etc.) furnished to officers essentially for the officers' personal use rather than for use in conducting official business.

Do not include in Column (G) loans to officers, which must be reported in Schedule 2 (Loans Receivable) or disbursements for benefits to officers, which must be reported in disbursement Schedule 24 (Benefits).

Column (H): Click the "Save & Calculate" button at the top of the schedule and the software will add the amounts in Columns (D) through (G) on each line and enter the individual totals in Column (H).

The software will also enter the totals for all officers listed in Columns (D) through (H) on the "Total Officers Disbursements" line.

Enter the total amount of withheld taxes, payroll deductions, and all other deductions on the "Less Deductions" line.

Click the "Save & Calculate" button at the top of the schedule and the software will subtract the "Less Deductions" line from the "Total Officers Disbursements" line and enter the difference on the "Net Disbursements" line.

The software enters the amount on the "Total Officers Disbursements" line in Item 70 (Officers) of Statement B.

SPECIAL RULES FOR AUTOMOBILES

Include in Column (G) of Schedule 13 that portion of the operating and maintenance costs of any automobile owned or leased by the labor organization to the extent that the use was for the personal benefit of the officer to whom it was assigned. This portion may be computed on the basis of the mileage driven on official business compared with the mileage for personal use. The portion not included in Column (G) must be reported in Column (F).

Alternatively, rather than allocating these operating and maintenance costs between Columns (F) and (G), if 50% or more of the officer's use of the vehicle was for official business, the labor organization may enter in Column (F) all disbursements relative to that vehicle with an explanation in Item 75 (Additional Information) indicating that the vehicle was also used part of the time for personal business. Likewise, if less than 50% of the officer's use of the vehicle was for official business, the labor organization may report all disbursements relative to the vehicle in Column (G) with an explanation in Item 75 indicating that the vehicle was also used part of the time on official business.

The amount of decrease in the market value of an automobile used over 50% for the personal benefit of an officer must also be reported in Item 75.

SCHEDULE 14 – DISBURSEMENTS TO EMPLOYEES

Report all direct and indirect disbursements to employees of the labor organization during the reporting period. If additional lines are required,

click the Add More Disbursements to Employees button on the top of the schedule. The software adds lines to the schedule in increments of ten.

Include disbursements to individuals other than officers who receive lost time payments even if the labor organization does not otherwise consider them to be employees or does not make any other direct or indirect disbursements to them. The definitions of "direct disbursements" and "indirect disbursements" are the same as the definitions stated above in Schedule 13.

If additional lines are required, click the "Add More Disbursements to Employees" button at the top of the schedule. The software will add lines to the schedule in increments of ten.

Column (A): Enter the last name, first name, and middle initial of each employee who during the reporting period received $10,000 or more in gross salaries, allowances, benefits, and other direct and indirect disbursements from the labor organization (including any subsidiary organizations) or from any affiliates of the labor organization. ("Affiliates" means labor organizations chartered by the same parent body, governed by the same constitution and bylaws, or having the relation of parent and subordinate.) The labor organization's report, however, should not include disbursements made by affiliates but should include only the disbursements made by the labor organization.

Column (B): Enter the position each listed employee held in the labor organization (including any subsidiary organizations).

Column (C): Enter the name of any affiliate that paid any salaries, allowances, benefits, or expenses on behalf of a listed employee. If a subsidiary of the labor organization paid any salaries, allowances, benefits, or expenses on behalf of a listed employee, see Section X of these Instructions for information about reporting these disbursements.

Columns (D) through (G): To complete Columns (D) through (G), follow the instructions for Columns (D) through (G) of Schedule 13.

Column (H): Click the "Save & Calculate" button at the top of the schedule and the software will add the amounts in Columns (D) through (G) on each line and enter the individual totals in Column (H).

Enter in Columns (D) through (G) on the "Total Received By All Other Employees Making $10,000 Or Less," the totals of all gross salaries, allowances, and other disbursements for all employees of the labor organization not required to be listed above.

Click the "Save & Calculate" button and at the top of the schedule and the software will add the amounts in Columns (D) through (G) on the "Total Received By All Other Employees Making $10,000 or Less" line and enter the total in Column (H). The software will also enter the total of all amounts listed in Columns (D) through (H) on the "Total Employees Disbursements" line.

Enter the total amount of withheld taxes, payroll deductions, and all other deductions on the "Less Deductions" line.

Click the "Save & Calculate" button on the page the software will subtract the "Less Deductions" line from the "Total Employees Disbursements" line and enter the difference on the "Net Disbursements" line.

The software enters the amount on the "Total Employee Disbursements" line in Item 71 (Employees) of Statement B.

SCHEDULE 15 – MEMBERSHIP STATUS INFORMATION

Enter in Column (A) the categories of membership tracked by the reporting labor organization. Define each category of membership in Item 75 (Additional Information). The definition should include a description of the members covered by the category and indicate whether the members pay full dues.

Included in Column (A) must be the category of "Retiree Members."

In Column (B) enter the number of members for each of the membership categories listed in Column (A).

If additional lines are required, click the "Add More Membership Statuses" button at the top of the schedule. The software will add lines to the schedule in increments of ten.

Members (Total of all lines above) – Click the "Save & Calculate" button at the top of the

schedule and the software will enter on this line the total number of all members reported in Column (B). The software will also enter the total number of members in your organization in Item 20 (Number of Members).

Agency Fee Payers Line – Enter the total number of agency fee payers in your organization. Agency fee paying nonmembers are those who make payments in lieu of dues to the reporting labor organization as a condition of employment under a union security provision in a collective bargaining agreement.

Total Members/Fee Payers Line – Click the "Save & Calculate" button at the top of the schedule and the software will enter the total of all members of the labor organization and agency fee payers reported in Column (B) This total in Column (B) is not the total number of members of the labor organization reportable in Item 20.

Check the "Yes" box in Column (C) if the category of membership listed in Column (A) is generally eligible to vote in all union elections held by the labor organization. Describe in Item 75 (Additional Information) any voting restrictions that apply to a category in Column (A).

SCHEDULES 16 THROUGH 23

Schedules 16 through 23 provide detailed information on the financial operations of the labor organization in categories that reflect the services provided to union members. Receipts and disbursements are allocated to Schedules 16 through 23 and are either listed as individual entries or as aggregated entries. **Note that before completing the Detailed Summary Page for Schedules 16 through 23, you must complete the itemization pages as described below.**

Allocating Receipts

Each receipt of the labor organization must be allocated to one of the receipt items in Statement B. Some of these items have backup schedules that require more detailed information. If a receipt does not conform to one of the defined items in Statement B it must be included in Schedule16 (Other Receipts) in which any "major" receipts during the reporting period must be separately identified. A "major" receipt includes: 1) any individual receipt of $5,000 or more; or 2) total receipts from any single entity or individual that aggregate to $5,000 or more during the reporting period. All other receipts in this schedule are aggregated. This process is discussed further below.

Allocating Disbursements

Each disbursement of the labor organization must be allocated to one of the disbursement items in Statement B. Some of these items have backup schedules that require more detailed information. Schedules 16 through 23 reflect various services provided to union members by the union in which all "major" disbursements during the reporting period in the various categories must be separately identified. A "major" disbursement includes: 1) any individual disbursement of $5,000 or more; or 2) total disbursements to any single entity or individual that aggregate to $5,000 or more during the reporting period. All other disbursements in these schedules are aggregated.

All disbursements, other than those reported elsewhere in Statement B, must be allocated to Schedules 17 through 23, as appropriate.

Example 1: If the labor organization received a settlement of $4,999 in a small claims lawsuit, the receipt would not be individually identified, as long as the settlement was the only receipt from the entity or individual during the reporting period. The receipt would be aggregated with other small receipts in Line 3 of Schedule 16 (Other Receipts) on the Detailed Summary Page as discussed below.

Example 2: If the labor organization made three payments of $1,800 each to an office supplies vendor for office supplies used by employees engaged in contract negotiations during the reporting period, a single disbursement to the vendor of $5,400 would be listed in Line 1 on an itemization page for that vendor for Schedule 17 (Contract Negotiations and Administration) as discussed below.

Example 3: If a union pays a total of $5,500 to a printing company during the reporting year and determines that $5,050 should be allocated to organizing costs, that amount must be identified in an itemization page for the printing company for Schedule 18 (Organizing). If the remaining $450 paid to the same printer over the course of the year was attributable to charitable expenses, that amount will be reported in Line 3 of Schedule 21 (Contributions, Gifts, and Grants) on the Detailed Summary Page but the printer need not be identified as a recipient of any funds expended for Contributions, Gifts, and Grants,

since the total paid to the printer during the reporting year for services related to Contributions, Gifts, and Grants did not exceed $5,000.

Example 4: The labor organization has an ongoing contract with a law firm that provides a wide range of legal services. The labor organization makes a single payment of $10,000 each month to the law firm. In a particular month the law firm spent 50% of its time on contract negotiation litigation and 50% advising the labor organization regarding, and working for the enactment of, a new Federal law. The labor organization must allocate the payment for that month as two distinct disbursements of $5,000 each to Schedule 17 (Contract Negotiations and Administration), and Schedule 20 (Lobbying).

Procedures for Completing Schedules 16 Through 23

Before completing the Detailed Summary Page for Schedules 16 through 23, complete an itemization page for each payer/payee for whom there is (1) an individual receipt/disbursement of $5,000 or more or (2) total receipts/disbursements that aggregate to $5,000 or more during the reporting period. Do not complete an itemization page for disbursements to officers or employees because these disbursements are reported in Lines 3 and 4 of the Detailed Summary Page.

Enter in Column (A) the full name and business address of the entity or individual from which the receipt was received or to which the disbursement was made. Do not abbreviate the name of the entity or individual. If you do not know and cannot reasonably attain the full address, the city and state are sufficient.

Enter in Column (B) the type of business or job classification of the entity or individual, such as printing company, office supplies vendor, lobbyist, think tank, marketing firm, legal counsel, etc.

If additional lines are needed to complete Columns (C) through (E) of the itemization page, click the "More Receipts For This Payer" for Schedule 16 or the "More Disbursements for This Payee" for Schedules 17 through 23 button in Column (A) of the itemization page. The software will add lines to the itemization page in increments of ten.

Enter in Column (C) the purpose of each individual receipt/disbursement for that payee/payer of $5,000 or more, which means a brief statement or description of the reason the receipt/disbursement was made. Examples of adequate descriptions include the following: preparing organizing campaign pamphlets, staffing a help desk, opposition research, litigation regarding representation issues, litigation regarding a refusal to bargain charge, grievance arbitration, get-out-the-vote, voter education, advocating or opposing legislation, job retraining, etc.

Enter in Column (D) the date that the receipt/disbursement was made. The format for the date must be mm/dd/yyyy. The date of receipt/disbursement for reporting purposes is the date the labor organization actually received or disbursed the money.

Enter in Column (E) the amount of the receipt/disbursement.

Click the "Save & Calculate" button at the top of the itemization page and the software will enter total of all itemized transactions for this payee/payer on the "Total of All Itemized Transaction with this Payee/Payer" line.

Enter the total of all non-itemized transactions for the payee/payer (that is, all individual transactions of less than $5,000 each) on the "Total of All Non-Itemized Transactions with this Payee/Payer" line.

Click the Save & Calculate" button at the top of the itemization page again and the software will enter the total of all transactions for this payee/payer, both itemized and non-itemized, on the "Total of All Transactions with this Payee/Payer for this Schedule" line.

Special Instructions for Reporting Credit Card Disbursements

Disbursements to credit card companies may not be reported as a single disbursement to the credit card company as the vendor. Instead, charges appearing on credit card bills paid during the reporting period must be allocated to the recipient of the payment by the credit card company according to the same process as described above.

The Department recognizes that filers will not always have the same access to information regarding credit card payments as with other transactions. Filers should report all of the

information required in the itemization schedules that is available to the union.

For instance, in the case of a credit card transaction for which the receipt(s) and monthly statement(s) do not provide the full legal name of a payee and the union does not have access to any other documents that would contain the information, the union should report the name as it appears on the receipt(s) and statement(s). Similarly, if the receipt(s) and statement(s) do not include a full street address, the union should report as much information as is available and no less than the city and state.

Once these transactions have been incorporated into the union's recordkeeping system they can be treated like any other transaction for purposes of assigning a description and purpose.

In instances when a credit card transaction is canceled and the charge is refunded in whole or part by entry of a credit on the credit card statement, the charge should be treated as a disbursement, and the credit should be treated as a receipt. In reporting a credit of $5,000 or more as a receipt, Column (C) must indicate that the receipt was in refund of a disbursement, and must identify the disbursement by date and amount.

Special Procedures for Reporting Confidential Information

Filers may use the procedure described below to report the following types of information:

- Information that would identify individuals paid by the union to work in a non-union bargaining unit in order to assist the union in organizing employees, provided that such individuals are not employees of the union who receive more than $10,000 in the aggregate in the reporting year from the union. Employees receiving more than $10,000 must be reported on Schedule 14 – Disbursements to Employees;
- Information that would expose the reporting union's prospective organizing strategy. The union must be prepared to demonstrate that disclosure of the information would harm an organizing drive. Absent unusual circumstances, information about past organizing drives should not be treated as confidential;
- Information that would provide a tactical advantage to parties with whom the reporting union or an affiliated union is engaged or will be engaged in contract negotiations. The union must be prepared to demonstrate that disclosure of the information would harm a contract negotiation. Absent unusual circumstances information about past contract negotiations should not be treated as confidential;
- Information pursuant to a settlement that is subject to a confidentiality agreement, or that the union is otherwise prohibited by law from disclosing; and
- Information in those situations where disclosure would endanger the health or safety of an individual.

With respect to these specific types of information, if the reporting union can demonstrate that itemized disclosure of a specific major receipt or disbursement, or aggregated receipt or disbursement would be adverse to the union's legitimate interests, the union may include the receipt or disbursement in Line 3 of Summary Schedule 16 (Other Receipts) or in Line 5 of Summary Schedules 17 (Contract Negotiation and Administration), 18 (Organizing) or 23 (Union Administration). In Item 75 (Additional Information) the union must identify each schedule from which any itemized receipts or disbursements were excluded because of an asserted legitimate interest in confidentiality based on one of the first three reasons listed above. No notation need be made for exclusion of information disclosure of which is prohibited by law or that would endanger the health or safety of an individual. The notation must describe the general types of information that were omitted from the schedule, but the name of the payer/payee, date, and amount of the transaction(s) is not required. This procedure may not be used for Schedules 17 through 23.

A union member, however, has the statutory right "to examine any books, records, and accounts necessary to verify" the union's financial report if the member can establish "just cause" for access to the information. 29 U.S.C. 431(c); 29 U.S.C. CFR 403.8 (2002). Any exclusion of itemized receipts or disbursements from Schedules 16, 17, 18 or 23 for one of the first three reasons listed above would constitute a *per se* demonstration of "just cause" for purposes of this Act. Consequently, any union

member (and the Department), upon request, has the right to review the undisclosed information that otherwise would have appeared in the applicable schedule if the union withholds the information in order to protect confidentiality interests. Exclusion of information disclosure of which is prohibited by law or that would endanger the health or safety of an individual creates no per se demonstration of "just cause."

Procedures for Completing the Detailed Summary Page

The Detailed Summary Page is used to summarize Schedules 16 through 23.

For Summary Schedule 16 (Other Receipts) the software enters on Line 1 the total of all itemized receipts during the reporting period from named payers. This is the sum of the amounts entered on the "Total of All Itemized Transactions with this Payee/Payer" line on all itemization pages for Schedule 16.

The software enters on Line 2 the total of all non-itemized receipts from named payers. This is the sum of the amounts entered on the "Total of All Non-Itemized Transactions with this Payee/Payer" line in all itemization pages for Schedule 16.

Enter on Line 3 the total of all other receipts during the reporting period relating to the schedule. This is the total from your organization's books of all receipts during the reporting period relating to this schedule for payers who did not have a single receipt of $5,000 or more or receipts that aggregated $5,000 or more.

The software enters on Line 4 the total of Lines 1 through 3 and forwards this total to Item 49 of Statement B.

For Summary Schedules 17 – 23, the software enters on Line 1 of each summary schedule the total of all itemized disbursements during the reporting period to named vendors. This is the sum of the amounts entered on the "Total of All Itemized Transactions with this Payee/Payer" line in all itemization pages for the schedule.

The software enters on Line 2 of each summary schedule the total of all non-itemized disbursements to named vendors. This is the sum of the amounts entered on the "Total of All Non-Itemized Transactions with this Payee/Payer" line in all itemization pages for the schedule.

Enter on Line 3 the total of all other disbursements during the reporting period relating to the schedule. This is the total from your organization's books of all disbursements during the reporting period relating to this schedule for payees who did not have a single disbursement of $5,000 or more or disbursements that aggregated $5,000 or more.

The software enters on Line 6 the total of Lines 1 through 5 and forwards this total to the appropriate line item of Statement B.

For example, if in Schedule 17 (Contract Negotiations and Administration) a labor organization has $200,000 in itemized disbursements of $5,000 or more to vendors, $35,000 in non- itemized disbursements of less than $5,000 each to those vendors, $100,000 in salary disbursements to officers, $50,000 in salary disbursements to employees, and $7,000 in disbursements to vendors who did not receive a major disbursement for contract negotiations and administration, then the software will enter $200,000 in Line 1, $35,000 in Line 2, $100,000 in Line 3, $50,000 in Line 4, and the filer will enter $7,000 in Line 5 of Schedule 17 on the Detailed Summary Page. The total of Lines 1 through 5 is $392,000, which the software will enter in Line 6 of the summary schedule and Item 51 (Contract Negotiations and Administration) of Statement B.

SCHEDULE 16 – OTHER RECEIPTS

Report the labor organization's receipts from all sources during the reporting period, other than those that must be reported elsewhere in Statement B, such as reimbursements from officers and employees for excess expense payments or travel advances not reported as loans in Schedule 2 (Loans Receivable); receipts from fundraising activities such as raffles, bingo games, and dances; funds received from a parent body, other unions, or the public for strike fund assistance; and receipts from another labor organization that merged into the labor organization.

For all itemized receipts in this category:

Enter in Column (A) of an itemization page the full name and business address of the entity or individual from which the union received $5,000 or more in Other Receipts during the reporting

period. Do not abbreviate the name of the entity or individual. If you do not know and cannot reasonably obtain the full address of the entity or individual, the city and state are sufficient.

Enter in Column (B) the type of business or job classification of the entity or individual from which the union received $5,000 or more in Other Receipts during the reporting period.

If additional lines are needed to complete Columns (C) through (E) for this Payer, click the "Add More Receipts for This Payer" button in Column (A) of the itemization page. The software will add lines to the itemization page in increments of ten.

Enter in Column (C) the purpose of each individual receipt of $5,000 or more from the payer in sufficient detail to determine why the receipt cannot be allocated to another schedule.

Enter in Column (D) the date that each individual receipt of $5,000 or more was received. The format for the date must be mm/dd/yyyy. The date of receipt for reporting purposes is the date the labor organization actually received the money.

Enter in Column (E) the amount of each individual receipt of $5,000 or more.

Enter the total of all non-itemized receipts from this payer (that is, all individual receipts of less than $5,000 each) on the "Total Non-Itemized Transactions with this Payee/Payer" line.

When you have completed entering all of the information for this payer, click the "Save & Calculate" button at the top of the itemization page and the software will enter the total in Column (E) on the "Total Itemized Transactions with this Payee/Payer" and the "Total of All Transactions with this Payee/Payer for This Schedule" lines.

An itemization page must be completed for each payer. Only one payer should be reported per page.

To create a new Other Receipts itemization page for a new payer, click the "Add More Other Receipts" button at the top of the itemization page and a new itemization page will open.

Follow the instructions above to complete any additional Other Receipts itemization pages.

By clicking the "Show Payer" drop down arrow at the top of a Schedule 16 itemization page, you can select and view all of the Other Receipts itemization pages you have completed.

As you complete each itemization page, click the "Save & Calculate" button at the top of the page and the total itemized transactions will be added to line 1 of Summary Schedule 16 on the Detailed Summary Page, and the total non-itemized transactions will be added to Line 2 of the Summary Schedule.

Enter on Line 3 of Summary Schedule 16 the total amount of all other receipts relating to this schedule from other payers during the reporting period. This is the total from your organization's books of all receipts relating to this schedule from payers who did not provide a single receipt of $5,000 or more or receipts that aggregated $5,000 or more.

The software adds Lines 1 through 3 and enters the total on Line 4 of Summary Schedule 16 and in Item 49 (Other Receipts) of Statement B.

SCHEDULE 17 – CONTRACT NEGOTIATION AND ADMINISTRATION

Report the labor organization's direct and indirect disbursements to all entities and individuals during the reporting period associated with preparation for, and participation in, the negotiation of collective bargaining agreements and the administration and enforcement of the agreements made by the labor organization. Do not include strike benefits that must be reported in Item 60 (Strike Benefits) of Statement B.

For all major disbursements in this category:

Enter in Column (A) of an itemization page the full name and business address of the entity or individual to which the disbursement was made. Do not abbreviate the name of the entity or individual. If you do not know and cannot reasonably obtain the full address of the entity or individual, the city and state are sufficient.

Enter in Column (B) the type of business or job classification of the entity or individual to which the union disbursed $5,000 or more in Contract Negotiation and Administration during the reporting period, such as printing company, office supplies vendor, legal counsel, etc.

If additional lines are required to complete Columns (C) through (E) for this Payee, click the "Add More Disbursements for This Payee" button in Column (A) of the itemization page. The software adds lines to the itemization page in increments of ten.

Enter in Column (C) the purpose of each individual disbursement of $5,000 or more, which means a brief statement or description of the reason the disbursement was made. Examples of adequate descriptions include the following: contract negotiation, grievance arbitration, litigation regarding the interpretation of a collective bargaining agreement, staffing a help desk, litigation regarding a refusal to bargain, etc. Neither the name of the employer nor the specific bargaining unit that is the subject of the organizing activity need be identified.

Enter in Column (D) the date that each individual disbursement of $5,000 or more was made. The format for the date must be mm/dd/yyyy. The date of disbursement for reporting purposes is the date the labor organization actually disbursed the money.

Enter in Column (E) the amount of each individual disbursement of $5,000 or more.

Enter the total of all non-itemized disbursements for Contract Negotiation and Administration to this payee (that is, all individual disbursements of less than $5,000 each) on the "Total Non-Itemized Transactions with this Payee/Payer" line.

When you have completed entering all of the information for this payee, click the "Save & Calculate" button at the top of the itemization page and the software will enter the totals in Column (E) on the "Total Itemized Transactions with this Payee/Payer" line and on the "Total of All Transactions with this Payee/Payer for This Schedule" line.

An itemization page must be completed for each payee who met the itemization threshold during the reporting period. Only one payee should be reported per page.

To create a new Contract Negotiation and Administration itemization page for a new payee, click the "Add More Contract Negotiation and Administration" button at the top of the itemization page and a new itemization page will open. Follow the instructions above to complete any additional Contract Negotiation and Administration itemization pages.

By clicking the "Show Payee" drop down arrow at the top of the Schedule 17 page, you can select and view all of the Contract Negotiation and Administration Itemization pages you have completed.

As you complete each itemization page, click the "Save & Calculate" button at the top of the page and the total itemized transactions will be added to line 1 of Summary Schedule 17 on the Detailed Summary Page and the total non-itemized transactions will be added to Line 2 of the Summary Schedule.

Enter the total amount of all other disbursements relating to this schedule made to other payees during the reporting period on Line 5 of Summary Schedule 17. This is the total from your organization's books of all disbursements relating to this schedule made to payees who did not have a single disbursement of $5,000 or more or disbursements that aggregated $5,000 or more.

The software adds Lines 1 through 5 and enters the total on Line 6 of Summary Schedule 17 and in Item 51 (Contract Negotiation and Administration) of Statement B.

SCHEDULE 18 – ORGANIZING

Report the labor organization's direct and indirect disbursements to all entities and individuals during the reporting period associated with efforts to become the exclusive bargaining representative for any unit of employees, or to keep from losing a unit in a decertification election or to another labor organization, or to recruit new members.

For all major disbursements in this category:

Enter in Column (A) of an itemization page the full name and business address of the entity or individual to which the disbursement was made. Do not abbreviate the name of the entity or individual. If you do not know and cannot reasonably obtain the full address of the entity or individual, the city and state are sufficient.

Enter in Column (B) the type of business or job classification of the entity or individual to which the union disbursed $5,000 or more in Organizing

during the reporting period, such as printing company, office supplies vendor, legal counsel, etc.

If additional lines are required to complete Columns (C) through (E) for this Payee, click the "Add More Disbursements for This Payee" button in Column (A) of the itemization page. The software adds lines to the itemization page in increments of ten.

Enter in Column (C) the purpose of each individual disbursement of $5,000 or more, which means a brief statement or description of the reason the disbursement was made. Examples of adequate descriptions include the following: preparing organizing campaign pamphlets, opposition research, recruiting new members, etc. Neither the name of the employer nor the specific bargaining unit that is the subject of the organizing activity need be identified.

Enter in Column (D) the date that each individual disbursement of $5,000 or more was made. The format for the date must be mm/dd/yyyy. The date of disbursement for reporting purposes is the date the labor organization actually disbursed the money.

Enter in Column (E) the amount of each individual disbursement of $5,000 or more.

Enter the total of all non-itemized disbursements to this payee for organizing (that is, all individual disbursements of less than $5,000 each) on the "Total Non-Itemized Transactions with this Payee/Payer" line.

When you have completed entering all of the information for this payee, click the "Save & Calculate" button at the top of the itemization page and the software will enter the totals in Column (E) on the "Total Itemized Transactions with this Payee/Payer" line and on the "Total of All Transactions with this Payee/Payer for This Schedule" line.

An itemization page must be completed for each payee who met the itemization threshold during the reporting period. Only one payee should be reported per page.

To create a new Organizing itemization page for a new payee, click the "Add More Organizing" button at the top of the itemization page and a new itemization page will open.

Follow the instructions above to complete any additional Organizing itemization pages.

By clicking the "Show Payee" drop down arrow at the top of the Schedule 18 page, you can select and view all of the Organizing Itemization pages you have completed.

As you complete each itemization page, click the "Save & Calculate" button at the top of the page and the total itemized transactions will be added to line 1 of Summary Schedule 18 on the Detailed Summary Page and the total non-itemized transactions will be added to Line 2 of the Summary Schedule.

Enter the total amount of all other disbursements relating to this schedule made to other payees during the reporting period on Line 5 of Summary Schedule 18. This is the total from your organization's books of all disbursements relating to this schedule made to payees who did not have a single disbursement of $5,000 or more or disbursements that aggregated $5,000 or more.

The software adds Lines 1 through 5 and enters the total on Line 6 of Summary Schedule 18 and in Item 52 (Organizing) of Statement B.

SCHEDULE 19 – POLITICAL ACTIVITIES

Report the labor organization's direct and indirect disbursements to all entities and individuals during the reporting period associated with political disbursements or contributions in money.

A political disbursement or contribution is one that is intended to influence the selection, nomination, election, or appointment of anyone to a Federal, state, or local executive, legislative or judicial public office, or office in a political organization, or the election of Presidential or Vice Presidential electors, and support for or opposition to ballot referenda. It does not matter whether the attempt succeeds. Include disbursements for communications with members (or agency fee paying nonmembers) and their families for registration, get-out-the-vote and voter education campaigns, the expenses of establishing, administering and soliciting contributions to union segregated political funds (or PACs), disbursements to political organizations as defined by the IRS in 26 U.S.C. 527, and other political disbursements.

For all major disbursements in this category:

Enter in Column (A) of an itemization page the full name and business address of the entity or individual to which the disbursement was made. Do not abbreviate the name of the entity or individual. If you do not know and cannot reasonably obtain the full address of the entity or individual, the union may report only the city and state.

Enter in Column (B) the type of business or job classification of the entity or individual to which the union disbursed $5,000 or more for Political Activities during the reporting period, such as campaign advisor, marketing firm, fund raiser, printing company, office supplies vendor, legal counsel, etc.

If additional lines are needed to complete Columns (C) through (E) for this Payee, click the "Add More Disbursements for This Payee" button in Column (A) of the itemization page. The software will add lines to the itemization page in increments of ten.

Enter in Column (C) the purpose of each individual disbursement of $5,000 or more, which means a brief statement or description of the reason the disbursement was made. Examples of adequate descriptions include the following: a registration drive, get-out-the-vote campaign, voter education campaign, fund raising, etc. The specific campaign should be identified whenever possible. Distinguish between activities in the United States and activities in foreign countries.

Enter in Column (D) the date that each individual disbursement of $5,000 or more was made. The format for the date must be mm/dd/yyyy. The date of disbursement for reporting purposes is the date the labor organization actually disbursed the money.

Enter in Column (E) the amount of each individual disbursement of $5,000 or more.

Enter the total of all non-itemized disbursements to this payee (that is, all individual disbursements of less than $5,000 each) on the "Total Non-Itemized Transactions with this Payee/Payer" line.

When you have completed entering all of the information for this payee, click the "Save & Calculate" button at the top of the itemization page and the software will add the amounts in Column (E), and enter the sum on the "Total Itemized Transactions with this Payee/Payer" line and complete the "Total of All Transactions with this Payee/Payer for This Schedule" line.

An initial itemization page must be completed for each payee who met the itemization threshold during the reporting period. Only one payee should be reported per page.

To create a new "Political Activities" itemization page for a new payee, click the "Add More Political Activities" button at the top of the page and a new itemization page opens. Follow the instructions above to complete any additional Political Activities itemization pages.

By clicking the Show Payee drop down arrow at the top of the Schedule 19 page, you can select and view all of the "Political Activities" itemization pages you have completed.

As you complete each itemization page, click the "Save & Calculate" button at the top of the page and the total itemized transactions will be added to line 1 of Summary Schedule 19 on the Detailed Summary Page and the total non-itemized transactions will be added to Line 2 of the Summary Schedule.

Enter the total amount of all other transactions relating to this schedule made to other payees during the reporting period on Line 5 of Summary Schedule 19. This is the total from your organization's books of all transactions relating to this schedule made to payees who did not have a single disbursement of $5,00 or more or transactions that aggregated $5,000 or more.

The software adds Lines 1 through 5 and enters the total on Line 6 of Summary Schedule 19 and in Item 53 (Political Activities) of Statement B.

SCHEDULE 20 – LOBBYING

Report the labor organization's direct and indirect disbursements to all entities and individuals during the reporting period associated with dealing with the executive and legislative branches of the Federal, state, and local governments and with independent agencies and staffs to advance the passage or defeat of existing or potential laws or the promulgation or any other action with respect to rules or regulations (including litigation expenses). It does not matter whether the lobbying attempt succeeds.

For all major disbursements in this category:

Enter in Column (A) of an itemization page the full name and business address of the entity or individual to which the disbursement was made. Do not abbreviate the name of the entity or individual. If you do not know and cannot reasonably obtain the full address of the entity or individual, the union may report only the city and state.

Enter in Column (B) the type of business or job classification of the entity or individual to which the union disbursed $5,000 or more for Lobbying during the reporting period, such as lobbyist, marketing firm, think tank, issue advocacy group, printing company, office supplies vendor, legal counsel, etc.

If additional lines are needed to complete Columns (C) through (E) for this Payee, click the "Add More Disbursements for This Payee" button in Column (A) of the itemization page. The software will add lines to the itemization page in increments of ten.

Enter in Column (C) the purpose of each individual disbursement of $5,000 or more, which means a brief statement or description of the reason the disbursement was made. Examples of adequate descriptions include the following: voter education campaign, fund raising, advocating or opposing legislation (including litigation challenging such legislation) advocating or opposing regulations (including litigation challenging such regulations), etc. The specific legislation, regulation, referendum, etc. should be identified whenever possible. Distinguish between activities in the United States and activities in foreign countries.

Enter in Column (D) the date that each individual disbursement of $5,000 or more was made. The format for the date must be mm/dd/yyyy. The date of disbursement for reporting purposes is the date the labor organization actually disbursed the money.

Enter in Column (E) the amount of each individual disbursement of $5,000 or more.

Enter the total of all non-itemized disbursements to this payee (that is, all individual disbursements of less than $5,000 each) on the "Total Non-Itemized Transactions with this Payee/Payer" line.

When you have completed entering all of the information for this payee, click the "Save & Calculate" button at the top of the itemization page and the software will add the amounts in Column (E), and enter the sum on the "Total Itemized Transactions with this Payee/Payer" line and complete the "Total of All Transactions with this Payee/Payer for This Schedule" line.

An initial itemization page must be completed for each payee who met the itemization threshold during the reporting period. Only one payee should be reported per page.

To create a new "Lobbying" itemization page for a new payee, click the "Add More Lobbying Activities" button at the top of the page and a new itemization page opens. Follow the instructions above to complete any additional Lobbying itemization pages.

By clicking the Show Payee drop down arrow at the top of the Schedule 20 page, you can select and view all of the "Lobbying "itemization pages you have completed.

As you complete each itemization page, click the "Save & Calculate" button at the top of the page and the total itemized transactions will be added to line 1 of Summary Schedule 20 on the Detailed Summary Page and the total non-itemized transactions will be added to Line 2 of the Summary Schedule.

The software enters in Line 3 of Summary Schedule 20 the total of all disbursements to officers allocated to the schedule. This is the sum of the amounts that correspond to the percentages entered in Line (I) of Schedule 13.

Enter the total amount of all other transactions relating to this schedule made to other payees during the reporting period on Line 5 of Summary Schedule 20. This is the total from your organization's books of all transactions relating to this schedule made to payees who did not have a single disbursement of $5,000 or more or transactions that aggregated $5,000 or more.

The software adds Lines 1 through 5 and enters the total on Line 6 of Summary Schedule 20 and in Item 54 (Lobbying) of Statement B.

SCHEDULE 21 – CONTRIBUTIONS, GIFTS, AND GRANTS

Report the labor organization's direct and

indirect disbursements to all entities and individuals during the reporting period associated with contributions, gifts, and grants, other than those listed on Schedules 17, 18, 19, 20 and 24. Include, for example, charitable contributions, contributions to scholarship funds, etc.

For all major disbursements in this category:

Enter in Column (A) of an itemization page the full name and business address of the entity or individual to which the disbursement was made. Do not abbreviate the name of the entity or individual. If you do not know and cannot reasonably obtain the full address of the entity or individual, the union may report only the city and state.

Enter in Column (B) the type of business or job classification of the entity or individual to which the union disbursed $5,000 or more in Contributions, Gifts, and Grants during the reporting period, such as charity, scholarship fund, state or local affiliate, etc.

If additional lines are needed to complete Columns (C) through (E) for this Payee, click the "Add More Disbursements for This Payee" button in Column (A) of the itemization page. The software will add lines to the itemization page in increments of ten.

Enter in Column (C) the purpose of each individual disbursement of $5,000 or more, which means a brief statement or description of the reason the disbursement was made.

Examples of adequate descriptions include the following: medical research, community development, job retraining, education, disaster and relief assistance, athletic and youth sponsorships, etc.

Enter in Column (D) the date that each individual disbursement of $5,000 or more was made. The format for the date must be mm/dd/yyyy. The date of disbursement for reporting purposes is the date the labor organization actually disbursed the money.

Enter in Column (E) the amount of each individual disbursement of $5,000 or more.

Enter the total of all non-itemized disbursements to this payee (that is, all individual disbursements of less than $5,000 each) on the "Total Non-Itemized Transactions with this Payee/Payer" line.

When you have completed entering all of the information for this payee, click the "Save & Calculate" button at the top of the itemization page and the software will add the amounts in Column (E) and enter the sum on the "Total Itemized Transactions with this Payee/Payer" line, and it will complete the "Total of All Transactions with this Payee/Payer for This Schedule" line.

An initial itemization page must be completed for each payee who met the itemization threshold during the reporting period. Only one payee should be reported per page.

To create a new "Contributions, Gifts & Grants" itemization page for a new payee, click the "Add Contributions, Gifts & Grants" button on the top of the page and a new page opens. Follow the instructions above to complete any additional "Contributions, Gifts & Grants" itemization pages.

By clicking the "Show Payee" drop down arrow at the top of the Schedule 21 page, you can select and view all of the "Contributions, Gifts and Grants "itemization pages you have completed.

As you complete each itemization page, click the "Save & Calculate" button at the top of the page and the total itemized transactions will be added to line 1 of Summary Schedule 21 on the Detailed Summary Page and the total non-itemized transactions will be added to Line 2 of the Summary Schedule.

Enter the total amount of all other transactions relating to this schedule made to other payees during the reporting period on Line 3 of Summary Schedule 21. This is the total from your organization's books of all disbursements relating to this schedule made to payees who did not have a single disbursement of $5,000 or more or disbursements that aggregated $5,000 or more.

The software totals Lines 1 through 5 and enters that amount on Line 6 of Summary Schedule 21 and in Item 55 (Contributions, Gifts and Grants) of Statement B.

SCHEDULE 22 – GENERAL OVERHEAD

Report the labor organization's direct and indirect disbursements to all entities and individuals during the reporting period

associated with general overhead that cannot be allocated to any of the other disbursement categories in Statement B.

Some disbursements for overhead do not support a specific function, so these disbursements should be reported in this schedule. Include support personnel at the labor organization's headquarters, such as building maintenance personnel and security guards, and other overhead costs. Not all support staff should be included in General Overhead. For instance, the salary of an assistant, whenever possible, should be allocated at the same ratio as the person or persons to whom they provide support.

For all major disbursements in this category:

Enter in Column (A) of an Initial Itemization Page the full name and business address of the entity or individual to which the disbursement was made. Do not abbreviate the name of the entity or individual. If you do not know and cannot reasonably obtain the full address of the entity or individual, the union may report only the city and state.

Enter in Column (B) the type of business or job classification of the entity or individual to which the union disbursed $5,000 or more in General Overhead during the reporting period, such as office supplies vendor, landlord, mortgage lender, cleaning firm, security firm, etc.

If additional lines are needed to complete Columns (C) through (E) for this Payee, click the "More Disbursements for This Payee" button in Column (A) of the itemization page. The software will add lines to the itemization page in increments of ten.

Enter in Column (C) the purpose of the disbursement of $5,000 or more, in sufficient detail to determine why the disbursement cannot be allocated to another schedule.

Enter in Column (D) the date that each individual disbursement of $5,000 or more was made. The format for the date must be mm/dd/yyyy. The date of disbursement for reporting purposes is the date the labor organization actually disbursed the money.

Enter in Column (E) the amount of each individual disbursement of $5,000 or more.

Enter the total of all non-itemized disbursements to this payee (that is, all individual disbursements of less than $5,000 each) on the "Total Non-Itemized Transactions with this Payee/Payer" line.

When you have completed entering all of the information for this payee, click the "Save & Calculate" button at the top of the itemization page and the software will add the amounts in Column (E) and enter the sum on the "Total Itemized Transactions with this Payee/Payer" line, and it will complete the "Total of All Transactions with this Payee/Payer for This Schedule" line.

An itemization page must be completed for each payee who met the itemization threshold during the reporting period. Only one payee should be reported per page.

To create a new "General Overhead" itemization page for a new payee, click the "Add More Overhead" button at the top of the page and a new itemization page opens. Follow the instructions above to complete any additional "General Overhead" itemization pages.

By clicking the "Show Payee" drop down arrow at the top of the Schedule 22 page, you can select and view all of the General Overhead itemization pages you have completed.

As you complete each itemization page, click the "Save & Calculate" button at the top of the page and the total itemized transactions will be added to line 1 of Summary Schedule 22 on the Detailed Summary Page and the total non-itemized transactions will be added to Line 2 of the Summary Schedule.

Enter the total amount of all other transactions relating to this schedule made to other payees during the reporting period on Line 3 of Summary Schedule 31. This is the total from your organization's books of all disbursements relating to this schedule made to payees who did not have a single disbursement of $5,000 or more or disbursements that aggregated $5,000 or more.

The software totals Lines 1 through 5 and enters that amount on Line 6 of Summary Schedule 22 and in Item 56 (General Overhead) of Statement B.

SCHEDULE 23 – UNION ADMINISTRATION

Report the labor organization's direct and indirect disbursements to all entities and

individuals during the reporting period associated with union administration. Union administration includes disbursements relating to the nomination and election of union officers, the union's regular membership meetings, intermediate, national and international meetings, union disciplinary proceedings, the administration of trusteeships, and the administration of apprenticeship and member education programs (not including political education which should be reported in Schedule 19 or 20).

For all major disbursements in this category:

Enter in Column (A) of an itemization Page the full name and business address of the entity or individual to which the disbursement was made. Do not abbreviate the name of the entity or individual. If you do not know and cannot reasonably obtain the full address of the entity or individual, the union may report only the city and state.

Enter in Column (B) the type of business or job classification of the entity or individual to which the union disbursed $5,000 or more for Union Administration during the reporting period, such as printing company, office supplies vendor, legal counsel, etc.

If additional lines are needed to complete Columns (C) through (E) for this Payee, click the "More Disbursements for This Payee" button in Column (A) of the itemization page. The software will add lines to the itemization page in increments of ten

Enter in Column (C) the purpose of the disbursement of $5,000 or more in sufficient detail to determine why the disbursement cannot be allocated to another schedule. For example, printing of election ballots, rental of meeting facilities for a union convention, printing of transcripts of trusteeship hearing, etc.

Enter in Column (D) the date that each individual disbursement of $5,000 or more was made. The format for the date must be mm/dd/yyyy. The date of disbursement for reporting purposes is the date the labor organization actually disbursed the money.

Enter in Column (E) the amount of each individual disbursement of $5,000 or more.

Enter the total of all non-itemized disbursements to this payee (that is, all individual receipts of less than $5,000 each) on the "Total Non-Itemized Transactions with this Payee/Payer" line.

When you have completed entering all of the information for this payee, click the "Save & Calculate" button at the top of the itemization page and the software will add the amounts in Column (E), and enter the sum on the "Total Itemized Transactions with this Payee/Payer" line, and it will complete the "Total of All Transactions with this Payee/Payer for This Schedule" line.

An itemization page must be completed for each payee who met the itemization threshold during the reporting period. Only one payee should be reported per page.

To create a new "Union Administration" itemization page for a new payee, click the "Add More Administration" button at the top of the page and a new itemization page opens. Follow the instructions above to complete any additional "Union Administration" itemization pages.

By clicking the "Show Payee" drop down arrow at the top of the Schedule 23 page, you can select and view all of the Union Administration Itemization pages you have completed.

As you complete each itemization page, click the "Save & Calculate" button at the top of the page and the total itemized transactions will be added to line 1 of Summary Schedule 32 on the Detailed Summary Page and the total non-itemized transactions will be added to Line 2 of the Summary Schedule.

Enter the total amount of all other transactions relating to this schedule made to other payees during the reporting period on Line 3 of Summary Schedule 23. This is the total from your organization's books of all disbursements relating to this schedule made to payees who did not have a single disbursement of $5,000 or more or disbursements that aggregated $5,000 or more.

The software totals Lines 1 through 5 and enters that amount on Line 6 of Summary Schedule 23 and in Item 57 (Union Administration) of Statement B.

SCHEDULE 24 – BENEFITS

[Note: Do not use the Itemization Pages for Schedule 24. Instead use the separate

Schedule 24.]

Report the labor organization's direct and indirect disbursements to all entities and individuals during the reporting period associated with direct and indirect benefits for officers, employees, members, and their beneficiaries. Benefit disbursements to be reported in Schedule 24 include, for example, disbursements for life insurance, health insurance, and pensions. Do not include salary bonuses, severance payments, or payments for accrued vacation, which should be reported in Column (D) of Schedule 13 or 14.

Direct benefit disbursements are those made to officers, employees, members, and their beneficiaries from the labor organization's funds. Indirect benefit disbursements are those made from the labor organization's funds to a separate and independent entity, such as a trust or insurance company, which in turn and under certain conditions will pay benefits to the covered individuals. An example of an indirect benefit disbursement is the premium on group life insurance.

If additional lines are required, click the "Add More Benefits" button at the top of the schedule. The software will add lines to the schedule in increments of ten.

Enter in Column (A) the type of benefit, such as pension, welfare, etc.

Enter in Column (B) to whom payment was made; for example, union members, insurance company, etc. Individual union members and their beneficiaries are not required to be listed by name.

Enter in Column (C) the amount disbursed for each type of benefit.

Click the "Save & Calculate" button at the top of the schedule and the software will enter the total for Column (C) on the "Total of all lines above" line and in Item 58 (Benefits) of Statement B.

STATEMENT A ASSETS AND LIABILITIES

ASSETS

The software pre-fills Columns (A) and (C) (Start of Reporting Period) from your organization's report for the previous fiscal year. If the data is inaccurate, however, it can be edited manually. Be sure to explain any changes in Item 75 (Additional Information).

22. CASH — Enter the total of all the labor organization's cash on hand and on deposit at the start and end of the reporting period in Columns (A) and (B), respectively. Include all cash on hand, such as undeposited cash, checks, and money orders; petty cash; and cash in safe deposit boxes. Cash on deposit includes funds in banks, credit unions, and other financial institutions, such as checking accounts, savings accounts, certificates of deposit, and money market accounts. Also, include any interest credited to the labor organization's account during the reporting period.

NOTE: The checking account balances reported should be obtained from the labor organization's books as reconciled with the balances shown on bank statements.

23. ACCOUNTS RECEIVABLE — Ordinarily, accounts receivable are moneys due for goods sold or services rendered evidenced by notes, statements, invoices, or other written evidence of a present obligation. Enter in Column (A) the total of all gross accounts receivable at the start of the reporting period. The software will enter in Column (B) the total of all gross accounts receivable at the end of the reporting period from Column (B) of Schedule 1 (Accounts Receivable Aging Schedule). If accounts receivable are carried on the labor organization's books at net (gross accounts receivable less the allowance for doubtful accounts), the labor organization may report the allowance for doubtful accounts in Item 75 (Additional Information).

24. LOANS RECEIVABLE — Enter in Column (A) the total of all gross loans receivable at the start of the reporting period, which is also reported in Column (B) of Schedule 2 (Loans Receivable). The software will enter the total of all gross loans receivable at the end of the reporting period in Column (B) from Column (E) of Schedule 2.

25. U.S. TREASURY SECURITIES — Enter the total value of all U.S. Treasury securities as shown on the labor organization's books at the start and end of the reporting period in Columns (A) and (B), respectively. If the value reported is different from the original cost, the original cost must be reported in Item 75 (Additional

Information). Other U.S. Government obligations, state and municipal bonds, and foreign government securities must be reported in Schedule 7 (Investments Other Than U.S. Treasury Securities) under "Marketable Securities" and in Item 26 (Investments).

(B) **26. INVESTMENTS —** Enter in Column (A) the total book value at the start of the reporting period of all investments other than U.S. Treasury securities, which are reported in Item 25 (U.S. Treasury Securities). The software will enter in Column (B) the total reported in Column of Schedule 7 (Investments Other Than U.S. Treasury Securities).

27. FIXED ASSETS — Enter in Column (A) the total value as shown on the labor organization's books at the start of the reporting period of all fixed assets, such as land, buildings, automobiles, and office furniture and equipment. The software will enter in Column (B) the total reported in Column (D) of Schedule 8 (Fixed Assets).

28. OTHER ASSETS — Enter in Column (A) the total value as shown on the labor organization's books at the start of the reporting period of all assets not reported in Items 22 through 27. The software will enter in Column (B) the total reported in Column (B) of Schedule 9 (Other Assets).

29. TOTAL ASSETS — Click the "Save & Calculate" button at the top of Statement A and the software will total Items 22 through 28, Columns (A) and (B), and enter the respective totals in Item 29.

LIABILITIES

30. ACCOUNTS PAYABLE — Ordinarily, accounts payable are those obligations incurred on an open account for goods and services rendered. Enter in Column (C) the total of all gross accounts payable at the start of the reporting period. The software will enter the total of all gross accounts payable at the end of the reporting period in Column (D) from Column (B) of Schedule 10 (Accounts Payable Aging Schedule).

31. LOANS PAYABLE — Enter in Column (C) the total of all gross loans payable at the start of the reporting period, which is also reported in Column (B) of Schedule 11 (Loans Payable). The software will enter the total of all gross loans payable at the end of the reporting period in Column (D) from Column (E) of Schedule 11 (Loans Payable).

32. MORTGAGES PAYABLE — Enter the total amount of the labor organization's obligations that were secured by mortgages or similar liens on real property (land or buildings) at the start and end of the reporting period in Columns (C) and (D), respectively.

33. OTHER LIABILITIES — Enter in Column (C) the total amount as shown on the labor organization's books at the start of the reporting period of all liabilities not reported in Items 30 through 32. The software will enter in Column (D) the total reported in Column (B) of Schedule 12 (Other Liabilities).

34. TOTAL LIABILITIES — Click the "Save & Calculate" button at the top of Statement A and the software will add the amounts in Items 30 through 33, Columns (C) and (D), and enter the respective amounts in Item 34. The software will also complete Item 35 (Net Assets) as explained in the next instruction.

35. NET ASSETS — As indicated in the previous instruction, when Item 34 is completed and the "Save & Calculate" button at the top of Statement A is clicked, the software subtracts Item 34 (Total Liabilities), Column (C) from Item 29 (Total Assets), Column (A) and enters the difference in Item 35, Column (C). The software also subtracts Item 34, Column (D) from Item 29, Column (B) and enters the difference in Item 35, Column (D).

STATEMENT B RECEIPTS AND DISBURSEMENTS

Under Statement B, receipts must be recorded when money is actually received by the labor organization and disbursements must be recorded when money is actually paid out by the labor organization.

The purpose of Statement B is to report the flow of cash in and out of the labor organization during the reporting period. Transfers between separate bank accounts or between special funds of the labor organization, such as vacation or strike funds, do not represent the flow of cash in and out of the labor organization. Therefore, these transfers should not be reported as receipts and disbursements of the labor organization. For example, do not report a transfer of cash from the labor organization's savings account to its checking account. Likewise, the use of funds reported in Item 22

(Cash) of Statement A to purchase certificates of deposit and the redemption of certificates of deposit should not be reported in Statement B.

Since Statement B reports all cash flowing in and out of the labor organization, "netting" is not permitted. "Netting" is the offsetting of receipts against disbursements and reporting only the balance (net) as either a receipt or disbursement. For example, if an officer received $1,000 from the labor organization for convention expenses, used only $800 and returned the remaining $200, the $1,000 disbursement must be reported in Schedule 13 (All Officers and Disbursements to Officers) and the appropriate disbursement Schedule 16 through 23, and the $200 receipt must be reported in Schedule 16 (Other Receipts). It would be incorrect to report only an $800 net disbursement to the officer.

Receipts and disbursements by an agent on behalf of the labor organization are considered receipts and disbursements of the labor organization and must be reported in the same detail as other receipts and disbursements. For example, if the labor organization owns a building managed by a rental agent, the agent's rental receipts and disbursements for expenses must be reported on the labor organization's Form LM-2. Also, if the labor organization's parent body or an intermediate body functions as an agent receiving and disbursing funds of the labor organization to third parties, these receipts and disbursements must be reported on the labor organization's Form LM-2. For example, if a parent body receives the labor organization's dues and makes disbursements from that money to pay the labor organization's bills (such as payments to an attorney for legal services), those receipts and disbursements must be reported on the labor organization's Form LM-2.

CASH RECEIPTS

36. DUES AND AGENCY FEES – Enter the total dues including regular dues, working dues, etc. received by the labor organization. Include dues received directly by the organization from members, dues received from employers through a checkoff arrangement, and dues transmitted to the organization by a parent body or other affiliate. Report the full dues received, including any portion that will later be transmitted to an intermediate or parent body as per capita tax. Also report in Item 36 payments in lieu of dues received from any nonmember employees as a condition of employment under a union security provision in a collective bargaining agreement.

If an intermediate or parent body receives dues checkoff directly from an employer on behalf of the reporting organization, do not report in Item 36 the portion retained by that organization for per capita tax or other purposes, such as a special assessment. Any amounts retained by the intermediate body or parent body other than per capita tax must be explained in Item 75 (Additional Information). For example, if the intermediate body or parent body retained $500 of the reporting organization's dues checkoff as payment for supplies purchased from that body by the reporting organization, this should be explained in Item 75, but the $500 should not be reported as a receipt or disbursement on either organization's Form LM-2. If, however, the intermediate body or parent body disbursed part of the reporting organization's dues checkoff on that organization's behalf, this amount should be included in Item 36 and in the appropriate disbursement item on the reporting organization's Form LM-2. For example, if the intermediate body or parent body disbursed $500 of the reporting organization's dues checkoff to an attorney who had provided lobbying services to the reporting organization, this amount should be reported in Item 54 and as a disbursement in Schedule 20 (Lobbying) of the reporting organization's Form LM-2.

Do not report in Item 36 dues that the reporting organization collected on behalf of other organizations for transmittal to them. For example, if the reporting organization received dues from a member of an affiliate who worked in the reporting organization's jurisdiction, the dues collected on the affiliate's behalf must be reported in Item 47.

37. PER CAPITA TAX — Enter the total per capita tax received by your organization if your organization is an intermediate or parent body; otherwise, enter "0" in Item 37. Include the per capita tax portion of dues received directly by your organization from members of affiliates, per capita tax received from subordinates, either directly or through intermediaries, and the per capita tax portion of dues received through a checkoff arrangement whereby local dues are remitted directly to an intermediate or parent body by employers. Do not include dues collected on behalf of subordinate organizations for transmittal to them. For example, if a parent body received dues checkoff directly from an

employer and returned the local's portion of the dues, the parent body must report the dues received on behalf of the local in Item 47 (On Behalf of Affiliates for Transmittal to Them).

38. FEES, FINES, ASSESSMENTS, WORK PERMITS — Enter the labor organization's receipts from fees, fines, assessments, and work permits. Receipts by the labor organization on behalf of affiliates for transmittal to them must be reported in Item 47 (On Behalf of Affiliates for Transmittal to Them).

39. SALE OF SUPPLIES — Enter the total amount received by the labor organization from the sale of supplies such as union logo clothing, lapel pins, bumper stickers, etc.

40. INTEREST — Enter the total amount of interest received by the labor organization from savings accounts, bonds, mortgages, loans, and all other sources.

41. DIVIDENDS — Enter the total amount of dividends from stocks and other investments received by the labor organization. Do not include "dividends" from credit unions, savings and loan associations, etc., which must be reported in Item 40 (Interest).

42. RENTS — Enter the total amount of rents received by the labor organization.

43. SALE OF INVESTMENTS — The software will enter the total "Net Sales" reported in Column (E) of Schedule 3 (Sale of Investments).

44. SALE OF FIXED ASSETS — The software will enter the total "Net Sales" reported in Column (E) of Schedule 4 (Sale of Fixed Assets).

45. LOANS OBTAINED — The software will enter the total reported in Column (C) of Schedule 11 (Loans Payable).

46. REPAYMENTS OF LOANS MADE — The software will enter the total reported in Column (D)(1) of Schedule 2 (Loans Receivable).

47. ON BEHALF OF AFFILIATES FOR TRANSMITTAL TO THEM — Enter the total amount of dues, fees, fines, assessments, and work permit fees received by the labor organization, through a checkoff arrangement or otherwise, on behalf of affiliates for transmittal to them. Do not include the amount withheld by the labor organization for per capita taxes or other purposes, such as loan repayments, which must be reported elsewhere in Statement B. When the receipts reported in Item 47 are transmitted, the disbursement must be reported in related Item 63 (To Affiliates of Funds Collected on Their Behalf).

48. FROM MEMBERS FOR DISBURSEMENT ON THEIR BEHALF — Enter the total receipts from members that are specifically designated by them for disbursement on their behalf; for example, contributions from members for transmittal by the labor organization to charities. When receipts that are reported in Item 48 are transmitted, the disbursement must be reported in related Item 68 (On Behalf of Individual Members).

49. OTHER RECEIPTS — The software will enter the total reported on Summary Schedule 16, Line 4.

50. TOTAL RECEIPTS — Click the "Save & Calculate" button at the top of Statement B and the software will add the amounts in Items 36 through 49 and enter the total in Item 50.

CASH DISBURSEMENTS

51. CONTRACT NEGOTIATION AND ADMINISTRATION – The software will enter the total from Summary Schedule 17, Line 6.

52. ORGANIZING – The software will enter the total from Summary Schedule 18, line 6.

53. POLITICAL ACTIVITIES – The software will enter the total from Summary Schedule 19, Line 6.

54. LOBBYING – The software will enter the total from Summary Schedule 20, Line 6.

55. CONTRIBUTIONS, GIFTS, AND GRANTS – The software will enter the total from Summary Schedule 21, Line 6.

56. GENERAL OVERHEAD – The software will enter the total from Summary Schedule 22, Line 6.

57. UNION ADMINISTRATION – The software will enter the total from Summary Schedule 23, Line 6.

58. BENEFITS – The software will enter the total reported in Column (C.) of Schedule 24

(Benefits).

59. PER CAPITA TAX — Enter your organization's total amount of per capita tax paid as a condition or requirement of affiliation with your parent national or international union, state and local central bodies, a conference, joint or system board, joint council, federation, or other labor organization.

60. STRIKE BENEFITS – Enter the total amount of all disbursements made to, or on behalf of the members (or agency fee paying nonmembers) of the labor organization, and others, associated with strikes (including recognitional strikes), work stoppages and lockouts during the reporting period.

61. FEES, FINES, ASSESSMENTS, ETC. — Enter the total amount of fees, fines, assessments, and similar disbursements made by the labor organization to a parent body or other labor organization.

62. SUPPLIES FOR RESALE — Enter the labor organization's total disbursements for purchases of supplies such as union logo clothing, lapel pins, bumper stickers, etc. for resale.

63. PURCHASE OF INVESTMENTS — The software will enter the total reported in Column (D) of Schedule 5 (Purchase of Investments).

64. PURCHASE OF FIXED ASSETS – The software will enter the total reported in Column (D) of Schedule 6 (Purchase of Fixed Assets).

65. LOANS MADE — The software will enter the total reported in Column (C) of Schedule 2 (Loans Receivable).

66. REPAYMENT OF LOANS OBTAINED — The software will enter the total reported in Column (D)(1) of Schedule 11 (Loans Payable).

67. TO AFFILIATES OF FUNDS COLLECTED ON THEIR BEHALF — Enter the total disbursements of funds collected on behalf of affiliates by the labor organization. This amount usually is the same as the amount reported in related Item 47 (On Behalf of Affiliates for Transmittal to Them). Any such funds not disbursed by the end of the reporting period are liabilities of the labor organization and must be reported in Schedule 12 (Other Liabilities).

68. ON BEHALF OF INDIVIDUAL MEMBERS — Enter the total disbursements of funds collected from members by the labor organization that were specifically designated by them for disbursement on their behalf. This amount usually is the same as the amount reported in related Item 48 (From Members for Disbursement on Their Behalf). Any such funds not disbursed by the end of the reporting period are liabilities of the labor organization and must be reported in Schedule 12 (Other Liabilities).

69. DIRECT TAXES – Enter all taxes assessed against and paid by your organization, including your organization's FICA taxes as an employer. Do not include disbursements for the transmittal of taxes withheld from the salaries of officers and employees which must be reported in Item 71 (Withholding Taxes and Other Payroll Deductions). Also, do not include indirect taxes, such as sales and excise taxes, for purchases reported in other disbursement items.

70. OFFICERS – The software will enter the total officer disbursements reported in Schedule 13 (All Officers and Disbursements to Officers).

71. EMPLOYEES – The software will enter the total employee disbursements reported in Schedule 14 (Disbursements to Employees).

72. SUBTOTAL — Click the "Save & Calculate" button at the top of Statement B and the software will add the amounts in Items 51 through 69 and enter the subtotal in Item 72.

73. WITHHOLDING TAXES AND OTHER PAYROLL DEDUCTIONS – a. Total Withheld - Enter the total amount of withholding taxes and all other payroll deductions during the reporting period.

b. Total Disbursed - Enter the total amount of withholding taxes and all other payroll deductions that were disbursed by your organization during the reporting period. This includes your organization's total disbursements to Federal, state, county, and municipal government agencies for the transmittal of taxes withheld from the salaries of officers and employees, including officers' and employees' portion of FICA taxes and all disbursements for the transmittal of other payroll deductions.

c. Total Withheld But Not Disbursed – Click the

"Save & Calculate" button at the top of Statement B and the software will subtract Item 73b from Item 73a and enter the difference in Item 73c. The software will also complete Item 74 (Total Disbursements) as explained in the next instruction.

74. TOTAL DISBURSEMENTS – As indicated in the previous instruction, when Item 73c is completed and the "Save & Calculate" button at the top of Statement B is clicked the software subtracts Item 73c from Item 72 and enters the difference in Item 74.

NOTE: *The following worktable may be used to determine that the figures for receipts, disbursements, and cash are correctly reported on the labor organization's Form LM-2:*

A. Cash at Start of Reporting $ Period — Item 22, Column (A)

B. Add: Total Receipts — Item 50 $

C. Total of Lines A and B $

D. Subtract: Total Disbursements $ — Item 74

E. Cash at End of Period $

If Line E does not equal the amount reported in Item 22, Column (B), there is an error in the labor organization's report, which should be corrected.

ADDITIONAL INFORMATION AND SIGNATURES

75. ADDITIONAL INFORMATION — Use Item 75 to provide additional information as indicated on Form LM-2 and in these instructions. Enter the number of the item to which the information relates in the Item Number column if the software has not entered the number.

76-77. SIGNATURES — The completed Form LM-2 that is filed with OLMS must be signed by both the president and treasurer, or corresponding principal officers, of the labor organization. If an officer other than the president or treasurer performs the duties of the principal executive or principal financial officer, the other officer may sign the report. If an officer other than the president or treasurer signs the report, enter the correct title in the title field next to the signature and explain in Item 75 (Additional Information) why the president or treasurer did not sign the report.

Before signing the form, enter the telephone number at which the signatories conduct official business and the date. Click the Validate button at the top of the form to ensure that the report passes validation.

To sign the form, click the signature spaces provided. Fill in the requested information in the screen that pops up.

XII. LABOR ORGANIZATIONS THAT HAVE CEASED TO EXIST

If a labor organization has gone out of existence as a reporting labor organization, the last president and treasurer or the officials responsible for winding up the affairs of the labor organization must file a terminal financial report for the period from the beginning of the fiscal year to the date of termination. A terminal financial report must be filed if the labor organization has gone out of business by disbanding, merging into another organization, or being merged and consolidated with one or more labor organizations to form a new labor organization. A terminal financial report is not required if the labor organization changed its affiliation but continues to function as a separate reporting labor organization.

The terminal financial report must be filed on Form LM-2 if the labor organization filed its previous annual report on Form LM-2 and must be submitted within 30 days after the date of termination.

To complete a terminal report on Form LM-2, follow the instructions in Section XI and, in addition:

- Enter the date the labor organization ceased to exist in Item 2 after the word "Through." The format for the date must be mm/dd/yyyy.
- Select Item 3(c) indicating that the labor organization ceased to exist during the reporting period and that this is the labor organization's terminal Form LM-2.
- Provide in Item 75 (Additional Information) a detailed statement of the reason the labor organization ceased to exist. Also report in Item 75 plans for the disposition of the labor organization's cash and other assets, if any (for example, transfer of cash and assets to the parent body). Provide the name and address of the person or organization that will retain the records of the terminated organization. If the labor organization

merged with another labor organization, report that organization's name, address, and 6-digit file number.

Contact the nearest OLMS field office listed below if you have questions about filing a terminal report.

OLMS District Offices

Staff is available to answer questions at OLMS offices in the following areas.

Atlanta-Nashville
Boston-Buffalo
Chicago
Cincinnati-Cleveland
Dallas-New Orleans
Denver-St. Louis
Detroit-Milwaukee
Los Angeles
Philadelphia-Pittsburgh
New York
San Francisco-Seattle
Washington

Consult the OLMS Web site at www.olms.dol.gov or local telephone directory listings under United States Government, Labor Department, Office of Labor-Management Standards, for the address and telephone number of the nearest field office. You may also contact OLMS via email at OLMS-Public@dol.gov.

Copies of labor organization annual financial reports, employer reports, and labor relations consultant reports filed for the year 2000 and after can be viewed and printed at www.unionreports.gov. Copies of reports for the year 1999 and earlier can be ordered through the Web site.

Information about OLMS, including key personnel and telephone numbers, compliance assistance materials, the text of the LMRDA, and related Federal Register and Code of Federal Regulations documents, is also available on the OLMS website at www.olms.dol.gov.

U.S. Department of Labor
Office of Labor-Management Standards
Washington, DC 20210

FORM LM-2 LONG FORM LABOR ORGANIZATION ANNUAL REPORT

Form Approved
Office of Management and Budget
No. xxxx-xxxx
Expires xx-xx-xxxx

MUST BE USED BY LABOR ORGANIZATIONS WITH $8,000,000 OR MORE IN TOTAL ANNUAL RECEIPTS AND SUCH LABOR ORGANIZATIONS IN TRUSTEESHIP

This report is mandatory under P.L. 86-257, as amended. Failure to comply may result in criminal prosecution, fines, or civil penalties as provided by 29 U.S.C. 439 or 440.

READ THE INSTRUCTIONS CAREFULLY BEFORE PREPARING THIS REPORT.

For Official Use Only	1. FILE NUMBER	2. PERIOD COVERED MO DAY YEAR From Through	3. (a) AMENDED — If this is an amended report, check here: ☐ (b) HARDSHIP — If filing under hardship procedures check here: ☐ (c) TERMINAL — If this is a terminal report, check here: ☐ (d) TRUSTEESHIP—If the Labor Organization is under trusteeship, check here: ☐

4. AFFILIATION OR ORGANIZATION NAME		8. MAILING ADDRESS (Type or print in capital letters.)	
		First Name	Last Name
5. DESIGNATION (Local, Lodge, etc.)	6. DESIGNATION NUMBER	P.O. Box - Building and Room Number	
7. UNIT NAME (if any)		Number and Street	
		City	
9. Are your organization's records kept at its mailing address? Yes ☐ No ☐ (If "No," provide address in Item 75.)		State	ZIP Code + 4

75. ADDITIONAL INFORMATION (Text entered will appear on last page of form. To enter comments, press the "General Additional Information" button.)

Each of the undersigned, duly authorized officers of the above labor organization, declares, under penalty of perjury and other applicable penalties of law, that all of the information submitted in this report (including the information contained in any accompanying documents) has been examined by the signatory and is, to the best of the undersigned's knowledge and belief, true, correct, and complete. (See Section VI on penalties in the instructions.)

76. SIGNED:_____ PRESIDENT (If other title, see instructions.)

/ / Date ( ) — Telephone Number

77. SIGNED:_____ TREASURER (If other title, see instructions.)

/ / Date ( ) — Telephone Number

COMPLETE ITEMS 10 THROUGH 21

FILE NUMBER:

10 (a). During the reporting period did the labor organization create or participate in the administration of a trust or other fund or organization, as defined in the instructions, which provides benefits for members or their beneficiaries?

Yes ☐ No ☐

10 (b). During the reporting period did an officer or employee paid $10,000 or more by the labor organization also receive $10,000 or more as an officer or employee of another labor organization in gross salaries, allowances, and other direct and indirect disbursements?

Yes ☐ No ☐

11(a). During the reporting period did the labor organization have a political action committee (PAC) fund?

Yes ☐ No ☐

11(b). During the reporting period did the labor organization have a subsidiary organization as defined in Section X of these Instructions?

Yes ☐ No ☐

11(c). During the reporting period did the labor organization have a separate strike fund?

Yes ☐ No ☐

12. During the reporting period did the labor organization have an audit or review of its books and records by an outside accountant or by a parent body auditor/representative?

Yes ☐ No ☐

13. During the reporting period did the labor organization experience and/or discover any loss or shortage of funds or other assets? (Answer "Yes" even if there has been repayment or recovery.)

Yes ☐ No ☐

14. What is the maximum amount recoverable under the labor organization's fidelity bond for a loss caused by any officer, employee or agent of the labor organization who handled union funds?

☐

15. During the reporting period did the labor organization acquire or dispose of any assets in any manner other than by purchase or sale?

Yes ☐ No ☐

16. Were any of the labor organization's assets pledged as security or encumbered in any other way at the end of the reporting period?

Yes ☐ No ☐

17. Did the labor organization have any contingent liabilities at the end of the reporting period?

Yes ☐ No ☐

18 (a). During the reporting period did the labor organization have any changes in its constitution and bylaws, other than rates of dues and fees, or in practices/procedures listed in the instructions?

Yes ☐ No ☐

18 (b). Enter the date of the labor organization's current Constitution ☐ and Bylaws ☐

19. What is the date of the labor organization's next regular election of officers? ☐

20. How many members did the labor organization have at the end of the reporting period? (Total from the Members Line of Schedule 15) ☐

21. What are the labor organization's rates of dues and fees? (Enter a minimum and maximum if more than one rate applies for any line.)

Rates of Dues and Fees

Dues/Fees	Amount		Unit	Minimum	Maximum
(a) Regular Dues/Fees		per			
(b) Working Dues/Fees		per			
(c) Initiation Fees		per			
(d) Transfer Fees		per			
(e) Work Permits		per			

If the answer to any of the above questions is "Yes," provide details in Item 75 (Additional Information) as explained in the instructions for each item.

STATEMENT A – ASSETS AND LIABLITIES

FILE NUMBER:

Complete Schedules 1 Through 31 Before Completing Statement A

ASSETS

ASSETS	Schedule Number	Start of Reporting Period (A)	End of Reporting Period (B)
22. Cash			
23. Accounts Receivable	1		
24. Loans Receivable	2		
25. U.S. Treasury Securities			
26. Investments	7		
27. Fixed Assets	8		
28. Other Assets	9		
29. TOTAL ASSETS			

LIABILITIES

LIABILITIES	Schedule Number	Start of Reporting Period (C)	End of Reporting Period (D)
30. Accounts Payable	10		
31. Loans Payable	11		
32. Mortgages Payable			
33. Other Liabilities	12		
34. TOTAL LIABILITIES			

35. NET ASSETS (Item 29 Less Item 34)		

STATEMENT B – RECEIPTS AND DISBURSEMENTS

FILE NUMBER:

Complete Schedules 1 Through 31 Before Completing Statement B

Item CASH RECEIPTS	SCH #	AMOUNT
36. Dues and Agency Fees	16	
37. Per Capita Tax	17	
38. Fees, Fines, Assessments, Work Permits	18	
39. Sale of Supplies	19	
40. Interest		
41. Dividends		
42. Rents	20	
43. Sale of Investments	3	
44. Sale of Fixed Assets	4	
45. Loans Obtained	11	
46. Repayments of Loans Made	2	
47. On Behalf of Affiliates for Transmittal to Them	21	
48. From Members for Disbursement on Their Behalf	22	
49. Other Receipts	23	
50. TOTAL RECEIPTS		

Item CASH DISBURSEMENTS	SCH #	AMOUNT
51. Contract Administration and Negotiation	24	
52. Organizing	25	
53. Political Activities	26	
54. Lobbying	27	
55. Contributions, Gifts, and Grants	28	
56. General Overhead	29	
57. Union Administration	30	
58. Benefits	31	
59. Per Capita Tax		
60. Strike Benefits		
61. Fees, Fines, Assessments, etc.		
62. Supplies for Resale		
63. Purchase of Investments	5	
64. Purchase of Fixed Assets	6	
65. Loans Made	2	
66. Repayment of Loans Obtained	11	
67. To Affiliates of Funds Collected on Their Behalf		
68. On Behalf of Individual Members		
69. Direct Taxes		
70. Officers	13	
71. Employees	14	
72. Subtotal		
73. Withholding Tax and Payroll Deductions		
73a. Total Withheld		
73b. Less Total Disbursed		
73c. Total Withheld But Not Disbursed		
74. TOTAL DISBURSEMENTS (Line 72 – 73c)		

SCHEDULE 1 – ACCOUNTS RECEIVABLE AGING SCHEDULE

FILE NUMBER:

Entity or Individual Name (A)	Total Account Receivable (B)	90 - 180 Days Past Due (C)	180+ Days Past Due (D)	Liquidated Account Receivable (E)
1.				
2.				
3.				
4.				
5.				
6.				
7.				
8.				
9.				
10.				
11.				
12.				
13.				
14.				
15.				
16.				
17.				
18.				
19.				
20.				
21.				
22.				
23.				
24.				
25.				
Total of all itemized accounts receivable				
Totals from all other accounts receivable				
Totals (Total of Column (B) will be automatically entered in Item 23, Column (B))				

SCHEDULE 2 – LOANS RECEIVABLE

FILE NUMBER:

List below loans to officers, employees, or members which at any time during the reporting period exceeded $250 and list all loans to business enterprises regardless of amount. (A)	Loans Outstanding at Start of Period (B)	Loans Made During Period (C)	Repayments Received During Period		Loans Outstanding at End of Period (E)
			Cash (D)(1)	Other Than Cash (D)(2)	
1. Name: _____ Purpose: _____ Security: _____ Terms of Repayment: _____					
2. Name: _____ Purpose: _____ Security: _____ Terms of Repayment: _____					
3. Name: _____ Purpose: _____ Security: _____ Terms of Repayment: _____					
4. Name: _____ Purpose: _____ Security: _____ Terms of Repayment: _____					
Total of loans not listed above					
Totals of all lines above					

Totals will be automatically entered In ……Item 24……Item 65……Item 46……Item 75 ……tem 24
Column (A) with Explanation Column (B)

SCHEDULE 3 – SALE OF INVESTMENTS

FILE NUMBER:

Name and Address of Purchaser or Financial Management Firm (A)	Description (B)	Date of Sale (C)	Cost (D)	Book Value (E)	Gross Sales Price (F)	Amount Received (G)
1.						
2.						
3.						
4.						
5.						
6.						
7.						
8.						
9.						
10.						
11.						
12.						
Total of all lines (D)-(G) above						
			Less Reinvestments			
		(The total from Net Sales Line will be automatically entered in Item 43.)	**Net Sales**			

SCHEDULE 4 – SALE OF FIXED ASSETS

FILE NUMBER:

Name and Address of Purchaser (A)	Description (if land or buildings, give location) (B)	Date of Sale (C)	Cost (D)	Book Value (E)	Gross Sales Price (F)	Amount Received (G)
1.						
2.						
3.						
4.						
5.						
6.						
7.						
8.						
9.						
10.						
11.						
12.						
Total of all lines(D)-(G) above						
			Less Reinvestments			
		(The total from Net Sales Line will be automatically entered in Item 44.)	**Net Sales**			

SCHEDULE 5 – PURCHASE OF INVESTMENTS

FILE NUMBER:

Name and Address of Seller or Financial Management Firm (A)	Description (B)	Date (C)	Cost (D)	Book Value (E)	Gross Sales Price (F)	Cash Paid (G)
1.						
2.						
3.						
4.						
5.						
6.						
7.						
8.						
9.						
10.						
11.						
12.						
Total of all lines above						
			Less Reinvestments			
		(The total from Net Sales Line will be automatically entered in Item 63.)	**Net Sales**			

SCHEDULE 6 – PURCHASE OF FIXED ASSETS

FILE NUMBER:

Name and Address of Seller (A)	Description (if land or buildings, give location) (B)	Date of Purchase (C)	Cost (D)	Book Value (E)	Gross Sales Price (F)	Amount Received (G)
1.						
2.						
3.						
4.						
5.						
6.						
7.						
8.						
9.						
10.						
11.						
12.						
Total of all lines above						
			Less Reinvestments			
		(The total from Net Sales Line will be automatically entered in Item 64.)	**Net Sales**			

SCHEDULE 7 – INVESTMENTS

FILE NUMBER:

Description (A)	Amount (B)
Marketable Securities	
A. Total Cost	
B. Total Book Value	
C. List each marketable security which has a book value over $5,000 and exceeds 5% of Line B.	
(1)	
(2)	
(3)	
(4)	
Other Investments	
D. Total Cost	
E. Total Book Value	
F. List each other investment which has a book value over $5,000 and exceeds 5% of Line E. Also, list each subsidiary for which separate reports are attached.	
(1)	
(2)	
(3)	
(4)	
(5)	
G. Total of Lines B and E (Total from Line G will be automatically entered in Item 26, Column (B))	

SCHEDULE 8 –FIXED ASSETS

FILE NUMBER:

Description (A)	Cost or Other Basis (B)	Total Depreciation or Amount Expensed (C)	Book Value (D)	Value (E)
A. Land (give location)				
1.				
2.				
3.				
B. Buildings (give location)				
1.				
2.				
3.				
C. Automobiles and Other Vehicles				
D. Office Furniture and Equipment				
E. Other Fixed Assets				
F. **Totals of Lines A through E** (Column (D) Total will be automatically entered in Item 27, Column (B))				

SCHEDULE 9 – OTHER ASSETS

FILE NUMBER:

Description (A)	Book Value (B)
1.	
2.	
3.	
4.	
5.	
6.	
7.	
8.	
9.	
10.	
11.	
12.	
13.	
14.	
Total (Total will be automatically entered in Item 28, Column (B))	

SCHEDULE 10 – ACCOUNTS PAYABLE AGING SCHEDULE

FILE NUMBER:

Entity or Individual Name (A)	Total Account Payable (B)	90 - 180 Days Past Due (C)	180+ Days Past Due (D)	Liquidated Account Payable (E)
1.				
2.				
3.				
4.				
5.				
6.				
7.				
8.				
9.				
10.				
11.				
12.				
13.				
14.				
15.				
16.				
17.				
18.				
19.				
20.				
21.				
22.				
23.				
24.				
25.				
Total of all Itemized Accounts Payable				
Total from all other accounts payable				
Totals (Total for Column (B) will be automatically entered in Item 30, Column (D))				

SCHEDULE 11 – LOANS PAYABLE

FILE NUMBER:

Source of Loans Payable at Any Time During the Reporting Period (A)	Loans Owed at Start of Period (B)	Loans Obtained During Period (C)	Repayment Made During Period		Loans Owed at End of Period (E)
			Cash (D)(1)	Other Than Cash (D)(2)	
1.					
2.					
3.					
4.					
5.					
6.					
7.					
8.					
9.					
10.					
11.					
12.					
13.					
Total Loans Payable					

Totals will be automatically entered in ……Item 31……Item 45……Item 66……Item 75…… tem 31
Column (C) with Explanation Column (D)

SCHEDULE 12 – OTHER LIABILITIES

FILE NUMBER:

Description (A)	Amount at End of Period (B)
1.	
2.	
3.	
4.	
5.	
6.	
7.	
8.	
9.	
10.	
11.	
12.	
13.	
Total Other Liabilities (Total will be automatically entered in Item 33, Column (D))	

SCHEDULE 13 – ALL OFFICERS AND DISBURSEMENTS TO OFFICERS

FILE NUMBER:

	(A) Name Last, First, MI	(B) Title	(C) Status	(D) Gross Salary Disbursements (before any deductions)	(E) Allowances Disbursed	(F) Disbursements for Official Business	(G) Other Disbursements not reported in (D) through (F)	(H) Total
1 A								
B								
C								
2 A								
B								
C								
3 A								
B								
C								
4 A								
B								
C								

TOTAL OFFICER DISBURSEMENTS					
LESS DEDUCTIONS					
NET DISBURSEMENTS					

SCHEDULE 14 – DISBURSEMENTS TO EMPLOYEES

FILE NUMBER:

(A) Name Last, First, MI	(B) Title	(C) Status	(D) Gross Salary Disbursements (before any deductions)	(E) Allowances Disbursed	(F) Disbursements for Official Business	(G) Other Disbursements not reported in (D) through (F)	(H) Total
1 A							
B							
C							
2 A							
B							
C							
3 A							
B							
C							
4 A							
B							
C							

TOTAL RECEIVED BY ALL OTHER EMPLOYEES MAKING $10,000 OR LESS					

TOTAL EMPLOYEE DISBURSEMENTS					
LESS DEDUCTIONS					
NET DISBURSEMENTS					

SCHEDULE 15 – MEMBERSHIP STATUS

FILE NUMBER:

Category of Membership (A)	Number (B)	Voter Eligibility (C)
1.		Yes
2.		Yes
3.		Yes
4.		Yes
5.		Yes
6.		Yes
7.		Yes
Members (Total of all lines above)		
Agency Fee Payers*		
Total Members/Fee Payers (Total of Members and Fee Payers Lines)		
*Agency Fee Payers are not considered members of the labor organization		

DETAILED SUMMARY PAGE – SCHEDULES 16 THROUGH 23

FILE NUMBER:

Complete Itemization Pages BEFORE the Detailed Summary Page

SCHEDULE 16 DUES AND AGENCY FEES	1. Named Payer Itemized Receipts		**Item 36**
	2. Named Payer Non-Itemized Receipts		
	3. All Other Receipts		
	4. Total Receipts *(add Lines 1 through 3)*		

SCHEDULE 17 PER CAPITA TAX	1. Named Payer Itemized Receipts		**Item 37**
	2. Named Payer Non-Itemized Receipts		
	3. All Other Receipts		
	4. Total Receipts *(add Lines 1 through 3)*		

SCHEDULE 18 FEES, FINES, ASSESSMENTS, WORK PERMITS	1. Named Payer Itemized Receipts		**Item 38**
	2. Named Payer Non-Itemized Receipts		
	3. All Other Disbursements		
	4. Total Receipts *(add Lines 1 through 3)*		

SCHEDULE 19 SALE OF SUPPLIES	1. Named Payer Itemized Receipts		**Item 39**
	2. Named Payer Non-Itemized Receipts		
	3. All Other Receipts		
	4. Total Receipts *(add Lines 1 through 3)*		

SCHEDULE 20 RENTS	1. Named Payer Itemized Receipts		**Item 45**
	2. Named Payer Non-Itemized Receipts		
	3. All Other Receipts		
	4. Total Receipts *(add Lines 1 through 3)*		

SCHEDULE 21 ON BEHALF OF AFFILIATES FOR TRANSMITTAL TO THEM	1. Named Payer Itemized Receipts		**Item 47**
	2. Named Payer Non-Itemized Receipts		
	3. All Other Receipts		
	4. Total Receipts *(add Lines 1 through 3)*		

SCHEDULE 22 FROM MEMBERS FOR DISBURSEMENTS ON THEIR BEHALF	1. Named Payer Itemized Receipts		**Item 48**
	2. Named Payer Non-Itemized Receipts		
	3. All Other Receipts		
	4. Total Receipts *(add Lines 1 through 3)*		

SCHEDULE 23 OTHER RECEIPTS	1. Named Payer Itemized Receipts		**Item 49**
	2. Named Payer Non-Itemized Receipts		
	3. All Other Receipts		
	4. Total Receipts *(add Lines 1 through 3)*		

SCHEDULE 16 – DUES AND AGENCY FEES

FILE NUMBER:

Complete Itemization Pages BEFORE the Detailed Summary Page

Name and Address (A)	Purpose (C)	Date (D)	Amount (E)
(B) Type or Classification			
	Total Itemized Transactions with this Payee/Payer		
	Total Non-Itemized Transactions with this Payee/Payer		
	Total of All Transactions with this Payee/Payer for This Schedule		

SCHEDULE 17 – PER CAPITA TAX

FILE NUMBER:

Complete Itemization Pages BEFORE the Detailed Summary Page

Name and Address (A)	Purpose (C)	Date (D)	Amount (E)
(B) Type or Classification			
	Total Itemized Transactions with this Payee/Payer		
	Total Non-Itemized Transactions with this Payee/Payer		
	Total of All Transactions with this Payee/Payer for This Schedule		

SCHEDULE 18 – FEES, FINES, ASSESSMENTS, WORK PERMITS

FILE NUMBER:

Complete Itemization Pages BEFORE the Detailed Summary Page

Name and Address (A)	Purpose (C)	Date (D)	Amount (E)
(B) Type or Classification			
	Total Itemized Transactions with this Payee/Payer		
	Total Non-Itemized Transactions with this Payee/Payer		
	Total of All Transactions with this Payee/Payer for This Schedule		

SCHEDULE 19 – SALE OF SUPPLIES

FILE NUMBER:

Complete Itemization Pages BEFORE the Detailed Summary Page

Name and Address (A)	Purpose (C)	Date (D)	Amount (E)
(B) Type or Classification			
	Total Itemized Transactions with this Payee/Payer		
	Total Non-Itemized Transactions with this Payee/Payer		
	Total of All Transactions with this Payee/Payer for This Schedule		

SCHEDULE 20 – RENTS

FILE NUMBER:

Complete Itemization Pages BEFORE the Detailed Summary Page

Name and Address (A)	Purpose (C)	Date (D)	Amount (E)
(B) Type or Classification			
	Total Itemized Transactions with this Payee/Payer		
	Total Non-Itemized Transactions with this Payee/Payer		
	Total of All Transactions with this Payee/Payer for This Schedule		

SCHEDULE 21 – ON BEHALF OF AFFILIATES FOR TRANSMITTAL TO THEM

FILE NUMBER:

Complete Itemization Pages BEFORE the Detailed Summary Page

Name and Address (A)	Purpose (C)	Date (D)	Amount (E)
(B) Type or Classification			
	Total Itemized Transactions with this Payee/Payer		
	Total Non-Itemized Transactions with this Payee/Payer		
	Total of All Transactions with this Payee/Payer for This Schedule		

SCHEDULE 22 – FROM MEMBERS FOR DISBURSEMENTS ON THEIR BEHALF

FILE NUMBER:

Complete Itemization Pages BEFORE the Detailed Summary Page

Name and Address (A)	Purpose (C)	Date (D)	Amount (E)
(B) Type or Classification			
	Total Itemized Transactions with this Payee/Payer		
	Total Non-Itemized Transactions with this Payee/Payer		
	Total of All Transactions with this Payee/Payer for This Schedule		

SCHEDULE 23 – OTHER RECEIPTS

FILE NUMBER:

Complete Itemization Pages BEFORE the Detailed Summary Page

Name and Address (A)	Purpose (C)	Date (D)	Amount (E)
(B) Type or Classification			
	Total Itemized Transactions with this Payee/Payer		
	Total Non-Itemized Transactions with this Payee/Payer		
	Total of All Transactions with this Payee/Payer for This Schedule		

DETAILED SUMMARY PAGE – SCHEDULES 24 THROUGH 30

FILE NUMBER:

Complete Itemization Pages BEFORE the Detailed Summary Page

SCHEDULE 24 **CONTRACT NEGOTIATION AND ADMINISTRATION**	1. Named Payee Itemized Disbursements		
	2. Named Payee Non-Itemized Disbursements		
	3. All Other Disbursements		
	4. Total Disbursements *(add Lines 1 through 3)*		**Item 51**
SCHEDULE 25 **ORGANIZING**	1. Named Payee Itemized Disbursements		
	2. Named Payee Non-Itemized Disbursements		
	3. All Other Disbursements		
	4 Total Disbursements *(add Lines 1 through 3)*		**Item 52**
SCHEDULE 26 **POLITICAL ACTIVITIES**	1. Named Payee Itemized Disbursements		
	2. Named Payee Non-Itemized Disbursements		
	3. All Other Disbursements		
	4. Total Disbursements *(add Lines 1 through 3)*		**Item 53**
SCHEDULE 27 **LOBBYING**	1. Named Payee Itemized Disbursements		
	2. Named Payee Non-Itemized Disbursements		
	3. All Other Disbursements		
	4. Total Disbursements *(add Lines 1 through 3)*		**Item 54**
SCHEDULE 28 **CONTRIBUTIONS, GIFTS, AND GRANTS**	1. Named Payee Itemized Disbursements		
	2. Named Payee Non-Itemized Disbursements		
	3. All Other Disbursements		
	4. Total Disbursements *(add Lines 1 through 3)*		**Item 55**

SCHEDULE 29 **GENERAL OVERHEAD**	1. Named Payee Itemized Disbursements		
	2. Named Payee Non-Itemized Disbursements		
	3. All Other Disbursements		
	4. Total Disbursements *(add Lines 1 through 3)*		**Item 56**
SCHEDULE 30 **UNION ADMINISTRATION**	1. Named Payee Itemized Disbursements		
	2. Named Payee Non-Itemized Disbursements		
	3. To Officers		
	4. Total Disbursements *(add Lines 1 through 3)*		**Item 57**

SCHEDULE 24 – CONTRACT NEGOTIATION AND ADMINISTRATION

FILE NUMBER:

Complete Itemization Pages BEFORE the Detailed Summary Page

Name and Address (A)	Purpose (C)	Date (D)	Amount (E)
(B) Type or Classification			
	Total Itemized Transactions with this Payee/Payer		
	Total Non-Itemized Transactions with this Payee/Payer		
	Total of All Transactions with this Payee/Payer for This Schedule		

SCHEDULE 25 – ORGANIZING

FILE NUMBER:

Complete Itemization Pages BEFORE the Detailed Summary Page

Name and Address (A)	Purpose (C)	Date (D)	Amount (E)
(B) Type or Classification			
	Total Itemized Transactions with this Payee/Payer		
	Total Non-Itemized Transactions with this Payee/Payer		
	Total of All Transactions with this Payee/Payer for This Schedule		

SCHEDULE 26 – POLITICAL ACTIVITIES

FILE NUMBER:

Complete Itemization Pages BEFORE the Detailed Summary Page

Name and Address (A)	Purpose (C)	Date (D)	Amount (E)
(B) Type or Classification			
	Total Itemized Transactions with this Payee/Payer		
	Total Non-Itemized Transactions with this Payee/Payer		
	Total of All Transactions with this Payee/Payer for This Schedule		

SCHEDULE 27 – LOBBYING

FILE NUMBER:

Complete Itemization Pages BEFORE the Detailed Summary Page

Name and Address (A)	Purpose (C)	Date (D)	Amount (E)
(B) Type or Classification			
	Total Itemized Transactions with this Payee/Payer		
	Total Non-Itemized Transactions with this Payee/Payer		
	Total of All Transactions with this Payee/Payer for This Schedule		

SCHEDULE 28 – CONTRIBUTIONS, GIFTS, AND GRANTS

FILE NUMBER:

Complete Itemization Pages BEFORE the Detailed Summary Page

Name and Address (A)	Purpose (C)	Date (D)	Amount (E)
(B) Type or Classification			
	Total Itemized Transactions with this Payee/Payer		
	Total Non-Itemized Transactions with this Payee/Payer		
	Total of All Transactions with this Payee/Payer for This Schedule		

SCHEDULE 29 – GENERAL OVERHEAD

FILE NUMBER:

Complete Itemization Pages BEFORE the Detailed Summary Page

Name and Address (A)	Purpose (C)	Date (D)	Amount (E)
(B) Type or Classification			
	Total Itemized Transactions with this Payee/Payer		
	Total Non-Itemized Transactions with this Payee/Payer		
	Total of All Transactions with this Payee/Payer for This Schedule		

SCHEDULE 30 – UNION ADMINISTRATION

FILE NUMBER:

Complete Itemization Pages BEFORE the Detailed Summary Page

Name and Address (A)	Purpose (C)	Date (D)	Amount (E)
(B) Type or Classification			
	Total Itemized Transactions with this Payee/Payer		
	Total Non-Itemized Transactions with this Payee/Payer		
	Total of All Transactions with this Payee/Payer for This Schedule		

SCHEDULE 31– BENEFITS

FILE NUMBER:

Description (A)	To Whom Paid (B)	Amount (C)
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		
11.		
12.		
13.		
14.		
15.		
16.		
17.		
18.		
19.		
20.		
21.		
22.		
Total of all lines above (Total will be automatically entered in Item 58.)		

75. ADDITIONAL INFORMATION

FILE NUMBER:

Public reporting burden for this collection of information is estimated to average 548.5 hours per response. For filers who have subsidiary organizations, as defined in Section X of these instructions, an additional public reporting burden is estimated to average 88 hours per response. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining data needed, and completing and reviewing the collection of information. Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number. Reporting of this information is mandatory and is required by the Labor-Management Reporting and Disclosure Act of 1959, as amended, for the purpose of public disclosure. As this is public information, there are no assurances of confidentiality. If you have any comments regarding this estimate or any other aspect of this information collection, including suggestions for reducing this burden, please send them to the U.S. Department of Labor, Office of Labor-Management Standards, Division of Interpretations and Standards, Room N-5609, 200 Constitution Avenue, NW, Washington, DC 20210.

INSTRUCTIONS FOR FORM LM-2 LONG FORM (LF) LABOR ORGANIZATION ANNUAL REPORT

GENERAL INSTRUCTIONS

I. WHO MUST FILE

Every labor organization subject to the Labor-Management Reporting and Disclosure Act, as amended (LMRDA), the Civil Service Reform Act (CSRA), or the Foreign Service Act (FSA) must file a financial report, Form LM-2 Long Form (Form LM-2 LF), Form LM-2, LM-3, or LM-4, each year with the Office of Labor-Management Standards (OLMS) of the U.S. Department of Labor. These laws cover labor organizations that represent employees who work in private industry, employees of the U.S. Postal Service, and most Federal government employees. Labor organizations that include or represent only state, county, or municipal government employees are not covered by these laws and, therefore, are not required to file. If you have a question about whether the labor organization is required to file, contact the nearest OLMS field office listed at the end of these instructions.

II. WHAT FORM TO FILE

Every labor organization subject to the LMRDA, CSRA, or FSA with total annual receipts of $8,000,000 or more must file the Form LM-2 LF.

Labor organizations with total annual receipts between $250,000 and $7,999,999 must file Form LM-2.

Labor organizations with total annual receipts of less than $250,000 may file the simplified Form LM-3, if not in trusteeship as defined in Section IX (Labor Organization In Trusteeship) of these instructions. Labor organizations with total annual receipts of less than $10,000 may file the abbreviated annual report Form LM-4, if not in trusteeship.

The term "total annual receipts" means all financial receipts of the labor organization during its fiscal year, regardless of the source, including receipts of any special funds as described in Section VIII (Funds To Be Reported) or as described in Section X (Labor Organizations With Subsidiary Organizations). Receipts of an LMRDA section 3(l) trust in which the labor organization is interested (as described in Information Item 10(a)) should not be included in the total annual receipts of the labor organization when determining which form to file, unless the 3(l) trust is a subsidiary organization of the union.

III. WHEN TO FILE

Form LM-2 LF must be filed within 90 days after the end of the labor organization's fiscal year (12-month reporting period). The law does not authorize the Department to grant an extension of time for filing reports. The penalties for delinquency are described in Section VI (Officer Responsibilities and Penalties) of these instructions.

If the labor organization went out of existence during its fiscal year, a terminal financial report must be filed within 30 days after the date it ceased to exist. See Section XII (Labor Organizations That Have Ceased to Exist) of these instructions for information on filing a terminal financial report.

IV. HOW TO FILE

Form LM-2 LF must be submitted electronically to the Department. Form LM-2 LF filers will be able to file reports in paper format only if they assert a temporary hardship exemption or apply for and are granted a continuing hardship exemption.

If you have difficulty navigating the software, or have questions about its functions and features, call the OLMS Help Desk at: (866) 401-1109. You may also send questions via e-mail to OLMS-Public@dol.gov.

TEMPORARY HARDSHIP EXEMPTION:

If a labor organization experiences unanticipated technical difficulties that prevent the timely preparation and submission of an electronic filing, the organization may file Form LM-2 LF in paper format by the required due date. An electronic format copy of the filed paper format document shall be submitted to the Department within ten business days after the required due date. Indicate in Item 3 (Amended, Hardship Exempted, or Terminal Report) that the labor organization is filing under the hardship exemption procedures. Unanticipated technical difficulties that may result in additional delays should be brought to the attention of the OLMS Division of Interpretations and Standards, which can be reached at the address below, by emailat OLMS-Public@dol.gov, by phone at 202-693-0123, or by fax at 202-693-1340.

Note: If either the paper filing or the electronic filing is not received in the timeframe specified above, the report will be considered delinquent.

V. PUBLIC DISCLOSURE

The LMRDA requires that the Department make labor organization financial reports available for inspection by the public. Reports may be viewed and downloaded from the OLMS Web site at www.unionreports.gov. Copies of reports and union constitutions and bylaws can also be ordered at the same Web site. Reports may also be examined and copies purchased at the OLMS Public Disclosure Room at the following address:

U.S. Department of Labor
Office of Labor-Management Standards
200 Constitution Avenue, NW
Room N-1519
Washington, DC 20210

VI. OFFICER RESPONSIBILITIES AND PENALTIES

The president and treasurer or the corresponding principal officers of the labor organization required to sign Form LM-2 LF are personally responsible for its filing and accuracy. Under the LMRDA, officers are subject to criminal penalties for willful failure to file a required report and for false reporting. False reporting includes making any false statement or misrepresentation of a material fact while knowing it to be false, or for knowingly failing to disclose a material fact in a required report or in the information required to be contained in it or in anyinformation required to be submitted with it.

The reporting labor organization and the officers required to sign Form LM-2 LF are also subject to civil prosecution for violations of the filing requirements. Section 210 of the LMRDA (29 U.S.C. 440) provides that "whenever it shall appear that any person has violated or is about to violate any of the provisions of this title, the Secretary may bring a civil action for such relief (including injunctions) as may be appropriate."

Under the CSRA and FSA and implementing regulations, false reporting and failure to report may result in administrative enforcement action and litigation. The officers responsible for signing Form LM-2 LF are also subject to criminal penalties for false reporting and perjury under Sections 1001 of Title 18 and 1746 of Title 28 of the United States Code.

VII. RECORDKEEPING

The officers required to file Form LM-2 LF are responsible for maintaining records that will provide in sufficient detail the information and data necessary to verify the accuracy and completeness of the report. The records must be kept for at least 5 years after the date the report is filed. Any record necessary to verify, explain or clarify the report must be retained, including, but not limited to, vouchers, worksheets, receipts, applicable resolutions, and any electronic documents, including recordkeeping software, used to complete, read, and file thereport.

VIII. FUNDS TO BE REPORTED

The labor organization must report financial information on Form LM-2 LF for all funds of the labor organization. Include any special purpose funds or accounts, such as strike funds, vacation funds, and scholarship funds even if they are not part of the labor organization's general treasury.

All labor organization political action committee (PAC) funds are considered to be labor organization funds. However, to avoid duplicate reporting, PAC funds that are kept separate from your labor organization's treasury are not required to be included in your organization's Form LM-2 LF if publicly available reports on the PAC funds are filed with a Federal or state agency.

Your organization is required to report financial information about any "subsidiary organizations." Financial information about your organization and its subsidiary organizations may be combined on a single Form LM-2 LF or you may attach to your Form LM-2 LF report the regular annual report of the financial condition and operations of the subsidiary organization with a signed certification by an independent public accountant, as described in Section X (Labor Organizations With Subsidiary Organizations).

If combining the information concerning subsidiary organizations, be sure to include the requested information and amounts for the subsidiary organizations as well as for all other assets of your union in all items.

SPECIAL INSTRUCTIONS FOR CERTAIN ORGANIZATIONS

IX. LABOR ORGANIZATIONS IN TRUSTEESHIP

Any labor organization that has placed a subordinate labor organization in trusteeship is responsible for filing the subordinate's annual financial report. A trusteeship is defined in section 3(h) of the LMRDA (29 U.S.C. 402) as "any receivership, trusteeship, or other method of supervision or control whereby a labor organization suspends the autonomy otherwise available to a subordinate body under its constitution or bylaws."

Annual financial reports filed for any labor organization with $8,000,000 in annual receipts in trusteeship must be filed on Form LM-2 LF. The report must be signed by the president and treasurer or corresponding principal officers of the labor organization that imposed the trusteeship. The trustees of the subordinate labor organization must also sign and date Form LM-2 LF. To add signature blocks, click on the "Add Signature Block" button on the bottom of page 1.

X. LABOR ORGANIZATIONS WITH SUBSIDIARY ORGANIZATIONS

The labor organization must disclose assets, liabilities, receipts, and disbursements of a subsidiary organization.

Within the meaning of these instructions, a subsidiary organization is defined as any separate organization of which the ownership is wholly vested in the reporting labor organization or its officers or its membership, which is governed or controlled by the officers, employees, or members of the reporting labor organization, and which is wholly financed by the reporting labor organization. A subsidiary organization is considered to be wholly financed if the initial financing was provided by the reporting labor organization even if the subsidiary organization is currently wholly or partially self-sustaining. An example of a subsidiary organization is a building corporation which holds title to a building; the labor organization owns the building corporation, selects the officers, and finances the operation of the building corporation.

A labor organization is required to report financial information for each of its subsidiary organizations using one of the following methods:

Method (1) — Consolidate the financial information for the subsidiary organization and the labor organization on a single Form LM-2 LF.

Method (2) —File, with the labor organization's Form LM-2 LF, the regular annual report of the financial condition and operations of the subsidiary organization, accompanied by a statement signed by an independent public accountant certifying that the financial report presents fairly the financial condition and operations of the subsidiary organization and was prepared in accordance with generally accepted accounting principles.

Financial information reported separately for subsidiary organizations under method (2) must include the name of the subsidiary organization and the name and file number of the labor organization as shown on its Form LM-2 LF. The financial report of the subsidiary organization must cover the same reporting period as that used by the reporting labor organization.

When method (2) is used and the subsidiary organization is an investment, the financial

interest of the reporting labor organization in the subsidiary organization must be reported in Item 26 (Investments) and in Schedule 7 (Investments) of the labor organization's Form LM-2 LF. When method (2) is used and the subsidiary organization is of a non-investment nature, the financial interest of the reporting labor organization in the subsidiary organization must be reported in Item 28 (Other Assets) and in Schedule 9 (Other Assets) of the labor organization's Form LM-2 LF.

The same type of information required on Form LM-2 LF regarding disbursements to officers and employees and loans made by labor organizations must also be reported with respect to the subsidiary organization. In method (1) the information relating to the subsidiary organization must be combined with that of the labor organization and reported on the labor organization's Form LM-2 LF on Schedule 13 (All Officers and Disbursements to Officers) and Schedule 14 (Disbursements to Employees) and Statement A, Item 24 (Loans Receivable) and Schedule 2 (Loans Receivable) in the detail required by the instructions. If method (2) is used, an attachment must be submitted containing the information required by the instructions for Schedules 2, 13, and 14.

The information regarding loans made by the subsidiary organization must include in Schedule 2 (Loans Receivable) a listing of the names of each officer, employee, or member of the labor organization and each officer or employee of the subsidiary organization whose total loan indebtedness to the subsidiary organization, to the labor organization, or to both at any time during the reporting period exceeded $250. However, if method (2) is used, the amount reported by the subsidiary organization should be only the amount owed to the subsidiary organization.

The annual financial report must also include on Schedule 13 (All Officers and Disbursements to Officers) all disbursements made by the subsidiary organization to or on behalf of its officers and officers of the labor organization. The report must also list on Schedule 14 (Disbursements to Employees) the name and position of the subsidiary organization's employees whose total gross salaries, allowances, and other disbursements from the subsidiary organization, the reporting labor organization, and any affiliates were more than $10,000. However, if method (2) is used, only the disbursements of the subsidiary organization for its employees should be reported.

XI. COMPLETING FORM LM-2 LF INTRODUCTION

Most pages have a "Save & Calculate" button to total and transfer data to fields in various parts of the form. You may click on one or more of these buttons as you fill out the form at any time.

You may click on the "Validate Form" button at any time to check for errors. This action will generate an "Errors Page" listing any errors that will need to be corrected before you will be able to sign the form. Clicking on the signature lines will also perform the validation function.

INFORMATION ITEMS 1–9

Items 1, 2, and 4-8 are "pre-filled" items. These fields are filled in by the software based on information you entered when you accessed and downloaded the form from our Web site. You cannot edit the information pre-filled in Items 1, 2, and 4-7.

1. FILE NUMBER — The software will enter the labor organization's 6-digit file number here and at the top of each page of Form LM-2 LF. This is the number you entered when you downloaded Form LM-2 LF. If the number is incorrect, you must download another copy of the form using the correct number. If the labor organization does not have the number on file and cannot obtain the number from prior reports filed with the Department, the number can be obtained from the OLMS Web site at www.unionreports.gov, or by contacting the nearest OLMS fieldoffice.

2. PERIOD COVERED — The software will enter the beginning and ending dates of the period covered by this report. These are the dates you entered when you downloaded Form LM-2 LF. If the dates are incorrect, you must download another form using the correctdates.

If the labor organization changed its fiscal year, the ending date in Item 2 should be the labor organization's new fiscal year ending date and the labor organization should indicate in Item 75 (Additional Information) that the report is for a period of less than 12 months because its fiscal year has changed. For example, if the labor organization's fiscal year ending date changes from June 30 to December 31, a report must be filed for the partial year from July 1 to December 31. Thereafter, the labor organization's annual report should cover a full 12-month period from

January 1 to December 31.

3. AMENDED, HARDSHIP EXEMPTED, TERMINAL, OR TRUSTEESHIP REPORT — Do not complete this item unless this report is an amended, hardship exempted, terminal, or trusteeship report. Select Item 3(a) if the labor organization is filing an amended report correcting a previously filed report. Select Item 3(b) if the labor organization is filing under the hardship exemption procedures defined in Section IV. Select Item 3(c) if the labor organization has gone out of business by disbanding, merging into another labor organization, or being merged and consolidated with one or more labor organizations to form a new labor organization, and this is the labor organization's terminal report. Be sure the date the labor organization ceased to exist is entered in Item 2 (Period Covered) after the word "Through." See Section XII (Labor Organizations That Have Ceased to Exist) of these instructions for more information on filing a terminal report. Select Item 3(d) if the report is being filed by a labor organization for a subordinate labor organization that it has placed in trusteeship. Use the Form LM-2 LF only for labor organizations in trusteeships with $8,000,000 in annual receipts. Use the Form LM-2 for labor organizations in trusteeship with less than $8,000,000 in annual receipts.

4. AFFILIATION OR ORGANIZATION NAME — The software accesses this information from the OLMS database and will enter the name of the national or international labor organization that granted the labor organization a charter. "Affiliates," within the meaning of these instructions, are labor organizations chartered by the same parent body, governed by the same constitution and bylaws, or having the relationship of parent and subordinate. For example, a parent body is an affiliate of all of its subordinate bodies, and all subordinate bodies of the same parent body are affiliates of each other.

If the labor organization has not reported such an affiliation, the software will enter the name of the labor organization as currently identified in the labor organization's constitution and bylaws or other organizational documents.

This item cannot be edited by the filer. If the labor organization needs to change this information, contact OLMS at (202) 693-0124.

5. DESIGNATION — The software will enter the specific designation that is used to identify the labor organization, such as Local, Lodge, Branch, Joint Board, Joint Council, District Council, etc. This field cannot be edited by the filer.

6. DESIGNATION NUMBER — The software will enter the number or other identifier, if any, by which the labor organization is known. This field cannot be edited by the filer.

7. UNIT NAME — The software will enter any additional or alternate name by which the labor organization is known, such as "Chicago Area Local." This field cannot be edited by thefiler.

8. MAILING ADDRESS — The software accesses the union's mailing address on record in the OLMS database and enters it in Item 8. The first and last name of the person, if any, to whom such mail should be sent and any building and room number should be included. These fields can be edited.

9. PLACE WHERE RECORDS ARE KEPT — If the records required to be kept by the labor organization to verify this report are kept at the address reported in Item 8 (Mailing Address), answer "Yes." If not, answer "No" and provide in Item 75 (Additional Information) the address where the labor organization's records are kept.

INFORMATION ITEMS 10–21

Answer Items 10 through 21 as instructed. Select the appropriate box for those questions requiring a "Yes" or "No" answer; do not leave both boxes blank. Enter a single "0" in the boxes for items requiring a number or dollar amount if there is nothing to report.

10. TRUSTS OR FUNDS —Answer "Yes" to Item 10(a), if the labor organization has an interest in a trust or other fund as defined in 29 U.S.C. 402(l). A trust in which a labor organization is interested is a trust or other fund as defined in Section 3(l) of the LMRDA (29 U.S.C. 402(l)) as

> ...a trust or other fund or organization (1) which was created or established by a labor organization, or one or more of the trustees or one or more members of the governing body of which is selected or appointed by a labor organization, and (2) a primary purpose of which is to provide benefits for the members of such labor organization or their beneficiaries.

The determination whether a particular entity is a trust in which a labor organization is interested

will be based on the facts in each case.

The labor organization must also file a Form T-1 Trust Annual Report annually for each trust in which it is interested, as defined in the LMRDA at 29 U.S.C. 402(l), if the labor organization alone, or in combination with other labor organizations, either

appoints or selects a majority of the members of the trust's governing board; or

contributes greater than 50% of the trust's receipts during the one-year reporting period.

Any contributions made pursuant to a collective bargaining agreement shall be considered the labor organization's contributions. See the Form T-1 Instructions for available exemptions and further information.

Additionally, in the Form LM-2 LF report, provide in Item 75 (Additional Information) the full name, address, and purpose of each trust or other fund. If the union is required to file a Form T-1 report regarding the trust, indicate in Item 75 and, if filed, report the Form T-1 file number. Also indicate in Item 75 whether the labor organization has or will file the report, or if a parent organization or other organization has or will file on the labor organization's behalf. If the labor organization will file the Form T-1 on behalf of other labor organizations, identify the other organizations in Item 75. Also include in Item 75 the fiscal year ending date for any trust for which a Form T-1 is filed if the trust's fiscal year is different from that of the labor organization. Further, if a report has been filed for the trust or other fund under the Employee Retirement Income Security Act of 1974 (ERISA), report in Item 75 (Additional Information) the ERISA file number (Employer Identification Number — EIN) and plan number, if any.

If no Form T-1 is filed because financial information is already available as a result of the disclosure requirements of a Federal statute other than ERISA or LMRDA, list the name of any government agency, such as the Internal Revenue Service (IRS), with which the trust files a publicly available report, and the relevant file number of the trust, or otherwise indicate where the relevant report may be viewed. See Instructions for Form T-1, Trust Annual Report, for guidance on reporting the assets, liabilities, receipts, disbursements, and other information about these entities.

Answer "Yes" to Item 10(b), if an officer or employee paid $10,000 or more by the reporting labor organization also received $10,000 or more as an officer or employee of another labor organization in gross salaries, allowances, and other direct and indirect disbursements during the reporting period. If the labor organization answered "Yes" to 10(b), provide in Item 75 (Additional Information) the name of the officer, the amount paid, what labor organization made the payment, and the file number of that labor organization.

11. POLITICAL ACTION COMMITTEE FUNDS AND SUBSIDIARY ORGANIZATIONS,STRIKE FUNDS — If the labor organization answered "Yes" to Item 11(a), in reference to a political action committee, provide in Item 75 (Additional Information) the full name of each separate political action committee (PAC) and list the name of any government agency, such as the Federal Election Commission or a state agency, with which the PAC has filed a publicly available report, and the relevant file number of the PAC. (PAC funds kept separate from the labor organization's treasury need not be included in the labor organization's Form LM-2 LF if publicly available reports on the PAC funds are filed with a Federal or state agency.)

If the labor organization answered "Yes" to Item 11(b), in reference to a subsidiary organization, provide in Item 75 (Additional Information) the name, address, and purpose of each subsidiary organization. Indicate whether the information concerning its financial condition and operations is included in this Form LM-2 LF or in a separate report. See Section X of these instructions for information on reporting subsidiary organizations.

If the labor organization answered "Yes" to Item 11(c), in reference to a strike fund, provide in Item 75 (Additional Information) the amount of funds in the strike fund as of the close of the reporting period.

12. AUDIT OR REVIEW OF BOOKS AND RECORDS — If the labor organization answered "Yes" to Item 12, indicate in Item 75 (Additional Information) whether the audit or review was performed by an outside accountant or a parent body auditor/representative. If an outside accountant performed the audit or review, provide the name of the accountant or accounting firm. Report any audit or review by an outside accountant or a parent body auditor/representative in which the labor

organization's books and records were examined to verify their accuracy and validity. The term "audit or review" does not include providing assistance in developing a bookkeeping system, providing routine bookkeeping services, or merely compiling information from the labor organization's books and records to prepare Form LM-2 LF or other financial reports. Also, do not answer "Yes" to Item 12 if an audit committee or trustees of the labor organization performed the audit or review.

13. LOSSES OR SHORTAGES — Answer "Yes" to Item 13 if the labor organization experienced and/or discovered a loss, shortage, or other discrepancy in its finances during the period covered. Describe the loss or shortage in detail in Item 75 (Additional Information), including such information as the amount of the loss or shortage of funds or a description of the property that was lost, how it was lost, and to what extent, if any, there has been an agreement to make restitution or any recovery by means of repayment, fidelity bond, insurance, or other means.

14. FIDELITY BOND — Enter the maximum amount recoverable for a loss caused by any officer, employee, or agent of the labor organization who handled the labor organization's funds. Enter "0" if the labor organization was not covered by a fidelity bond during the reporting period.

NOTE: If a labor organization has property and annual financial receipts that exceeded $5,000, each of the labor organization's officers, employees, and agents who handles funds or other property of the labor organization must be bonded. The amount of the bond must be at least 10% of the value of the funds handled by the individual during the last reporting period, up to a maximum bond of $500,000. The bond must be obtained from a surety company approved by the Secretary of the Treasury. If you have any questions or need more information about bonding requirements, contact the nearest OLMS field office.

15. ACQUISITION OR DISPOSITION OF ASSETS — If the labor organization answered "Yes" to Item 15, describe in Item 75 (Additional Information) the manner in which the labor organization acquired or disposed of the asset(s), such as donating office furniture or equipment to charitable organizations, trading in assets, writing off a receivable, or giving away other tangible or intangible property of the labor organization. Include the type of asset, its value, and the identity of the recipient or donor, if any. Also report in Item 75 the cost or other basis at which any acquired assets were entered on the labor organization's books or the cost or other basis at which any assets disposed of were carried on the labor organization's books. For example, assets may be entered on the labor organization's books at cost and carried at that value; carried at cost less accumulated depreciation; or carried at scrap value or other nominal value because the assets were fully depreciated or were expensed when purchased (that is, the cost was charged to current expenses rather than entered on the books and periodically depreciated).

For assets that were traded in, enter in Item 75 the cost, book value, and trade-in allowance.

16. PLEDGED OR ENCUMBERED ASSETS — If the labor organization answered "Yes" to Item 16, identify in Item 75 (Additional Information) all of the labor organization's assets pledged or encumbered in any way (such as those pledged as collateral for a loan) at the end of the reporting period. Also report in Item 75 their fair market value, and provide details of transactions related to the encumbrance.

17. CONTINGENT LIABILITIES — If the labor organization answered "Yes" to Item 17, describe in Item 75 (Additional Information) the transactions or events resulting in the contingent liabilities and include the identity of the claimant or creditor. Contingent liabilities are potential obligations that may or may not develop into actual liabilities in the future. Examples of a contingent liability are a loan co-signed by the labor organization, or a pending lawsuit that could result in the labor organization being ordered to pay damages or make other payments.

A pending administrative or judicial action is considered a contingent liability that must be reported in Item 17 if, in the opinion of legal counsel, it is reasonably possible that the labor organization will be required to make some payment. Such administrative or judicial actions must be reported as contingent liabilities regardless of whether or not the possible losses would have a materially adverse effect on the labor organization's financial condition. List in Item 75 each administrative or judicial action, including the case number, court, and caption.

18. CHANGES IN CONSTITUTION AND

BYLAWS OR PRACTICES AND PROCEDURES — If the labor organization answered "Yes" to Item 18(a) because the labor organization's constitution and bylaws were changed during the reporting period (other than rates of dues and fees), a dated copy of the new constitution and bylaws must be submitted to OLMS as an electronic attachment to the Form LM-2.

If the labor organization is governed by a uniform or model constitution and bylaws prescribed by the labor organization's parent national or international body, the labor organization's parent body may file the constitution and bylaws on the labor organization's behalf. If the parent body files a constitution and bylaws on the labor organization's behalf, answer "Yes" to Item 18(a) and state that fact in Item 75 (Additional Information). If the labor organization has any supplemental governing documents or has modified a model constitution and bylaws, the labor organization must file these documents.

If the labor organization answered "Yes" to Item 18(a) because the labor organization changed any of the practices/procedures listed below during the reporting period and the practices/procedures are not described in the labor organization's constitution or bylaws, the labor organization must file an amended Form LM-1 (Labor Organization Information Report) to update information on file with the Department:

- qualifications for or restrictions on membership;
- levying assessments;
- participating in insurance or other benefit plans;
- authorizing disbursement of labor organization funds;
- auditing financial transactions of the labor organization;
- calling regular and special meetings;
- authorizing bargaining demands;
- ratifying contract terms;
- authorizing strikes;
- disciplining or removing officers or agents for breaches of their trust;
- imposing fines and suspending or expelling members including the grounds for such action and any provision made for notice, hearing, judgment on the evidence, and appeal procedures;
- selecting officers and stewards and any representatives to other bodies composed of labor organizations' representatives;
- invoking procedures by which a membermay protest a defect in the election of officers (including not only all procedures for initiating an election protest but also all procedures for subsequently appealing an adverse decision, e.g., procedures for appeals to superior or parent bodies, if any); and
- issuing work permits.

Information on obtaining Form LM-1 may be obtained from the OLMS Web site at www.olms.dol.gov or from any OLMS field office.

NOTE: Federal employee labor organizations subject solely to the Civil Service Reform Act or Foreign Service Act are not required to submit an amended Form LM-1 to describe revised or changed practices/procedures.

Report in Item 18(b) the dates of the labor organization's current Constitution and Bylaws.

19. NEXT REGULAR ELECTION — Enter the month and year of the labor organization's next regular election of general officers (president, vice president, treasurer, secretary, etc.). Do not report the date of any interim election to fill vacancies.

20. NUMBER OF MEMBERS — After Schedule 15 is completed and the "Save & Calculate" button is clicked, the software will enter the total number of members into Item 20.

21. DUES AND FEES — Enter the dues and fees established by the labor organization. If more than one rate applies, enter the minimum and maximum rates. Enter "0" where appropriate.

Line (a): Enter the regular dues, fees or other periodic payments that a member must pay to be in good standing in the labor organization, including the calendar basis for the payment (per month, per year, etc.). Include only the dues or fees of regular members and not dues or fees of members with special rates, such as apprentices, retirees, or unemployed members.

Line (b): If individuals covered by your organization's collective bargaining agreement(s) pay "working" dues in addition to their regular dues, enter the amount or percent of "working" dues, including the basis for the payment (per hour, per month, etc.).
Line (c): Enter the initiation fees required from new members.

Line (d): Enter the fees other than dues required from transferred members. Such fees are those charged to persons applying for a transfer of membership to the labor organization from another labor organization with the same affiliation. Do not report fees charged to members transferring from one class of membership to another within the labor organization.

Line (e): If the labor organization issues work permits, enter the fees required and enter the calendar basis for the payment (per month, per year, etc.). Work permit fees are fees charged to nonmembers of the labor organization who work within its jurisdiction. Do not report as work permit fees those fees charged to nonmember applicants for membership pending acceptance of their membership application, or fees charged to persons applying for transfer of membership to the labor organization pending acceptance of their application for transfer.

FINANCIAL DETAILS

REPORT ONLY DOLLAR AMOUNTS

Report all amounts in dollars only. Round cents to the nearest dollar. Amounts ending in $.01 through $.49 should be rounded down. Amounts ending in $.50 through $.99 should be rounded up.

REPORTING CLASSIFICATIONS

Complete all items and lines on the form. Do not use different accounting classifications or change the wording of any item or line.

BEGINNING AND ENDING AMOUNTS

Entries in Schedules 2 and 11 and in Statement A must report amounts for both the start and the end of the reporting period. The amounts entered for the start of the reporting period on the labor organization's report should be identical to the amounts entered for the end of the reporting period on last year's report. If the amounts are not the same, fully explain the difference in Item 75 (Additional Information).

COMPLETE SCHEDULES FIRST

Complete Schedules 1 through 31 before completing Statements A and B. Be sure to complete all applicable lines in Schedules 1 through 31. As you complete the schedules, **the software will transfer some of the totals** to the appropriate items in Statements A and B. You must enter the remaining totals manually.

COMPLETE ALL ITEMS 22 THROUGH 74

Complete all items in Statement A and Statement B. Enter "0" where appropriate.

SCHEDULES 1 THROUGH 14

SCHEDULE 1 – ACCOUNTS RECEIVABLE AGING SCHEDULE

The labor organization must report 1) all accounts with an entity or individual that aggregate to a value of $7,500 or more and that are 90 days or more past due at the end of the reporting period <u>or</u> were liquidated, reduced or written off during the reporting period; and 2) the total aggregated value of all other accounts receivable.

If additional lines are needed, click the “Add More Accounts Receivable” button at the top of the schedule. The software will add lines to the schedule in increments of ten.

Column (A): Enter the name of each entity or individual with which the labor organization has an account receivable of $7,500 or more that is 90 days or more past due at the end of the reporting period <u>or</u> that was liquidated, reduced or written off during the reporting period without the receipt of cash sufficient to cover the total value of the account receivable.

Column (B): Enter the total amount of money owed to the labor organization by each listed entity or individual at the end of the reporting period. Enter on the “Total from all other accounts receivable” line the total amount of money owed to the labor organization in all other accounts receivable not required to be itemized in Schedule 1.

Click the “Save & Calculate” button at the top of the schedule and the software completes the “Total of all itemized accounts receivable” line” in Column (B) and enters the total accounts receivable in Column (B) and in Item 23, Column (B) of Statement A.

Column (C): Enter the total amount of money owed to the labor organization by each listed entity or individual at the end of the reporting period that is 90 to 180 days past due. Enter the total amount of money owed to the labor organization in all other accounts receivable (those of less than $7,500) that are 90 to 180

days past due and are not required to be itemized in Schedule 1 on the "Total from all other accounts receivable" line.

Click the "Save & Calculate" button at the top of the schedule and the software completes the "Total of all itemized accounts receivable" line in Column (C) and enters the total accounts receivable that were 90 to 180 days past due in Column (C).

Column (D): Enter the total amount of money owed to the labor organization by each listed entity or individual at the end of the reporting period that is more than 180 days past due. Enter the total amount of money owed to the labor organization in all other accounts receivable (those of less than $7,500 and not require to be itemized in Schedule 1) that are more than 180 days past due on the "Total from all other accounts receivable" line.

Click the "Save & Calculate" button at the top of the schedule and the software completes the "Total of all itemized accounts receivable" line in Column (D) and enters the total accounts receivable that were more than 180 days past due in Column (D).

Column (E): Enter the total amount of money owed to the labor organization by each entity or individual that was liquidated, reduced or written off during the reporting period by the reporting labor organization without the receipt of cash sufficient to cover the total value of the account receivable. Enter on the "Total from all other accounts receivable" line the total amount of money owed to the labor organization in all other accounts receivable (those of less than $7,500 and not required to be itemized in Schedule1) that was liquidated, reduced or written off during the reporting period by the reporting labor organization without the receipt of cash sufficient to cover the total value of the account receivable.

Click the "Save & Calculate" button at the top of the schedule and the software completes the "Total of all itemized accounts receivable" line in Column (E) and enters the total liquidated accounts receivable in Column (E).

Provide in Item 75 (Additional Information) all details and circumstances in connection with the liquidation, reduction or writing off of any account receivable, in accordance with the instructions for Item 15 (Acquisition or Disposition of Assets).

SCHEDULE 2 – LOANS RECEIVABLE

Report details of all direct and indirect loans (whether or not evidenced by promissory notes or secured by mortgages) owed to the labor organization at any time during the reporting period by individuals, business enterprises, benefit plans, and other entities including labor organizations. An example of an indirect loan is a disbursement by the labor organization to an educational institution for the tuition expense of an officer, employee, or member that must be repaid to the labor organization by that individual. Be sure to report all loans that were made and repaid in full during the reporting period. Do not include investments in corporate bonds or mortgages purchased on a block basis through a bank or similar institution that must be reported in Schedule 7 (Investments Other Than U.S. Treasury Securities).

NOTE: Advances, including salary advances, are considered loans and must be reported in Schedule 2 (Loans Receivable). However, advances to officers and employees of the labor organization for travel expenses necessary for conducting official business are not considered loans if the following conditions are met:

- The amount of an advance for a specific trip does not exceed the amount of expenses reasonably expected to be incurred for official travel in the near future, and the amount of the advance is fully repaid or fully accounted for by vouchers or paid receipts within 30 days after the completion or cancellation of the travel.
- The amount of a standing advance to an officer or employee who must frequently travel on official business does not unreasonably exceed the average monthly travel expenses for which the individual is separately reimbursed after submission of vouchers or paid receipts, and the individual does not exceed 60 days without engaging in official travel.

See the instructions for Schedules 9 (Other Assets), 13 (All Officers and Disbursements to Officers) and 14 (Disbursements to Employees) for reporting travel advances that meet these criteria.

If additional lines are needed, click the "Add More Loans Receivable" button at the top of the schedule. The software will add lines to the schedule in increments of ten.

Column (A): Enter the following information:

- The name of each officer, employee, or member whose total loan indebtedness to the labor organization, including any subsidiary organization, at any time during the reporting period exceeded $250, and the name of each business enterprise which had any loan indebtedness, regardless of amount, at any time during the reporting period;
- The purpose of each loan;
- The security given for each loan; and
- The terms of repayment for each loan.

For each officer or employee listed, indicate after each name either "O" (officer) or "E" (employee).

Column (B): Enter the loan amounts outstanding at the start of the reporting period from each listed individual and business enterprise. Enter the total of loans made to officers, employees, or members whose total individual loan indebtedness to the labor organization at any time during the reporting period did not exceed $250, and all loans, regardless of amount, made to other individuals and entities on the "Total of loans not listed above" line.

Click the "Save & Calculate" button at the top of the schedule and the software will enter the total for Column (B) on the "Total of all lines above" line in Schedule 2 and in Item 24 (Loans Receivable), Column (A) of Statement A.

Column (C): Enter the amount of loans made during the reporting period to each listed individual and business enterprise. Enter the total of all other loans made during the reporting period on the "Total of loans not listed above" line.

Click the "Save & Calculate" button at the top of the schedule and the software will enter the total for Column (C) on the "Total of all lines above" line in Schedule 2 and in Item 65 (Loans Made) of Statement B.

Columns (D)(1) and (D)(2): Enter the amount of loan repayments during the reporting period from each listed individual and business enterprise. Report in these columns only the portion of the payments applied toward principal; interest received must be reported in Item 40 (Interest). Use Column (D)(1) to report repayments received in cash. Use Column (D)(2) to report repayments made in a manner other than cash, such as repayments made by officers or employees by means of deductions from their salaries. Enter the amount of loan repayments from all other loans on the "Total of loans not listed above" line.

Click the "Save & Calculate" button at the top of the schedule and the software will enter the total for Columns (D)(1) and (D)(2) on the "Total of all lines above" line in Schedule 2 and the total from Column (D)(1) in Item 46 (Repayments of Loans Made) of Statement B. Explain in Item 75 (Additional Information) any non-cash amounts reported in Column (D)(2).

Column (E): Enter the loan amounts outstanding at the end of the reporting period for each listed individual and business enterprise.
Enter the total amount outstanding at the end of the reporting period for all other loans on the "Total of loans not listed above" line.

Click the "Save & Calculate" button at the top of the schedule and the software will enter the total for Column (E) on the "Total of all lines above" line in Schedule 2 and in Item 24 (Loans Receivable), Column (B) of Statement A. If any loans receivable were liquidated, reduced or written off during the reporting period, the reason and the amount must be reported in Item 75 (Additional Information).

NOTE: Section 503(a) of the LMRDA (29 U.S.C. 503) prohibits labor organizations from making direct or indirect loans to any officer or employee of the labor organization which results in a total indebtedness on the part of such officer or employee to the labor organization in excess of $2,000 at any time.

SCHEDULE 3 – SALE OF INVESTMENTS

Report details of the sale or redemption by the labor organization of U.S. Treasury securities, marketable securities, and other investments, during the reporting period. Include receipts from sales of mortgages that were purchased on a block basis through a bank or similar institution. Do not include the receipts from repayments by individual mortgagors, which must be reported in Schedule 2 (Loans Receivable) as loan repayments.

If additional lines are required click the "Add More Investments Sales" button at the top of the schedule. The software will add lines to the schedule in increments of ten.

Column (A): Enter the name and address of the purchasers of investments from the labor

organization. If the sale was on a registered exchange, enter the name of the financial management firm.

Column (B): Enter a general description of the type of investment, such as U.S. Treasury securities, stocks, or bonds.

Column (C): Enter the date of the sale of each type of investment described in Column (B).

Column (D): Enter the total cost of each type of investment (including any transaction costs) described in Column (B).

Column (E): Enter the value at which the investments or fixed assets were shown on the labor organization's books.

Column (F): Enter the gross sales (or contract) price of the investments.

Column (G): Enter the net amount received from the sale of the investments. If the amount received during the reporting period is less than the amount due (gross sales price less any deductions for selling expenses and repayments of secured loans or mortgages), the additional amount due to the labor organization must be reported in Schedule 9 (Other Assets) with a description sufficient to identify the type of asset. However, if a mortgage or note is taken back, it must be reported as a new loan in Schedule 2 (Loans Receivable).

Click the "Save & Calculate" button at the top of the schedule and the software enters the totals for Columns (D) through (G) on the "Total of all lines above" line.

Enter the total amount from the sale or redemption of U.S. Treasury securities, marketable securities, or other investments that was promptly reinvested (i.e., "rolled over") in U.S. Treasury securities, marketable securities, or other investments during the reporting period on the "Less Reinvestments" line. Calculate the total amount reinvested by adding, for each investment, the lower of each investment's original cost or the amount received from the sale or redemption that was actually reinvested. If only a portion of the amount received was reinvested, only the reinvested portion may be included on the Less Reinvestments line. Interest and dividends received during the reporting period must be reported in Items 40 (Interest) and 41 (Dividends).

Click the "Save & Calculate" button at the top of the schedule and the software will enter the total "Net Sales" in Column (G) and in Item 43 (Sale of Investments) of Statement B.

SCHEDULE 4 – SALE OF FIXED ASSETS

Report details of the sale or redemption by the labor organization of fixed assets, including those fixed assets that were expensed (that is, the cost of the asset was charged to current expenses, rather than entered on the books and periodically depreciated), during the reporting period.

If additional lines are required click the "Add More Fixed Assets Sales" button at the top of the schedule. The software will add lines to the schedule in increments of ten.

Column (A): Enter the name and address of the purchasers of fixed assets from the labor organization.

Column (B): Enter a general description of the type of fixed asset sold. If land or building were sold, enter the location of the property, including the street address, if appropriate. If an automobile was sold, individually identify the automobile by make, model, year, and Vehicle Identification Number (VIN),

Column (C): Enter the date of the sale of each fixed asset described in Column (B).

Column (D): Enter the total cost of each type of fixed asset described in Column (B).

Column (E): Enter the value of at which the fixed assets were shown on the labor organization's books.

Column (F): Enter the gross sales (or contract) price of the fixed assets.

Column (G): Enter the net amount received from the sale of the fixed assets. If the amount received during the reporting period is less than the amount due (gross sales price less any deductions for selling expenses and repayments of secured loans or mortgages), the additional amount due to the labor organization must be reported in Schedule 9 (Other Assets) with a description sufficient to identify the type of asset.

However, if a mortgage or note is taken back, it must be reported as a new loan in Schedule 2 (Loans Receivable).

Click the "Save & Calculate" button at the top of the schedule and the software enters the totals for Columns (D) through (G) on the "Total of all lines above" line.

Click the "Save & Calculate" button at the top of the schedule and the software will enter the total "Net Sales" in Column (G) and in Item 43 (Sale of Investments) of Statement B.

SCHEDULE 5 – PURCHASE OF INVESTMENTS

Report details of the purchase by the labor organization of U.S. Treasury securities, marketable securities, and other investments during the reporting period.

If additional lines are needed, click the "Add Investments Purchases" button at the top of the schedule. The software will add lines to the schedule in increments of ten.

Column (A): Enter the name and address of the sellers of investments to the labor organization. If the sale was on a registered exchange, enter the name of the financial management firm.

Column (B): Enter a general description of the type of investment, such as U.S. Treasury securities, stocks, bonds, etc.

Column (C): Enter the date of the purchase of each investment described in Column (B).

Column (D): Enter the total cost of each type of investment (including any transaction costs) described in Column (B).

Column (E): Enter the value at which the investments were entered on the labor organization's books. If assets were traded in on assets purchased, answer Item 15 (Acquisition or Disposition of Assets) "Yes," and provide in Item 75 (Additional Information) the cost, book value, and trade-in allowance in accordance with the instructions for Item 15.

Column (F): Enter the gross sales (or contract) price of the investments.

Column (G): Enter the total amount disbursed for each type of investment purchased during the reporting period. Do not include any unpaid balance that must be reported in Schedule 11 (Loans Payable) or Item 32 (Mortgages Payable) of Statement A.

Click the "Save & Calculate "button at the top of the schedule and the software will enter the totals for Columns (D) through (G) on the "Total of all lines above" line.

Enter the total amount from the sale or redemption of U.S. Treasury securities, marketable securities, or other investments that was promptly reinvested (i.e., "rolled over") in U.S. Treasury securities, marketable securities, or other investments during the reporting period on the "Less Reinvestments" line. Calculate the total amount reinvested by adding, for each investment, the lower of each investment's original cost or the amount received from the sale or redemption that was actually reinvested. If only a portion of the amount received was reinvested, only the reinvested portion may be included on the Less Reinvestments line. Interest and dividends received during the reporting period must be reported in Items 40 (Interest) and 41 (Dividends). The total on the Less Reinvestments line must agree with the amount reported as Reinvestments on Schedule 3 (Sale of Investments).

Click the "Save & Calculate" button at the top of the schedule and the software will enter the "Net Purchases" in Column (F) and in Item 63 (Purchase of Investments) of Statement B.

SCHEDULE 6 – PURCHASE OF FIXED ASSETS

Report details of the purchase by the labor organization of fixed assets, including those fixed assets that were expensed (that is, the cost of the asset was charged to current expenses, rather than entered on the books and periodically depreciated), during the reporting period. Include disbursements for mortgages that were purchased on a block basis through a bank or similar institution. Purchases of fixed assets with a purchase price below $5,000 need not be reported.
If additional lines are needed, click the "Add Fixed Assets Purchases" button at the top of the schedule. The software will add lines to the schedule in increments of ten.

Column (A): Enter the name and address of the sellers of fixed assets to the labor organization.

Column (B): Enter a general description of the type of fixed asset purchased, such as land, automobile, etc. If land or building were purchased, enter the location of the property, including the street address, if appropriate. If an automobile was sold, individually identify the

automobile by make, model, year, and Vehicle Identification Number (VIN).

Column (C): Enter the date of the purchase of each fixed asset described in Column (B).

Column (D): Enter the total cost of each type of fixed asset (including any transaction costs) described in Column (B).

Column (E): Enter the value at which the fixed assets were entered on the labor organization's books. If assets were traded in on assets purchased, answer Item 15 (Acquisition or Disposition of Assets) "Yes," and provide in Item 75 (Additional Information) the cost, book value, and trade-in allowance in accordance with the instructions for Item 15.

Column (F): Enter the gross sales (or contract) price of the fixed assets.

Column (G): Enter the net amount received from the sale of the fixed assets. If the amount received during the reporting period is less than the amount due (gross sales price less any deductions for selling expenses and repayments of secured loans or mortgages), the additional amount due to the labor organization must be reported in Schedule 9 (Other Assets) with a description sufficient to identify the type of asset. However, if a mortgage or note is taken back, it must be reported as a new loan in Schedule 2 (Loans Receivable).

Click the "Save & Calculate" button at the top of the schedule and the software will enter the totals for Columns (D) through (F) on the "Total of all Lines above" line.

SCHEDULE 7 – INVESTMENTS OTHER THAN U.S. TREASURY SECURITIES

Report details of all the labor organization's investments at the end of the reporting period, other than U.S. Treasury securities. Include mortgages purchased on a block basis and investments in any subsidiary organization not reported on a consolidated basis in accordance with method (1) explained in Section X of these instructions. Do not include savings accounts, certificates of deposit, or money market accounts, which must be reported in Item 22 (Cash) of Statement A.

Line A: Enter in Column (B) the total cost of all the labor organization's marketable securities including transaction costs such as brokerage commissions. Marketable securities are those for which current market values can be obtained from published reports of transactions in listed securities or in securities traded "over the counter," such as corporate stocks and bonds, stock and bond mutual funds, state and municipal bonds, and foreign government securities.

Line B: Enter in Column (B) the total book value of all the labor organization's marketable securities. Book value is the lower of cost or market value.

Line C: List in Column (A) each Marketable Security that has a book value over $5,000 and exceeds 5% of the total book value entered in Line B, Column (B) above and enter its book value in Column (B).

If additional lines are needed to complete Line C, click the "Add More Marketable Securities" button in the schedule. The software will add lines to the schedule in increments of ten.

Line D: Enter in Column (B) the total cost, including any transaction costs, of all the labor organization's other investments (that is, those that are not U.S. Treasury securities or marketable securities). Include mortgages purchased on a block basis.

Line E: Enter in Column (B) the total book value of such other investments. Book value is the lower of cost or market value.

Line F: List in Line F, Column (A) each Other Investment that has a book value over $5,000 and exceeds 5% of the total book value entered on in Column (B) above and enter its book value in Column (B).

If additional lines are needed to complete Line F, click the "Add More Marketable Securities" button in the schedule. The software adds lines to the schedule in increments of ten.

NOTE: If your organization has a subsidiary organization for which a separate report is being submitted in accordance with Section X of these instructions, the subsidiary organization must be reported in Schedule 7 if it is an investment. Enter in Line F the name of each subsidiary organization in Column (A) and its book value in Column (B).

If additional lines are required, click the Add More Other Investments button on the top of the schedule. The software adds lines to the schedule in increments of ten.

Line G: Click the "Save & Calculate" button at the top of the schedule and the software will enter the total of Lines B and E on Line G and in Item 26 (Investments), Column (B) of Statement A.

SCHEDULE 8 – FIXED ASSETS

Report details of all fixed assets, such as land, buildings, automobiles and other vehicles, and office furniture and equipment owned by the labor organization at the end of the reporting period. Land and buildings must be itemized, whereas automobiles and other vehicles, and office furniture and equipment should be aggregated. Include fixed assets that were expensed (that is, the cost of the asset was charged to current expenses, rather than entered on the books and periodically depreciated), fully depreciated, or carried on the labor organization's books at scrap value or other nominal value.

Column (A): Enter under "Line A. Land (give location)" the location of any land and under "Line B. Buildings (give location)" the location of any buildings owned by the labor organization.

If additional lines are needed, click the "Add More Land Assets" button on Line A or the "Add More Building Assets" button on Line B, as applicable. The software will add lines to the schedule in increments of ten.

Column (B): Enter the cost or other basis of the fixed assets listed in Column (A).

Column (C): Enter the accumulated depreciation, if any, of the fixed assets (except land) listed in Column (A) whose cost or other basis is reported in Column (B). If the labor organization "expenses" fixed assets, also include in Column (C) the amount that the labor organization charged to expenses when the assets were purchased.

Column (D): Enter the amount at which the fixed assets listed in Column (A) are carried on the labor organization's books. Include the nominal amount, if any, at which fully depreciated assets are carried on the labor organization's books. The amount reported in Column (D) should be the difference between Columns (B) and (C).

Column (E): Enter the fair market value of land and of all assets listed in Column (A) that were expensed, fully depreciated, or depreciated to scrap value or nominal value. It is not necessary to secure a formal appraisal of the assets; a good faith estimate is sufficient. The value used for insurance purposes or for tax appraisals, for example, will normally be acceptable as representing the fair market value.

Click the "Save & Calculate" button at the top of the schedule and the software will enter the totals of Columns (B) through (E) on Line F, and the total on Line F, Column (D) in Item 27 (Fixed Assets), Column (B) of Statement A.

SCHEDULE 9 – OTHER ASSETS

Report details of all the labor organization's assets at the end of the reporting period other than Item 22 (Cash), Item 23 (Accounts Receivable), Item 24 (Loans Receivable), Item 25 (U.S. Treasury Securities), Item 26 (Investments), and Item 27 (Fixed Assets).

The labor organization's other assets must be described in Column (A) and may be classified by general groupings or bookkeeping categories, such as utility deposits, inventory of supplies for resale, or travel advances that are not required to be reported as loans as explained in the instructions for Schedule 2 (Loans Receivable), if the description is sufficient to identify the type of assets. Enter in Column (B) the value as shown on the labor organization's books of each asset or group of assets described in Column (A).

NOTE: If your organization has a subsidiary organization for which a separate report is being submitted in accordance with Section X of these instructions, the value of the subsidiary organization as shown on your organization's books must be reported in Schedule 9 if it is of a non-investment nature. Enter in Column (A) the name of any such subsidiary organization. Enter in Column (B) the value as shown on your organization's books of the net assets of any such subsidiary organization.

If additional lines are needed, click the "Add More Other Assets" button at the top of the schedule. The software will add lines to the schedule in increments of ten.

Click the "Save & Calculate" button at the top of the schedule and the software will enter the Total Other Assets in Column (B) of Schedule 9 and in Item 28 (Other Assets), Column (B) of Statement A.

SCHEDULE 10 – ACCOUNTS PAYABLE AGING SCHEDULE

The labor organization must report 1) individual accounts that are valued at $7,500 or more and that are 90 days or more past due at the end of the reporting period or were liquidated, reduced or written off during the reporting period; and 2) the total aggregated value of all other accounts.

If additional lines are needed, click the "Add More Accounts Payable Aging" button at the top of the schedule. The software will add lines to the schedule in increments of ten.

Column (A): Enter the name of each entity or individual with which the labor organization has an account payable of $7,500 or more that is 90 days or more past due at the end of the reporting period or that was liquidated, reduced or written off during the reporting period without the disbursement of cash sufficient to cover the total value of the account payable.

Column (B): Enter the total amount of money owed by the labor organization to each listed entity or individual at the end of the reporting period. Enter the total amount of money owed by the labor organization in all other accounts payable not required to be itemized in Schedule 10 on the "Totals from all other accounts payable" line.

Click the "Save & Calculate" button at the top of the schedule and the software will complete the "Total of all itemized accounts payable" line in Column (B) and enter the total accounts payable in Column (B) and in Item 30, Column (D) of Statement A.

Column (C): Enter the total amount of money owed by the labor organization to the listed entity or individual at the end of the reporting period that is 90 to 180 days past due. Enter the total amount of money owed by the labor organization in all other accounts payable (those of less than $7,500) that are 90 to 180 days past due on the "Totals from all other accounts payable" line.

Click the "Save & Calculate" button at the top of the schedule and the software will complete the "Total of all itemized accounts payable" line in Column (C) and enter the total accounts payable that were 90 to 180 days past due in Column (C).

Column (D): Enter the total amount of money owed by the labor organization to each entity or individual at the end of the reporting period that is more than 180 days past due. Enter the total amount of money owed by the labor organization in all other accounts payable (those of less than $7,500 and not required to be itemized in Schedule 10) that are more than 180 days past due and on the "Total from all other accounts payable" line.

Click the "Save & Calculate" button at the top of the schedule and the software will complete the "Total of all itemized accounts payable" line in Column (D) and enter the total accounts payable that were more than 180 days past due in Column (D).

Column (E): Enter the total amount of money owed by the labor organization to each entity or individual that was written off during the reporting period by the reporting labor organization without the disbursement of cash sufficient to cover the total value of the account payable. Enter the total amount of money owed by the labor organization in all other accounts payable (those of less than $7,500 and not required to be itemized in Schedule 10) that was written off during the reporting period by the reporting labor organization without the disbursement of cash sufficient to cover the total value of the account payable on the "Total from all other accounts payable" line.

Click the "Save & Calculate" button at the top of the schedule and the software will complete the "Total of all itemized accounts payable" line in Column (E) and enter the total liquidated accounts payable in Column (E).

Provide in Item 75 (Additional Information) all details and circumstances in connection with the writing off of the account payable, including the reason and amount.

SCHEDULE 11 – LOANS PAYABLE

Report details of all loans payable on which the labor organization owed money at any time during the reporting period except those secured by mortgages or similar liens on real property (land or buildings) that must be reported in Item 32 (Mortgages Payable) of Statement A.

If additional lines are needed, click the "Add More Loans Payable" button at the top of the schedule. The software will add lines to the schedule in increments of ten.

Column (A): Enter the name of each business enterprise to which a loan was payable. Also list the source of all other loans by general categories, such as labor organizations, individuals, etc.

Column (B): For each loan source listed in Column (A), enter the amount, if any, owed by the labor organization at the start of the reporting period.

Click the "Save & Calculate" button at the top of the schedule and the software will enter the total for Column (B) on the "Total of all above lines" line in Schedule 11 and in Item 31(Loans Payable), Column (C) of Statement A.

Column (C): For each loan source listed in Column (A), enter the amount, if any, obtained by the labor organization during the reporting period. If, due to discounting by a bank or for any other reason, the amount received from a loan was less than the face value of the note or the amount repayable, enter the amount actually received and explain in Item 75 (Additional Information).

Click the "Save & Calculate" button at the top of the schedule and the software will enter the total for Column (C) on the "Total of all above lines" line in Schedule 11 and in Item 45 (Loans Obtained) of Statement B.

Columns (D)(1) and (D)(2): For each loan source listed in Column (A), enter the amount, if any, that the labor organization repaid to the lender during the reporting period. Report only repayments of principal; interest paid must be reported in Schedule 31 (General Overhead). Use Column (D)(1) to report repayments made in cash. Use Column (D)(2) to report repayments made in a manner other than by cash, such as repayments made to a creditor by offsetting an amount owed by the creditor to the labor organization.

Click the "Save & Calculate" button at the top of the schedule and the software will enter the total for Columns (D)(1) and (D)(2) on the "Total of all above lines" line in Schedule 11 and the total for Column (D)(1) in Item 66 (Repayment of Loans Obtained) of Statement B. Explain in Item 75 (Additional Information) any non-cash amounts reported in Column (D)(2).

Column (E): For each loan source listed in Column (A), enter the balance, if any, that the labor organization owed the listed lender at the end of the reporting period. If any loans payable were written off during the reporting period, the reason and amount must be reported in Item 75 (Additional Information).

Click the "Save & Calculate button" at the top of the schedule and the software will enter the total for Column (E) on the "Total of all above lines" line in Schedule 11 and in Item 31 (Loans Payable), Column (D) of Statement A.

SCHEDULE 12 – OTHER LIABILITIES

Report details of all the labor organization's liabilities at the end of the reporting period other than Item 30 (Accounts Payable), Item 31 (Loans Payable), and Item 32 (Mortgages Payable) of Statement A.

Any portion of withheld taxes or any other payroll or other deductions, which have not been transmitted at the end of the reporting period, are liabilities of the labor organization and must be reported in Schedule 12. Payroll or other deductions that are retained by the labor organization (such as repayments of loans to officers or employees) must be fully explained in Item 75 (Additional Information).

The labor organization's other liabilities must be described in Column (A) and may be classified by general groupings or bookkeeping categories if the description is sufficient to identify the type of liability. List separately any payroll taxes withheld but not yet paid, other unpaid payroll taxes of the labor organization, such as FICA taxes, and any funds collected on behalf of affiliates or members and not disbursed by the end of the reporting period. Do not include reserves for special purposes (for example, "Reserve for Building Fund") that are actually an allocation of certain assets for specific purposes rather than a liability.

If additional lines are needed, click the "Add More Other Liabilities" button at the top of the schedule. The software will add lines to the schedule in increments of ten.

Enter in Column (B) the amount of each liability described in Column (A). Click the Save button at the top of the schedule and the software will enter the total in Column (B) of Schedule 12 and in Item 33 (Other Liabilities), Column (D) of Statement A.

SCHEDULE 13 – ALL OFFICERS AND DISBURSEMENTS TO OFFICERS

List all the labor organization's officers and report all salaries and other direct and indirect disbursements to officers during the reporting period.

If additional lines are required, click the "Add More Disbursements to Officers" button at the top of the schedule. The software will add lines to the schedule in increments of ten.

NOTE: A "direct disbursement" to an officer is a payment made by the labor organization to the officer in the form of cash, property, goods, services, or other things of value.

An "indirect disbursement" to an officer is a payment made by the labor organization to another party for cash, property, goods, services, or other things of value received by or on behalf of the officer. "On behalf of the officer" refers to a payment received by a party other than the officer or the labor organization for the personal interest or benefit of the officer. Such payments include those made through a credit arrangement under which charges are made to the account of the labor organization and are paid by the labor organization. For example, when a union, through its credit arrangements, is billed directly and pays the hotel bills of an officer who, during his workweek, resides at a hotel in the city where the union headquarters is located away from his legal residence in another city, the payments must be reported as disbursements to the officer.

Column (A): Enter in (A) the last name, first name, and middle initial of each person who held office in the labor organization at any time during the reporting period. Include all the labor organization's officers whether or not any salary or other disbursements were made to them or on their behalf by the labor organization. "Officer" is defined in section 3(n) of the LMRDA (29 U.S.C. 402) as "any constitutional officer, any person authorized to perform the functions of president, vice president, secretary, treasurer, or other executive functions of a labor organization, and any member of its executive board or similar governing body."

Column (B): Enter in (B) the title of the position each officer listed held during the reporting period. If an officer held more than one position during the reporting period, list each additional position and the dates on which the officer held the position in Item 75 (Additional Information).

Column (C): Use the drop-down menu to select the status of each officer: "N" for a new officer who took office during the reporting period; "P" for a past officer who was not in office at the end of the reporting period; or "C" for a continuing officer who was in office before the reporting period and was still in office at the end of the reporting period. If any officer was not elected at a regular election in accordance with the labor organization's constitution and bylaws or other governing documents on file with OLMS, explain the manner in which the officer was chosen in Item 75 (Additional Information).

Column (D): Enter the gross salary of each officer (before tax withholdings and other payroll deductions). Include disbursements for "lost time" or time devoted to union activities.

Column (E): Enter the total allowances made by direct and indirect disbursements to each officer on a daily, weekly, monthly, or other periodic basis. Do not include allowances paid on the basis of mileage or meals which must be reported in Column (F) or (G), as applicable.

Column (F): Enter all direct and indirect disbursements to each officer that were necessary for conducting official business of the labor organization, except salaries or allowances which must be reported in Columns (D) and (E), respectively.

Examples of disbursements to be reported in Column (F) include all expenses that were reimbursed directly to an officer, meal allowances and mileage allowances, expenses for officers' meals and entertainment, and various goods and services furnished to officers but charged to the labor organization. Such disbursements should be included in Column (F) only if they were necessary for conducting official business; otherwise, report them in Column (G). Also include in Column (F) travel advances that are not considered loans as explained in the instructions for Schedule 2 (Loans Receivable).

Do not report the following disbursements in Schedule 13:

- Reimbursements to an officer for the purchase of investments or fixed assets, such as reimbursing an officer for a file cabinet purchased for office use, which must be reported in Schedule 6 (Purchase of Fixed Assets) and explained in Item 75 (Additional

Information);

- Disbursements made by the labor organization to someone other than an officer as a result of transactions arranged by an officer in which property, goods, services, or other things of value were received by or on behalf of the labor organization rather than the officer, such as rental of offices and meeting rooms, purchase of office supplies, refreshments and other expenses of membership banquets or meetings, and food and refreshments for the entertainment of groups other than the officers and membership on official business;
- Office supplies, equipment, and facilities furnished to officers by the labor organization for use in conducting official business; and
- Maintenance and operating costs of the labor organization's assets, including buildings, office furniture, and office equipment; however, see "Special Rules for Automobiles" below.

Column (G): Enter all other direct and indirect disbursements to each officer. Include all disbursements for which cash, property, goods, services, or other things of value were received by or on behalf of each officer and were essentially for the personal benefit of the officer and not necessary for conducting official business of the labor organization. Include in Column (G) all disbursements for transportation by public carrier between the officer's home and place of employment or for other transportation not involving the conduct of official business. Also, include the operating and maintenance costs of all the labor organization's assets (automobiles, etc.) furnished to officers essentially for the officers' personal use rather than for use in conducting official business.

Do not include in Column (G) loans to officers, which must be reported in Schedule 2 (Loans Receivable) or disbursements for benefits to officers, which must be reported in disbursement Schedule 31 (Benefits).

Column (H): Click the “Save & Calculate” button at the top of the schedule and the software will add the amounts in Columns (D) through (G) on each line and enter the individual totals in Column (H).

The software will also enter the totals for all officers listed in Columns (D) through (H) on the “Total Officers Disbursements” line.

Enter the total amount of withheld taxes, payroll deductions, and all other deductions on the “Less Deductions” line.

Click the “Save & Calculate” button at the top of the schedule and the software will subtract the “Less Deductions” line from the “Total Officers Disbursements” line and enter the difference on the “Net Disbursements” line.

The software enters the amount on the ”Total Officers Disbursements” line in Item 70 (Officers) of Statement B.

SPECIAL RULES FOR AUTOMOBILES

Include in Column (G) of Schedule 13 that portion of the operating and maintenance costs of any automobile owned or leased by the labor organization to the extent that the use was for the personal benefit of the officer to whom it was assigned. This portion may be computed on the basis of the mileage driven on official business compared with the mileage for personal use. The portion not included in Column (G) must be reported in Column (F).

Alternatively, rather than allocating these operating and maintenance costs between Columns (F) and (G), if 50% or more of the officer's use of the vehicle was for official business, the labor organization may enter in Column (F) all disbursements relative to that vehicle with an explanation in Item 75 (Additional Information) indicating that the vehicle was also used part of the time for personal business. Likewise, if less than 50% of the officer's use of the vehicle was for official business, the labor organization may report all disbursements relative to the vehicle in Column (G) with an explanation in Item 75 indicating that the vehicle was also used part of the time on official business.

The amount of decrease in the market value of an automobile used over 50% for the personal benefit of an officer must also be reported in Item 75.

SCHEDULE 14 – DISBURSEMENTS TO EMPLOYEES

Report all direct and indirect disbursements to employees of the labor organization during the reporting period. If additional lines are required, click the Add More Disbursements to

Employees button on the top of the schedule. The software adds lines to the schedule in increments of ten.

Include disbursements to individuals other than officers who receive lost time payments even if the labor organization does not otherwise consider them to be employees or does not make any other direct or indirect disbursements to them. The definitions of "direct disbursements" and "indirect disbursements" are the same as the definitions stated above in Schedule 13.

If additional lines are required, click the "Add More Disbursements to Employees" button at the top of the schedule. The software will add lines to the schedule in increments of ten.

Column (A): Enter the last name, first name, and middle initial of each employee who during the reporting period received $10,000 or more in gross salaries, allowances, benefits, and other direct and indirect disbursements from the labor organization (including any subsidiary organizations) or from any affiliates of the labor organization. ("Affiliates" means labor organizations chartered by the same parent body, governed by the same constitution and bylaws, or having the relation of parent and subordinate.) The labor organization's report, however, should not include disbursements made by affiliates but should include only the disbursements made by the labor organization.

Column (B): Enter the position each listed employee held in the labor organization (including any subsidiary organizations).

Column (C): Enter the name of any affiliate that paid any salaries, allowances, benefits, or expenses on behalf of a listed employee. If a subsidiary of the labor organization paid any salaries, allowances, benefits, or expenses on behalf of a listed employee, see Section X of these Instructions for information about reporting these disbursements.

Columns (D) through (G): To complete Columns (D) through (G), follow the instructions for Columns (D) through (G) of Schedule 13.

Column (I): Click the "Save & Calculate" button at the top of the schedule and the software will add the amounts in Columns (D) through (G) on each line and enter the individual totals in Column (H).

Enter in Columns (D) through (I) on the "Total Received By All Other Employees Making $10,000 Or Less," the totals of all gross salaries, allowances, and other disbursements for all employees of the labor organization not required to be listed above.

Click the "Save & Calculate" button at the top of the schedule and the software will add the amounts in Columns (D) through (H) on the "Total Received By All Other Employees Making $10,000 or Less" line and enter the total in Column (H). The software will also enter the total of all amounts listed in Columns (D) through (H) on the "Total Employees Disbursements" line.

Enter the total amount of withheld taxes, payroll deductions, and all other deductions on the "Less Deductions" line.

Click the "Save & Calculate" button on the page the software will subtract the "Less Deductions" line from the "Total Employees Disbursements" line and enter the difference on the "Net Disbursements" line.

The software enters the amount on the "Total Employee Disbursements" line in Item 71 (Employees) of Statement B.

SCHEDULE 15 – MEMBERSHIP STATUS INFORMATION

Enter in Column (A) the categories of membership tracked by the reporting labor organization. Define each category of membership in Item 75 (Additional Information). The definition should include a description of the members covered by the category and indicate whether the members pay full dues.

Included in Column (A) must be the category of "Retiree Members."

In Column (B) enter the number of members for each of the membership categories listed in Column (A).

If additional lines are required, click the "Add More Membership Statuses" button at the top of the schedule. The software will add lines to the schedule in increments of ten.

Members (Total of all lines above) – Click the "Save & Calculate" button at the top of the schedule and the software will enter on this line the total number of all members reported in

Column (B). The software will also enter the total number of members in your organization in Item 20 (Number of Members).

Agency Fee Payers Line – Enter the total number of agency fee payers in your organization. Agency fee paying nonmembers are those who make payments in lieu of dues to the reporting labor organization as a condition of employment under a union security provision in a collective bargaining agreement.

Total Members/Fee Payers Line – Click the "Save & Calculate" button at the top of the schedule and the software will enter the total of all members of the labor organization and agency fee payers reported in Column (B) This total in Column (B) is not the total number of members of the labor organization reportable in Item 20.

Check the "Yes" box in Column (C) if the category of membership listed in Column (A) is generally eligible to vote in all union elections held by the labor organization. Describe in Item 75 (Additional Information) any voting restrictions that apply to a category in Column (A).

SCHEDULES 16 THROUGH 30

Schedules 16 through 30 provide detailed information on the financial operations of the labor organization in categories that reflect the services provided to union members. Receipts and disbursements are allocated to Schedules 16 through 30 and are either listed as individual entries or as aggregated entries. **Note that before completing the Detailed Summary Page for Schedules 16 through 30, you must complete the itemization pages as described below.**

Allocating Receipts

Each receipt of the labor organization must be allocated to one of the receipt items in Statement B. Some of these items have backup schedules that require more detailed information. If a receipt does not conform to one of the defined items in Statement B it must be included in Schedule 25 (Other Receipts) in which any "major" receipts during the reporting period must be separately identified. A "major" receipt includes: 1) any individual receipt of $5,000 or more; or 2) total receipts from any single entity or individual that aggregate to $5,000 or more during the reporting period. All other receipts in this schedule are aggregated. This process is discussed further below.

Allocating Disbursements

Each disbursement of the labor organization must be allocated to one of the disbursement items in Statement B. Some of these items have backup schedules that require more detailed information. Schedules 24 through 30 reflect various services provided to union members by the union in which all "major" disbursements during the reporting period in the various categories must be separately identified. A "major" disbursement includes: 1) any individual disbursement of $5,000 or more; or 2) total disbursements to any single entity or individual that aggregate to $5,000 or more during the reporting period. All other disbursements in these schedules are aggregated.

All disbursements, other than those reported elsewhere in Statement B, must be allocated to Schedules 16 through 30, as appropriate.

Example 1: If the labor organization received a settlement of $4,999 in a small claims lawsuit, the receipt would not be individually identified, as long as the settlement was the only receipt from the entity or individual during the reporting period. The receipt would be aggregated with other small receipts in Line 3 of Schedule 23 (Other Receipts) on the Detailed Summary Page as discussed below.

Example 2: If the labor organization made three payments of $1,800 each to an office supplies vendor for office supplies used by employees engaged in contract negotiations during the reporting period, a single disbursement to the vendor of $5,400 would be listed in Line 1 on an itemization page for that vendor for Schedule 24 (Contract Negotiations and Administration) as discussed below.

Example 3: If a union pays a total of $5,500 to a printing company during the reporting year and determines that $5,050 should be allocated to organizing costs, that amount must be identified in an itemization page for the printing company for Schedule 25 (Organizing). If the remaining $450 paid to the same printer over the course of the year was attributable to charitable expenses, that amount will be reported in Line 3 of Schedule 28 (Contributions, Gifts, and Grants) on the Detailed Summary Page but the printer need not be identified as a recipient of any funds expended for Contributions, Gifts, and Grants, since the total paid to the printer during the reporting year for services related to

Contributions, Gifts, and Grants did not exceed $5,000.

Example 4: The labor organization has an ongoing contract with a law firm that provides a wide range of legal services. The labor organization makes a single payment of $10,000 each month to the law firm. In a particular month the law firm spent 50% of its time on contract negotiation litigation and 50% advising the labor organization regarding, and working for the enactment of, a new Federal law. The labor organization must allocate the payment for that month as two distinct disbursements of $5,000 each to Schedule 24 (Contract Negotiations and Administration), and Schedule 27 (Lobbying).

Procedures for Completing Schedules 23 Through 30

Before completing the Detailed Summary Page for Schedules 23 through 30, complete an itemization page for each payer/payee for whom there is (1) an individual receipt/disbursement of $5,000 or more or (2) total receipts/disbursements that aggregate to $5,000 or more during the reporting period. Do not complete an itemization page for disbursements to officers or employees because these disbursements are reported in Lines 3 and 4 of the Detailed Summary Page.

Enter in Column (A) the full name and business address of the entity or individual from which the receipt was received or to which the disbursement was made. Do not abbreviate the name of the entity or individual. If you do not know and cannot reasonably attain the full address, the city and state are sufficient.

Enter in Column (B) the type of business or job classification of the entity or individual, such as printing company, office supplies vendor, lobbyist, think tank, marketing firm, legal counsel, etc.

If additional lines are needed to complete Columns (C) through (E) of the itemization page, click the "More Receipts For This Payer" for Schedule 23 or the "More Disbursements for This Payee" for Schedules 24 through 30 button in Column (A) of the itemization page. The software will add lines to the itemization page in increments of ten.

Enter in Column (C) the purpose of each individual receipt/disbursement for that payee/payer of $5,000 or more, which means a brief statement or description of the reason the receipt/disbursement was made. Examples of adequate descriptions include the following: preparing organizing campaign pamphlets, staffing a help desk, opposition research, litigation regarding representation issues, litigation regarding a refusal to bargain charge, grievance arbitration, get-out-the-vote, voter education, advocating or opposing legislation, job retraining, etc.

Enter in Column (D) the date that the receipt/disbursement was made. The format for the date must be mm/dd/yyyy. The date of receipt/disbursement for reporting purposes is the date the labor organization actually received or disbursed the money.

Enter in Column (E) the amount of the receipt/disbursement.

Click the "Save & Calculate" button at the top of the itemization page and the software will enter total of all itemized transactions for this payee/payer on the "Total of All Itemized Transaction with this Payee/Payer" line.

Enter the total of all non-itemized transactions for the payee/payer (that is, all individual transactions of less than $5,000 each) on the "Total of All Non-Itemized Transactions with this Payee/Payer" line.

Click the Save & Calculate" button at the top of the itemization page again and the software will enter the total of all transactions for this payee/payer, both itemized and non-itemized, on the "Total of All Transactions with this Payee/Payer for this Schedule" line.

Special Instructions for Reporting Credit Card Disbursements

Disbursements to credit card companies may not be reported as a single disbursement to the credit card company as the vendor. Instead, charges appearing on credit card bills paid during the reporting period must be allocated to the recipient of the payment by the credit card company according to the same process as described above.

The Department recognizes that filers will not always have the same access to information regarding credit card payments as with other transactions. Filers should report all of the information required in the itemization schedules that is available to the union.

For instance, in the case of a credit card transaction for which the receipt(s) and monthly statement(s) do not provide the full legal name of a payee and the union does not have access to any other documents that would contain the information, the union should report the name as it appears on the receipt(s) and statement(s). Similarly, if the receipt(s) and statement(s) do not include a full street address, the union should report as much information as is available and no less than the city and state.

Once these transactions have been incorporated into the union's recordkeeping system they can be treated like any other transaction for purposes of assigning a description and purpose.

In instances when a credit card transaction is canceled and the charge is refunded in whole or part by entry of a credit on the credit card statement, the charge should be treated as a disbursement, and the credit should be treated as a receipt. In reporting a credit of $5,000 or more as a receipt, Column (C) must indicate that the receipt was in refund of a disbursement, and must identify the disbursement by date and amount.

Special Procedures for Reporting Confidential Information

Filers may use the procedure described below to report the following types of information:

- Information that would identify individuals paid by the union to work in a non-union bargaining unit in order to assist the union in organizing employees, provided that such individuals are not employees of the union who receive more than $10,000 in the aggregate in the reporting year from the union. Employees receiving more than $10,000 must be reported on Schedule 14 – Disbursements to Employees;
- Information that would expose the reporting union's prospective organizing strategy. The union must be prepared to demonstrate that disclosure of the information would harm an organizing drive. Absent unusual circumstances, information about past organizing drives should not be treated as confidential;
- Information that would provide a tactical advantage to parties with whom the reporting union or an affiliated union is engaged or will be engaged in contract negotiations. The union must be prepared to demonstrate that disclosure of the information would harm a contract negotiation. Absent unusual circumstances information about past contract negotiations should not be treated as confidential;
- Information pursuant to a settlement that is subject to a confidentiality agreement, or that the union is otherwise prohibited by law from disclosing; and,
- Information in those situations where disclosure would endanger the health or safety of an individual.

With respect to these specific types of information, if the reporting union can demonstrate that itemized disclosure of a specific major receipt or disbursement, or aggregated receipt or disbursement would be adverse to the union's legitimate interests, the union may include the receipt or disbursement in Line 3 of Summary Schedules 23 (Other Receipts), 24 (Contract Negotiation and Administration), 25 (Organizing) or 30 (Union Administration). In Item 75 (Additional Information) the union must identify each schedule from which any itemized receipts or disbursements were excluded because of an asserted legitimate interest in confidentiality based on one of the first three reasons listed above. No notation need be made for exclusion of information disclosure of which is prohibited by law or that would endanger the health or safety of an individual. The notation must describe the general types of information that were omitted from the schedule, but the name of the payer/payee, date, and amount of the transaction(s) is not required. This procedure may not be used for Schedules 26 through 29.

A union member, however, has the statutory right "to examine any books, records, and accounts necessary to verify" the union's financial report if the member can establish "just cause" for access to the information. 29 U.S.C. 431(c); 29 U.S.C. CFR 403.8 (2002). Any exclusion of itemized receipts or disbursements from Schedules 25, 26, 27 or 32 for one of the first three reasons listed above would constitute a *per se* demonstration of "just cause" for purposes of this Act. Consequently, any union member (and the Department), upon request, has the right to review the undisclosed information that otherwise would have appeared in the applicable schedule if the union withholds the

information in order to protect confidentiality interests. Exclusion of information disclosure of which is prohibited by law or that would endanger the health or safety of an individual creates no per se demonstration of "just cause."

Procedures for Completing the Detailed Summary Pages

The Detailed Summary Pages are used to summarize Schedules 16 through 30.

For Summary Schedule 23 (Other Receipts) the software enters on Line 1 the total of all itemized receipts during the reporting period from named payers. This is the sum of the amounts entered on the "Total of All Itemized Transactions with this Payee/Payer" line on all itemization pages for Schedule 23.

The software enters on Line 2 the total of all non-itemized receipts from named payers. This is the sum of the amounts entered on the "Total of All Non-Itemized Transactions with this Payee/Payer" line in all itemization pages for Schedule 23.

Enter on Line 3 the total of all other receipts during the reporting period relating to the schedule. This is the total from your organization's books of all receipts during the reporting period relating to this schedule for payers who did not have a single receipt of $5,000 or more or receipts that aggregated $5,000 or more.

The software enters on Line 4 the total of Lines 1 through 3 and forwards this total to Item 49 of Statement B.

For Summary Schedules 24–30, the software enters on Line 1 of each summary schedule the total of all itemized disbursements during the reporting period to named vendors. This is the sum of the amounts entered on the "Total of All Itemized Transactions with this Payee/Payer" line in all itemization pages for the schedule.

The software enters on Line 2 of each summary schedule the total of all non-itemized disbursements to named vendors. This is the sum of the amounts entered on the "Total of All Non-Itemized Transactions with this Payee/Payer" line in all itemization pages for the schedule.

Enter on Line 3 the total of all other disbursements during the reporting period relating to the schedule. This is the total from your organization's books of all disbursements during the reporting period relating to this schedule for payees who did not have a single disbursement of $5,000 or more or disbursements that aggregated $5,000 or more.

The software enters on Line 4 the total of Lines 1 through 3 and forwards this total to the appropriate line item of Statement B.

For example, if in Schedule 24 (Contract Negotiations and Administration) a labor organization has $200,000 in itemized disbursements of $5,000 or more to vendors, $35,000 in non- itemized disbursements of less than $5,000 each to those vendors, and $7,000 in disbursements to vendors who did not receive a major disbursement for contract negotiations and administration, then the software will enter $200,000 in Line 1, and $35,000 in Line 2, and the filer will enter $7,000 in Line 3 of Schedule 24 on the Detailed Summary Page. The total of Lines 1 through 3 is $242,000, which the software will enter in Line 4 of the summary schedule and Item 51 (Contract Negotiations and Administration) of Statement B.

SCHEDULE 16 – Dues and Agency Fees

Report the labor organization's dues and agency fees from all sources during the reporting period.

If an intermediate or parent body receives dues checkoff directly from an employer on behalf of the reporting organization, do not report the portion retained by that organization for per capita tax or other purposes, such as a special assessment. Any amounts retained by the intermediate body or parent body other than per capita tax must be explained in Item 75 (Additional Information). For example, if the intermediate body or parent body retained $500 of the reporting organization's dues checkoff as payment for supplies purchased from that body by the reporting organization, this should be explained in Item 75, but the $500 should not be reported as a receipt or disbursement on either organization's Form LM-2 LF. If, however, the intermediate body or parent body disbursed part of the reporting organization's dues checkoff on that organization's behalf, this amount should be included in the appropriate disbursement item on the reporting organization's Form LM-2 LF. For example, if the intermediate body or parent body disbursed $500 of the reporting

organization's dues checkoff to an attorney who had provided lobbying services to the reporting organization, this amount should be reported in Item 54 and as a disbursement in Schedule 27 (Lobbying) of the reporting organization's Form LM-2 LF.

Do not report here dues that the reporting organization collected on behalf of other organizations for transmittal to them. For example, if the reporting organization received dues from a member of an affiliate who worked in the reporting organization's jurisdiction, the dues collected on the affiliate's behalf must be reported in Item 47 and on Schedule 21 (On Behalf of Affiliates for Transmittal to Them).

For all itemized receipts in this category:

Enter in Column (A) of an itemization page the full name and business address of the entity or individual from which the union received $5,000 or more in Dues and Agency Fees during the reporting period. Do not abbreviate the name of the entity or individual. If you do not know and cannot reasonably obtain the full address of the entity or individual, the city and state are sufficient.

Enter in Column (B) the type of business or job classification of the entity or individual from which the union received $5,000 or more in Dues and Agency Fees during the reporting period.

If additional lines are needed to complete Columns (C) through (E) for this Payer, click the "Add More Receipts of Dues and Agency Fees for This Payer" button in Column (A) of the itemization page. The software will add lines to the itemization page in increments of ten.

Enter in Column (C) the purpose of each individual receipt of $5,000 or more from the payer in sufficient detail to determine why the receipt cannot be allocated to another schedule.

Enter in Column (D) the date that each individual receipt of $5,000 or more was received. The format for the date must be mm/dd/yyyy. The date of receipt for reporting purposes is the date the labor organization actually received the money.

Enter in Column (E) the amount of each individual receipt of $5,000 or more.

Enter the total of all non-itemized receipts of Dues and Agency Fees from this payer (that is, all individual receipts of less than $5,000 each) on the "Total Non-Itemized Transactions with this Payee/Payer" line.

When you have completed entering all of the information for this payer, click the "Save & Calculate" button at the top of the itemization page and the software will enter the total in Column (E) on the "Total Itemized Transactions with this Payee/Payer" and the "Total of All Transactions with this Payee/Payer for This Schedule" lines.

An itemization page must be completed for each payer. Only one payer should be reported per page.

To create a new Dues and Agency Fees itemization page for a new payer, click the "Add More Dues and Agency Fees" button at the top of the itemization page and a new itemization page will open.

Follow the instructions above to complete any additional Dues and Agency Fees itemization pages.

By clicking the "Show Payer" drop down arrow at the top of a Schedule 16 itemization page, you can select and view all of the Dues and Agency Fees itemization pages you have completed.

As you complete each itemization page, click the "Save & Calculate" button at the top of the page and the total itemized transactions will be added to line 1 of Summary Schedule 16 on the Detailed Summary Page, and the total non-itemized transactions will be added to Line 2 of the Summary Schedule.

Enter on Line 3 of Summary Schedule 16 the total amount of all other receipts relating to this schedule from other payers during the reporting period. This is the total from your organization's books of all receipts relating to this schedule from payers who did not provide a single receipt of $5,000 or more or receipts that aggregated $5,000 or more.

The software adds Lines 1 through 3 and enters the total on Line 4 of Summary Schedule 16 and in Item 36 (Dues and Agency Fees) of Statement B.

SCHEDULE 17 – Per Capita Tax

Report the labor organization's per capita taxes from all sources during the reporting period.

Include the per capita tax portion of dues received directly by your organization from members of affiliates, per capita tax received from subordinates, either directly or through intermediaries, and the per capita tax portion of dues received through a checkoff arrangement whereby local dues are remitted directly to an intermediate or parent body by employers. Do not include dues collected on behalf of subordinate organizations for transmittal to them. For example, if a parent body received dues checkoff directly from an employer and returned the local's portion of the dues, the parent body must report the dues received on behalf of the local in Item 47 (On Behalf of Affiliates for Transmittal to Them).

For all itemized receipts in this category:

Enter in Column (A) of an itemization page the full name and business address of the entity or individual from which the union received $5,000 or more in Per Capita Tax during the reporting period. Do not abbreviate the name of the entity or individual. If you do not know and cannot reasonably obtain the full address of the entity or individual, the city and state are sufficient.

Enter in Column (B) the type of business or job classification of the entity or individual from which the union received $5,000 or more in Per Capita Tax during the reporting period.

If additional lines are needed to complete Columns (C) through (E) for this Payer, click the "Add More Receipts of Per Capita Tax for This Payer" button in Column (A) of the itemization page. The software will add lines to the itemization page in increments of ten.

Enter in Column (C) the purpose of each individual receipt of $5,000 or more from the payer in sufficient detail to determine why the receipt cannot be allocated to another schedule.

Enter in Column (D) the date that each individual receipt of $5,000 or more was received. The format for the date must be mm/dd/yyyy. The date of receipt for reporting purposes is the date the labor organization actually received the money.

Enter in Column (E) the amount of each individual receipt of $5,000 or more.

Enter the total of all non-itemized receipts for Per Capita Tax from this payer (that is, all individual receipts of less than $5,000 each) on the "Total Non-Itemized Transactions with this Payee/Payer" line.

When you have completed entering all of the information for this payer, click the "Save & Calculate" button at the top of the itemization page and the software will enter the total in Column (E) on the "Total Itemized Transactions with this Payee/Payer" and the "Total of All Transactions with this Payee/Payer for This Schedule" lines.

An itemization page must be completed for each payer. Only one payer should be reported per page.

To create a new Per Capita Tax itemization page for a new payer, click the "Add More Per Capita Tax" button at the top of the itemization page and a new itemization page will open. Follow the instructions above to complete any additional Per Capita Tax itemization pages.

By clicking the "Show Payer" drop down arrow at the top of a Schedule 17 itemization page, you can select and view all of the Per Capita Tax itemization pages you have completed.

As you complete each itemization page, click the "Save & Calculate" button at the top of the page and the total itemized transactions will be added to line 1 of Summary Schedule 17 on the Detailed Summary Page, and the total non-itemized transactions will be added to Line 2 of the Summary Schedule.

Enter on Line 3 of Summary Schedule 17 the total amount of all other receipts relating to this schedule from other payers during the reporting period. This is the total from your organization's books of all receipts relating to this schedule from payers who did not provide a single receipt of $5,000 or more or receipts that aggregated $5,000 or more.

The software adds Lines 1 through 3 and enters the total on Line 4 of Summary Schedule 17 and in Item 37 (Per Capita Tax) of Statement B.

SCHEDULE 18 – FEES, FINES, ASSESSMENTS, WORK PERMITS

Report the labor organization's fees, fines, assessments, work permits from all sources during the reporting period. Receipts by the labor organization on behalf of affiliates for transmittal to them must be reported in Item 47 (On Behalf of Affiliates for Transmittal to Them).

For all itemized receipts in this category:

Enter in Column (A) of an itemization page the full name and business address of the entity or individual from which the union received $5,000 or more in Fees, Fines, Assessments, Work Permits during the reporting period. Do not abbreviate the name of the entity or individual. If you do not know and cannot reasonably obtain the full address of the entity or individual, the city and state are sufficient.

Enter in Column (B) the type of business or job classification of the entity or individual from which the union received $5,000 or more in Fees, Fines, Assessments, Work Permits during the reporting period.

If additional lines are needed to complete Columns (C) through (E) for this Payer, click the "Add More Receipts of Fees, Fines, Assessments, Work Permits for This Payer" button in Column (A) of the itemization page. The software will add lines to the itemization page in increments of ten.

Enter in Column (C) the purpose of each individual receipt of $5,000 or more from the payer in sufficient detail to determine why the receipt cannot be allocated to another schedule.

Enter in Column (D) the date that each individual receipt of $5,000 or more was received. The format for the date must be mm/dd/yyyy. The date of receipt for reporting purposes is the date the labor organization actually received the money.

Enter in Column (E) the amount of each individual receipt of $5,000 or more.

Enter the total of all non-itemized receipts of Fees, Fines, Assessments, Work Permits from this payer (that is, all individual receipts of less than $5,000 each) on the "Total Non-Itemized Transactions with this Payee/Payer" line.

When you have completed entering all of the information for this payer, click the "Save & Calculate" button at the top of the itemization page and the software will enter the total in Column (E) on the "Total Itemized Transactions with this Payee/Payer" and the "Total of All Transactions with this Payee/Payer for This Schedule" lines.

An itemization page must be completed for each payer. Only one payer should be reported per page.

To create a new Fees, Fines, Assessments, Work Permits Tax itemization page for a new payer, click the "Add More Fees, Fines, Assessments, Work Permits" button at the top of the itemization page and a new itemization page will open.

Follow the instructions above to complete any additional Fees, Fines, Assessments, Work Permits itemization pages.

By clicking the "Show Payer" drop down arrow at the top of a Schedule 18 itemization page, you can select and view all of the Fees, Fines, Assessments, Work Permits itemization pages you have completed.

As you complete each itemization page, click the "Save & Calculate" button at the top of the page and the total itemized transactions will be added to line 1 of Summary Schedule 18 on the Detailed Summary Page, and the total non-itemized transactions will be added to Line 2 of the Summary Schedule.

Enter on Line 3 of Summary Schedule 18 the total amount of all other receipts relating to this schedule from other payers during the reporting period. This is the total from your organization's books of all receipts relating to this schedule from payers who did not provide a single receipt of $5,000 or more or receipts that aggregated $5,000 or more.

The software adds Lines 1 through 3 and enters the total on Line 4 of Summary Schedule 18 and in Item 38 (Fees, Fines, Assessments, Work Permits) of Statement B.

SCHEDULE 19 – SALE OF SUPPLIES

Report the labor organization's sale of supplies from all sources during the reporting period, such as union logo clothing, lapel pins, bumper stickers, etc.

For all itemized receipts in this category:

Enter in Column (A) of an itemization page the full name and business address of the entity or individual from which the union received $5,000 or more in Sale of Supplies during the reporting period. Do not abbreviate the name of the entity or individual. If you do not know and cannot reasonably obtain the full address of the entity or individual, the city and state are sufficient.

Enter in Column (B) the type of business or job classification of the entity or individual from which the union received $5,000 or more in Sale of Supplies during the reporting period.

If additional lines are needed to complete Columns (C) through (E) for this Payer, click the "Add More Receipts from Sale of Supplies for This Payer" button in Column (A) of the itemization page. The software will add lines to the itemization page in increments of ten.

Enter in Column (C) the purpose of each individual receipt of $5,000 or more from the payer in sufficient detail to determine why the receipt cannot be allocated to another schedule.

Enter in Column (D) the date that each individual receipt of $5,000 or more was received. The format for the date must be mm/dd/yyyy. The date of receipt for reporting purposes is the date the labor organization actually received the money.

Enter in Column (E) the amount of each individual receipt of $5,000 or more.

Enter the total of all non-itemized receipts of Sale of Supplies from this payer (that is, all individual receipts of less than $5,000 each) on the "Total Non-Itemized Transactions with this Payee/Payer" line.

When you have completed entering all of the information for this payer, click the "Save & Calculate" button at the top of the itemization page and the software will enter the total in Column (E) on the "Total Itemized Transactions with this Payee/Payer" and the "Total of All Transactions with this Payee/Payer for This Schedule" lines.

An itemization page must be completed for each payer. Only one payer should be reported per page.

To create a new Sale of Supplies itemization page for a new payer, click the "Add More Sale of Supplies" button at the top of the itemization page and a new itemization page will open. Follow the instructions above to complete any additional Sale of Supplies itemization pages.

By clicking the "Show Payer" drop down arrow at the top of a Schedule 19 itemization page, you can select and view all of the Sale of Supplies itemization pages you have completed.

As you complete each itemization page, click the "Save & Calculate" button at the top of the page and the total itemized transactions will be added to line 1 of Summary Schedule 19 on the Detailed Summary Page, and the total non-itemized transactions will be added to Line 2 of the Summary Schedule.

Enter on Line 3 of Summary Schedule 19 the total amount of all other receipts relating to this schedule from other payers during the reporting period. This is the total from your organization's books of all receipts relating to this schedule from payers who did not provide a single receipt of $5,000 or more or receipts that aggregated $5,000 or more.

The software adds Lines 1 through 3 and enters the total on Line 4 of Summary Schedule 19 and in Item 39 (Sale of Supplies) of Statement B.

SCHEDULE 20 – RENTS

Report the labor organization's rents from all sources during the reporting period.

For all itemized receipts in this category:

Enter in Column (A) of an itemization page the full name and business address of the entity or individual from which the union received $5,000 or more in Rents during the reporting period. Do not abbreviate the name of the entity or individual. If you do not know and cannot reasonably obtain the full address of the entity or individual, the city and state are sufficient.

Enter in Column (B) the type of business or job classification of the entity or individual from which the union received $5,000 or more in Rents during the reporting period.

If additional lines are needed to complete Columns (C) through (E) for this Payer, click the "Add More Receipts of Rent for This Payer" button in Column (A) of the itemization page. The software will add lines to the itemization page in increments of ten.

Enter in Column (C) the purpose of each individual receipt of $5,000 or more from the payer in sufficient detail to determine why the receipt cannot be allocated to another schedule.

Enter in Column (D) the date that each individual receipt of $5,000 or more was received. The format for the date must be mm/dd/yyyy. The

date of receipt for reporting purposes is the date the labor organization actually received the money.

Enter in Column (E) the amount of each individual receipt of $5,000 or more.

Enter the total of all non-itemized receipts of Rent from this payer (that is, all individual receipts of less than $5,000 each) on the "Total Non-Itemized Transactions with this Payee/Payer" line.

When you have completed entering all of the information for this payer, click the "Save & Calculate" button at the top of the itemization page and the software will enter the total in Column (E) on the "Total Itemized Transactions with this Payee/Payer" and the "Total of All Transactions with this Payee/Payer for This Schedule" lines.

An itemization page must be completed for each payer. Only one payer should be reported per page.

To create a new Rents itemization page for a new payer, click the "Add More Rents" button at the top of the itemization page and a new itemization page will open.
Follow the instructions above to complete any additional Rents itemization pages.

By clicking the "Show Payer" drop down arrow at the top of a Schedule 22 itemization page, you can select and view all of the Rents itemization pages you have completed.

As you complete each itemization page, click the "Save & Calculate" button at the top of the page and the total itemized transactions will be added to line 1 of Summary Schedule 20 on the Detailed Summary Page, and the total non-itemized transactions will be added to Line 2 of the Summary Schedule.

Enter on Line 3 of Summary Schedule 20 the total amount of all other receipts relating to this schedule from other payers during the reporting period. This is the total from your organization's books of all receipts relating to this schedule from payers who did not provide a single receipt of $5,000 or more or receipts that aggregated
$5,000 or more.

The software adds Lines 1 through 3 and enters the total on Line 4 of Summary Schedule 20 and in Item 42 (Rents) of Statement B.

SCHEDULE 21 – ON BEHALF OF AFFLIATES FOR TRANSMITTAL TO THEM

Report the labor organization's receipts on behalf of affiliates for transmittal to them from all sources during the reporting period. Enter the total amount of dues, fees, fines, assessments, and work permit fees received by the labor organization, through a checkoff arrangement or otherwise, on behalf of affiliates for transmittal to them. Do not include the amount withheld by the labor organization for per capita taxes or other purposes, such as loan repayments, which must be reported elsewhere in Statement B. When the receipts reported in Item 47 are transmitted, the disbursement must be reported in related Item 67 (To Affiliates of Funds Collected on Their Behalf).

For all itemized receipts in this category:

Enter in Column (A) of an itemization page the full name and business address of the entity or individual from which the union received $5,000 or more in receipts On Behalf of Affiliates for Transmittal to Them during the reporting period. Do not abbreviate the name of the entity or individual. If you do not know and cannot reasonably obtain the full address of the entity or individual, the city and state are sufficient.

Enter in Column (B) the type of business or job classification of the entity or individual from which the union received $5,000 or more receipts in On Behalf of Affiliates for Transmittal to Them during the reporting period.

If additional lines are needed to complete Columns (C) through (E) for this Payer, click the "Add More Receipts On Behalf of Affiliates for Transmittal to Them for This Payer" button in Column (A) of the itemization page. The software will add lines to the itemization page in increments of ten.

Enter in Column (C) the purpose of each individual receipt of $5,000 or more from the payer in sufficient detail to determine why the receipt cannot be allocated to another schedule.

Enter in Column (D) the date that each individual receipt of $5,000 or more was received. The format for the date must be mm/dd/yyyy. The date of receipt for reporting purposes is the date the labor organization actually received the money.

Enter in Column (E) the amount of each individual receipt of $5,000 or more.

Enter the total of all non-itemized receipts On Behalf of Affiliates for Transmittal to Them from this payer (that is, all individual receipts of less than $5,000 each) on the "Total Non-Itemized Transactions with this Payee/Payer" line.

When you have completed entering all of the information for this payer, click the "Save & Calculate" button at the top of the itemization page and the software will enter the total in Column (E) on the "Total Itemized Transactions with this Payee/Payer" and the "Total of All Transactions with this Payee/Payer for This Schedule" lines.

An itemization page must be completed for each payer. Only one payer should be reported per page.

To create a new On Behalf of Affiliates for Transmittal to Them itemization page for a new payer, click the "Add More On Behalf of Affiliates for Transmittal to Them" button at the top of the itemization page and a new itemization page will open.
Follow the instructions above to complete any additional On Behalf of Affiliates for Transmittal to Them itemization pages.

By clicking the "Show Payer" drop down arrow at the top of a Schedule 21 itemization page, you can select and view all of the On Behalf of Affiliates for Transmittal to Them itemization pages you have completed.

As you complete each itemization page, click the "Save & Calculate" button at the top of the page and the total itemized transactions will be added to line 1 of Summary Schedule 21 on the Detailed Summary Page, and the total non-itemized transactions will be added to Line 2 of the Summary Schedule.

Enter on Line 3 of Summary Schedule 21 the total amount of all other receipts relating to this schedule from other payers during the reporting period. This is the total from your organization's books of all receipts relating to this schedule from payers who did not provide a single receipt of $5,000 or more or receipts that aggregated $5,000 or more.

The software adds Lines 1 through 3 and enters the total on Line 4 of Summary Schedule 21 and in Item 47 (On Behalf of Affiliates for Transmittal to Them) of Statement B.

SCHEDULE 22 – FROM MEMBERS FOR DISBURSEMENT ON THEIR BEHALF

Report the labor organization's receipts from members for disbursement on their behalf from all sources during the reporting period. Enter the total receipts from members that are specifically designated by them for disbursement on their behalf; for example, contributions from members for transmittal by the labor organization to charities. When receipts that are reported in Item 48 are transmitted, the disbursement must be reported in related Item 68 (On Behalf of Individual Members).

For all itemized receipts in this category:

Enter in Column (A) of an itemization page the full name and business address of the entity or individual from which the union received $5,000 or more in receipts From Members for Disbursement on their Behalf during the reporting period. Do not abbreviate the name of the entity or individual. If you do not know and cannot reasonably obtain the full address of the entity or individual, the city and state are sufficient.

Enter in Column (B) the type of business or job classification of the entity or individual from which the union received $5,000 or more in receipts From Members for Disbursement on their Behalf during the reporting period.

If additional lines are needed to complete Columns (C) through (E) for this Payer, click the "Add More Receipts From Members for Disbursement on their Behalf for This Payer" button in Column (A) of the itemization page. The software will add lines to the itemization page in increments of ten.

Enter in Column (C) the purpose of each individual receipt of $5,000 or more from the payer in sufficient detail to determine why the receipt cannot be allocated to another schedule.

Enter in Column (D) the date that each individual receipt of $5,000 or more was received. The format for the date must be mm/dd/yyyy. The date of receipt for reporting purposes is the date the labor organization actually received the money.

Enter in Column (E) the amount of each individual receipt of $5,000 or more.

Enter the total of all non-itemized receipts From Members for Disbursement on their Behalf from this payer (that is, all individual receipts of less than $5,000 each) on the "Total Non-Itemized Transactions with this Payee/Payer" line.

When you have completed entering all of the information for this payer, click the "Save & Calculate" button at the top of the itemization page and the software will enter the total in Column (E) on the "Total Itemized Transactions with this Payee/Payer" and the "Total of All Transactions with this Payee/Payer for This Schedule" lines.

An itemization page must be completed for each payer. Only one payer should be reported per page.

To create a new From Members for Disbursement on their Behalf itemization page for a new payer, click the "Add More From Members for Disbursement on their Behalf" button at the top of the itemization page and a new itemization page will open.
Follow the instructions above to complete any additional From Members for Disbursement on their Behalf itemization pages.

By clicking the "Show Payer" drop down arrow at the top of a Schedule 22 itemization page, you can select and view all of the From Members for Disbursement on their Behalf itemization pages you have completed.

As you complete each itemization page, click the "Save & Calculate" button at the top of the page and the total itemized transactions will be added to line 1 of Summary Schedule 22 on the Detailed Summary Page, and the total non-itemized transactions will be added to Line 2 of the Summary Schedule.

Enter on Line 3 of Summary Schedule 22 the total amount of all other receipts relating to this schedule from other payers during the reporting period. This is the total from your organization's books of all receipts relating to this schedule from payers who did not provide a single receipt of $5,000 or more or receipts that aggregated
$5,000 or more.

The software adds Lines 1 through 3 and enters the total on Line 4 of Summary Schedule 22 and in Item 48 (From Members for Disbursement on their Behalf) of Statement B.

SCHEDULE 23 – OTHER RECEIPTS

Report the labor organization's receipts from all sources during the reporting period, other than those that must be reported elsewhere in Statement B, such as reimbursements from officers and employees for excess expense payments or travel advances not reported as loans in Schedule 2 (Loans Receivable); receipts from fundraising activities such as raffles, bingo games, and dances; funds received from a parent body, other unions, or the public for strike fund assistance; and receipts from another labor organization that merged into the labor organization.

For all itemized receipts in this category:

Enter in Column (A) of an itemization page the full name and business address of the entity or individual from which the union received $5,000 or more in Other Receipts during the reporting period. Do not abbreviate the name of the entity or individual. If you do not know and cannot reasonably obtain the full address of the entity or individual, the city and state are sufficient.

Enter in Column (B) the type of business or job classification of the entity or individual from which the union received $5,000 or more in Other Receipts during the reporting period.

If additional lines are needed to complete Columns (C) through (E) for this Payer, click the "Add More Receipts for This Payer" button in Column (A) of the itemization page. The software will add lines to the itemization page in increments of ten.

Enter in Column (C) the purpose of each individual receipt of $5,000 or more from the payer in sufficient detail to determine why the receipt cannot be allocated to another schedule.

Enter in Column (D) the date that each individual receipt of $5,000 or more was received. The format for the date must be mm/dd/yyyy. The date of receipt for reporting purposes is the date the labor organization actually received the money.

Enter in Column (E) the amount of each individual receipt of $5,000 or more.

Enter the total of all non-itemized receipts from this payer (that is, all individual receipts of less than $5,000 each) on the "Total Non-Itemized Transactions with this Payee/Payer" line.

When you have completed entering all of the information for this payer, click the "Save & Calculate" button at the top of the itemization page and the software will enter the total in Column (E) on the "Total Itemized Transactions with this Payee/Payer" and the "Total of All Transactions with this Payee/Payer for This Schedule" lines.

An itemization page must be completed for each payer. Only one payer should be reported per page.

To create a new Other Receipts itemization page for a new payer, click the "Add More Other Receipts" button at the top of the itemization page and a new itemization page will open.
Follow the instructions above to complete any additional Other Receipts itemization pages.

By clicking the "Show Payer" drop down arrow at the top of a Schedule 25 itemization page, you can select and view all of the Other Receipts itemization pages you have completed.

As you complete each itemization page, click the "Save & Calculate" button at the top of the page and the total itemized transactions will be added to line 1 of Summary Schedule 23 on the Detailed Summary Page, and the total non-itemized transactions will be added to Line 2 of the Summary Schedule.

Enter on Line 3 of Summary Schedule 23 the total amount of all other receipts relating to this schedule from other payers during the reporting period. This is the total from your organization's books of all receipts relating to this schedule from payers who did not provide a single receipt of $5,000 or more or receipts that aggregated$5,000 or more.

The software adds Lines 1 through 3 and enters the total on Line 4 of Summary Schedule 23 and in Item 49 (Other Receipts) of Statement B.

SCHEDULE 24 – CONTRACT NEGOTIATION AND ADMINISTRATION

Report the labor organization's direct and indirect disbursements to all entities and individuals during the reporting period associated with preparation for, and participation in, the negotiation of collective bargaining agreements and the administration and enforcement of the agreements made by the labor organization. Do not include strike benefits that must be reported in Item 60 (Strike Benefits) of Statement B.

For all major disbursements in this category:

Enter in Column (A) of an itemization page the full name and business address of the entity or individual to which the disbursement was made. Do not abbreviate the name of the entity or individual. If you do not know and cannot reasonably obtain the full address of the entity or individual, the city and state are sufficient.

Enter in Column (B) the type of business or job classification of the entity or individual to which the union disbursed $5,000 or more in Contract Negotiation and Administration during the reporting period, such as printing company, office supplies vendor, legal counsel, etc.
If additional lines are required to complete Columns (C) through (E) for this Payee, click the "Add More Disbursements for This Payee" button in Column (A) of the itemization page. The software adds lines to the itemization page in increments of ten.

Enter in Column (C) the purpose of each individual disbursement of $5,000 or more, which means a brief statement or description of the reason the disbursement was made. Examples of adequate descriptions include the following: contract negotiation, grievance arbitration, litigation regarding the interpretation of a collective bargaining agreement, staffing a help desk, litigation regarding a refusal to bargain, etc. Neither the name of the employer nor the specific bargaining unit that is the subject of the organizing activity need be identified.

Enter in Column (D) the date that each individual disbursement of $5,000 or more was made. The format for the date must be mm/dd/yyyy. The date of disbursement for reporting purposes is the date the labor organization actually disbursed the money.

Enter in Column (E) the amount of each individual disbursement of $5,000 or more.

Enter the total of all non-itemized disbursements for Contract Negotiation and Administration to this payee (that is, all individual disbursements of less than $5,000 each) on the "Total Non-Itemized Transactions with this Payee/Payer" line.

When you have completed entering all of the information for this payee, click the "Save & Calculate" button at the top of the itemization page and the software will enter the totals in Column (E) on the "Total Itemized Transactions with this Payee/Payer" line and on the "Total of All Transactions with this Payee/Payer for This Schedule" line.

An itemization page must be completed for each payee who met the itemization threshold during the reporting period. Only one payee should be reported per page.

To create a new Contract Negotiation and Administration itemization page for a new payee, click the "Add More Contract Negotiation and Administration" button at the top of the itemization page and a new itemization page will open. Follow the instructions above to complete any additional Contract Negotiation and Administration itemization pages.

By clicking the "Show Payee" drop down arrow at the top of the Schedule 24 page, you can select and view all of the Contract Negotiation and Administration Itemization pages you have completed.

As you complete each itemization page, click the "Save & Calculate" button at the top of the page and the total itemized transactions will be added to line 1 of Summary Schedule 24 on the Detailed Summary Page and the total non-itemized transactions will be added to Line 2 of the Summary Schedule.

Enter the total amount of all other disbursements relating to this schedule made to other payees during the reporting period on Line 3 of Summary Schedule 24. This is the total from your organization's books of all disbursements relating to this schedule made to payees who did not have a single disbursement of $5,000 or more or disbursements that aggregated $5,000 or more.

The software adds Lines 1 through 3 and enters the total on Line 4 of Summary Schedule 24 and in Item 51 (Contract Negotiation and Administration) of Statement B.

SCHEDULE 25 – ORGANIZING

Report the labor organization's direct and indirect disbursements to all entities and individuals during the reporting period associated with efforts to become the exclusive bargaining representative for any unit of employees, or to keep from losing a unit in a decertification election or to another labor organization, or to recruit new members.

For all major disbursements in this category:

Enter in Column (A) of an itemization page the full name and business address of the entity or individual to which the disbursement was made. Do not abbreviate the name of the entity or individual. If you do not know and cannot reasonably obtain the full address of the entity or individual, the city and state are sufficient.

Enter in Column (B) the type of business or job classification of the entity or individual to which the union disbursed $5,000 or more in Organizing during the reporting period, such as printing company, office supplies vendor, legal counsel, etc.

If additional lines are required to complete Columns (C) through (E) for this Payee, click the "Add More Disbursements for This Payee" button in Column (A) of the itemization page.
The software adds lines to the itemization page in increments of ten.

Enter in Column (C) the purpose of each individual disbursement of $5,000 or more, which means a brief statement or description of the reason the disbursement was made. Examples of adequate descriptions include the following: preparing organizing campaign pamphlets, opposition research, recruiting new members, etc. Neither the name of the employer nor the specific bargaining unit that is the subject of the organizing activity need be identified.

Enter in Column (D) the date that each individual disbursement of $5,000 or more was made. The format for the date must be mm/dd/yyyy. The date of disbursement for reporting purposes is the date the labor organization actually disbursed the money.

Enter in Column (E) the amount of each individual disbursement of $5,000 or more.

Enter the total of all non-itemized disbursements for organizing to this payee (that is, all individual disbursements of less than $5,000 each) on the "Total Non-Itemized Transactions with this Payee/Payer" line.

When you have completed entering all of the information for this payee, click the "Save & Calculate" button at the top of the itemization page and the software will enter the totals in Column (E) on the "Total Itemized Transactions with this Payee/Payer" line and on the "Total of All Transactions with this Payee/Payer for This Schedule" line.

An itemization page must be completed for each payee who met the itemization threshold during the reporting period. Only one payee should be reported per page.

To create a new Organizing itemization page for a new payee, click the "Add More Organizing" button at the top of the itemization page and a new itemization page will open. Follow the instructions above to complete any additional Organizing itemization pages.

By clicking the "Show Payee" drop down arrow at the top of the Schedule 25 page, you can select and view all of the Organizing itemization pages you have completed.

As you complete each itemization page, click the "Save & Calculate" button at the top of the page and the total itemized transactions will be added to line 1 of Summary Schedule 25 on the Detailed Summary Page and the total non-itemized transactions will be added to Line 2 of the Summary Schedule.

Enter the total amount of all other disbursements relating to this schedule made to other payees during the reporting period on Line 3 of Summary Schedule 25. This is the total from your organization's books of all disbursements relating to this schedule made to payees who did not have a single disbursement of $5,000 or more or disbursements that aggregated $5,000 or more.

The software adds Lines 1 through 3 and enters the total on Line 4 of Summary Schedule 25 and in Item 52 (Organizing) of Statement B.

SCHEDULE 26 – POLITICAL ACTIVITIES

Report the labor organization's direct and indirect disbursements to all entities and individuals during the reporting period associated with political disbursements or contributions in money.

A political disbursement or contribution is one that is intended to influence the selection, nomination, election, or appointment of anyone to a Federal, state, or local executive, legislative or judicial public office, or office in a political organization, or the election of Presidential or Vice Presidential electors, and support for or opposition to ballot referenda. It does not matter whether the attempt succeeds. Include disbursements for communications with members (or agency fee paying nonmembers) and their families for registration, get-out-the-vote and voter education campaigns, the expenses of establishing, administering and soliciting contributions to union segregated political funds (or PACs), disbursements to political organizations as defined by the IRS in 26 U.S.C. 527, and other political disbursements.

For all major disbursements in this category: Enter in Column (A) of an itemization page the full name and business address of the entity or individual to which the disbursement was made. Do not abbreviate the name of the entity or individual. If you do not know and cannot reasonably obtain the full address of the entity or individual, the union may report only the city and state.

Enter in Column (B) the type of business or job classification of the entity or individual to which the union disbursed $5,000 or more for Political Activities during the reporting period, such as campaign advisor, marketing firm, fund raiser, printing company, office supplies vendor, legal counsel, etc.

If additional lines are needed to complete Columns (C) through (E) for this Payee, click the "Add More Disbursements for This Payee" button in Column (A) of the itemization page. The software will add lines to the itemization page in increments of ten.

Enter in Column (C) the purpose of each individual disbursement of $5,000 or more, which means a brief statement or description of the reason the disbursement was made.

Examples of adequate descriptions include the following: a registration drive, get-out-the-vote campaign, voter education campaign, fund raising, etc. The specific campaign should be identified whenever possible. Distinguish between activities in the United States and activities in foreign countries.

Enter in Column (D) the date that each individual disbursement of $5,000 or more was made. The format for the date must be mm/dd/yyyy. The date of disbursement for reporting purposes is the date the labor organization actually disbursed the money.

Enter in Column (E) the amount of each individual disbursement of $5,000 or more.

Enter the total of all non-itemized disbursements to this payee (that is, all individual disbursements of less than $5,000 each) on the "Total Non-Itemized Transactions with this Payee/Payer" line.

When you have completed entering all of the information for this payee, click the "Save & Calculate" button at the top of the itemization page and the software will add the amounts in Column (E), and enter the sum on the "Total Itemized Transactions with this Payee/Payer" line and complete the "Total of All Transactions with this Payee/Payer for This Schedule" line.

An initial itemization page must be completed for each payee who met the itemization threshold during the reporting period. Only one payee should be reported per page.

To create a new "Political Activities" itemization page for a new payee, click the "Add More Political Activities" button at the top of the page and a new itemization page opens. Follow the instructions above to complete any additional Political Activities itemization pages.

By clicking the Show Payee drop down arrow at the top of the Schedule 26 page, you can select and view all of the "Political Activities" itemization pages you have completed.

As you complete each itemization page, click the "Save & Calculate" button at the top of the page and the total itemized transactions will be added to line 1 of Summary Schedule 26 on the Detailed Summary Page and the total non-itemized transactions will be added to Line 2 of the Summary Schedule.

Enter the total amount of all other transactions relating to this schedule made to other payees during the reporting period on Line 3 of Summary Schedule 26. This is the total from your organization's books of all transactions relating to this schedule made to payees who did not have a single disbursement of $5,000 or more or transactions that aggregated $5,000 or more.

The software adds Lines 1 through 3 and enters the total on Line 4 of Summary Schedule 26 and in Item 53 (Political Activities) of Statement B.

SCHEDULE 27 – LOBBYING

Report the labor organization's direct and indirect disbursements to all entities and individuals during the reporting period associated with dealing with the executive and legislative branches of the Federal, state, and local governments and with independent agencies and staffs to advance the passage or defeat of existing or potential laws or the promulgation or any other action with respect to rules or regulations (including litigation expenses). It does not matter whether the lobbying attempt succeeds.

For all major disbursements in this category:

Enter in Column (A) of an itemization page the full name and business address of the entity or individual to which the disbursement was made. Do not abbreviate the name of the entity or individual. If you do not know and cannot reasonably obtain the full address of the entity or individual, the union may report only the city and state.

Enter in Column (B) the type of business or job classification of the entity or individual to which the union disbursed $5,000 or more for Lobbying during the reporting period, such as lobbyist, marketing firm, think tank, issue advocacy group, printing company, office supplies vendor, legal counsel, etc.

If additional lines are needed to complete Columns (C) through (E) for this Payee, click the "Add More Disbursements for This Payee" button in Column (A) of the itemization page. The software will add lines to the itemization page in increments of ten.

Enter in Column (C) the purpose of each individual disbursement of $5,000 or more, which means a brief statement or description of the reason the disbursement was made.

Examples of adequate descriptions include the following: voter education campaign, fund raising, advocating or opposing legislation (including litigation challenging such legislation) advocating or opposing regulations (including litigation challenging such regulations), etc. The specific legislation, regulation, referendum, etc. should be identified whenever possible. Distinguish between activities in the United States and activities in foreign countries.

Enter in Column (D) the date that each individual disbursement of $5,000 or more was made. The format for the date must be mm/dd/yyyy. The date of disbursement for reporting purposes is the date the labor organization actually disbursed the money.

Enter in Column (E) the amount of each individual disbursement of $5,000 or more.

Enter the total of all non-itemized disbursements to this payee (that is, all individual disbursements of less than $5,000 each) on the "Total Non-Itemized Transactions with this Payee/Payer" line.

When you have completed entering all of the information for this payee, click the "Save & Calculate" button at the top of the itemization page and the software will add the amounts in Column (E), and enter the sum on the "Total Itemized Transactions with this Payee/Payer" line and complete the "Total of All Transactions with this Payee/Payer for This Schedule" line.

An initial itemization page must be completed for each payee who met the itemization threshold during the reporting period. Only one payee should be reported per page.

To create a new "Lobbying" itemization page for a new payee, click the "Add More Lobbying Activities" button at the top of the page and a new itemization page opens. Follow the instructions above to complete any additional Lobbying itemization pages.

By clicking the Show Payee drop down arrow at the top of the Schedule 27 page, you can select and view all of the "Lobbying "itemization pages you have completed.

As you complete each itemization page, click the "Save & Calculate" button at the top of the page and the total itemized transactions will be added to line 1 of Summary Schedule 27 on the Detailed Summary Page and the total non-itemized transactions will be added to Line 2 of the Summary Schedule.

Enter the total amount of all other transactions relating to this schedule made to other payees during the reporting period on Line 3 of Summary Schedule 27. This is the total from your organization's books of all transactions relating to this schedule made to payees who did not have a single disbursement of $5,000 or more or transactions that aggregated $5,000 or more.

The software adds Lines 1 through 3 and enters the total on Line 4 of Summary Schedule 27 and in Item 54 (Lobbying) of Statement B.

SCHEDULE 28 – CONTRIBUTIONS, GIFTS, AND GRANTS

Report the labor organization's direct and indirect disbursements to all entities and individuals during the reporting period associated with contributions, gifts, and grants, other than those listed on Schedules 28, 29, and 33. Include, for example, charitable contributions, contributions to scholarship funds, etc.

For all major disbursements in this category:

Enter in Column (A) of an itemization page the full name and business address of the entity or individual to which the disbursement was made. Do not abbreviate the name of the entity or individual. If you do not know and cannot reasonably obtain the full address of the entity or individual, the union may report only the city and state.

Enter in Column (B) the type of business or job classification of the entity or individual to which the union disbursed $5,000 or more in Contributions, Gifts, and Grants during the reporting period, such as charity, scholarship fund, state or local affiliate, etc.

If additional lines are needed to complete Columns (C) through (E) for this Payee, click the "Add More Disbursements for This Payee" button in Column (A) of the itemization page. The software will add lines to the itemization page in increments of ten.

Enter in Column (C) the purpose of each individual disbursement of $5,000 or more, which means a brief statement or description of the reason the disbursement was made.

Examples of adequate descriptions include the following: medical research, community development, job retraining, education, disaster and relief assistance, athletic and youth sponsorships, etc.

Enter in Column (D) the date that each individual disbursement of $5,000 or more was made. The format for the date must be mm/dd/yyyy. The date of disbursement for reporting purposes is the date the labor organization actually disbursed the money.

Enter in Column (E) the amount of each individual disbursement of $5,000 or more.

Enter the total of all non-itemized disbursements to this payee (that is, all individual disbursements of less than $5,000 each) on the "Total Non-Itemized Transactions with this Payee/Payer" line.

When you have completed entering all of the information for this payee, click the "Save & Calculate" button at the top of the itemization page and the software will add the amounts in Column (E) and enter the sum on the "Total Itemized Transactions with this Payee/Payer" line, and it will complete the "Total of All Transactions with this Payee/Payer for This Schedule" line.

An initial itemization page must be completed for each payee who met the itemization threshold during the reporting period. Only one payee should be reported per page.

To create a new "Contributions, Gifts & Grants" itemization page for a new payee, click the "Add Contributions, Gifts & Grants" button on the top of the page and a new page opens. Follow the instructions above to complete any additional "Contributions, Gifts & Grants" itemization pages.

By clicking the "Show Payee" drop down arrow at the top of the Schedule 28 page, you can select and view all of the "Contributions, Gifts and Grants "itemization pages you have completed.

As you complete each itemization page, click the "Save & Calculate" button at the top of the page and the total itemized transactions will be added to line 1 of Summary Schedule 28 on the Detailed Summary Page and the total non-itemized transactions will be added to Line 2 of the Summary Schedule.

Enter the total amount of all other transactions relating to this schedule made to other payees during the reporting period on Line 5 of Summary Schedule 28. This is the total from your organization's books of all disbursements relating to this schedule made to payees who did not have a single disbursement of $5,000 or more or disbursements that aggregated $5,000or more.

The software totals Lines 1 through 3 and enters that amount on Line 4 of Summary Schedule 28 and in Item 55 (Contributions, Gifts and Grants) of Statement B.

SCHEDULE 29 – GENERAL OVERHEAD

Report the labor organization's direct and indirect disbursements to all entities and individuals during the reporting period associated with general overhead that cannot be allocated to any of the other disbursement categories in Statement B.

Some disbursements for overhead do not support a specific function, so these disbursements should be reported in this schedule. Include support personnel at the labor organization's headquarters, such as building maintenance personnel and security guards, and other overhead costs. Not all support staff should be included in General Overhead. For instance, the salary of an assistant, whenever possible, should be allocated at the same ratio as the person or persons to whom they provide support.

For all major disbursements in this category:

Enter in Column (A) of an Initial Itemization Page the full name and business address of the entity or individual to which the disbursement was made. Do not abbreviate the name of the entity or individual. If you do not know and cannot reasonably obtain the full address of the entity or individual, the union may report only the city and state.

Enter in Column (B) the type of business or job classification of the entity or individual to which the union disbursed $5,000 or more in General Overhead during the reporting period, such as office supplies vendor, landlord, mortgage lender, cleaning firm, security firm, etc.

If additional lines are needed to complete Columns (C) through (E) for this Payee, click the "More Disbursements for This Payee" button in

Column (A) of the itemization page. The software will add lines to the itemization page in increments of ten.

Enter in Column (C) the purpose of the disbursement of $5,000 or more, in sufficient detail to determine why the disbursement cannot be allocated to another schedule.

Enter in Column (D) the date that each individual disbursement of $5,000 or more was made. The format for the date must be mm/dd/yyyy. The date of disbursement for reporting purposes is the date the labor organization actually disbursed the money.

Enter in Column (E) the amount of each individual disbursement of $5,000 or more.

Enter the total of all non-itemized disbursements to this payee (that is, all individual disbursements of less than $5,000 each) on the "Total Non-Itemized Transactions with this Payee/Payer" line.

When you have completed entering all of the information for this payee, click the "Save & Calculate" button at the top of the itemization page and the software will add the amounts in Column (E) and enter the sum on the "Total Itemized Transactions with this Payee/Payer" line, and it will complete the "Total of All Transactions with this Payee/Payer for This Schedule" line.

An itemization page must be completed for each payee who met the itemization threshold during the reporting period. Only one payee should be reported per page.

To create a new "General Overhead" itemization page for a new payee, click the "Add More Overhead" button at the top of the page and a new itemization page opens. Follow the instructions above to complete any additional "General Overhead" itemization pages.

By clicking the "Show Payee" drop down arrow at the top of the Schedule 29 page, you can select and view all of the General Overhead itemization pages you have completed.

As you complete each itemization page, click the "Save & Calculate" button at the top of the page and the total itemized transactions will be added to line 1 of Summary Schedule 29 on the Detailed Summary Page and the total non-itemized transactions will be added to Line 2 of the Summary Schedule.

Enter the total amount of all other transactions relating to this schedule made to other payees during the reporting period on Line 3 of Summary Schedule 29. This is the total from your organization's books of all disbursements relating to this schedule made to payees who did not have a single disbursement of $5,000 or more or disbursements that aggregated $5,000 or more.

The software totals Lines 1 through 3 and enters that amount on Line 4 of Summary Schedule 29 and in Item 56 (General Overhead) of Statement B.

SCHEDULE 30 – UNION ADMINISTRATION

Report the labor organization's direct and indirect disbursements to all entities and individuals during the reporting period associated with union administration. Union administration includes disbursements relating to the nomination and election of union officers, the union's regular membership meetings, intermediate, national and international meetings, union disciplinary proceedings, the administration of trusteeships, and the administration of apprenticeship and member education programs (not including political education which should be reported in Schedule 28).

For all major disbursements in this category:

Enter in Column (A) of an itemization Page the full name and business address of the entity or individual to which the disbursement was made. Do not abbreviate the name of the entity or individual. If you do not know and cannot reasonably obtain the full address of the entity or individual, the union may report only the city and state.

Enter in Column (B) the type of business or job classification of the entity or individual to which the union disbursed $5,000 or more for Union Administration during the reporting period, such as printing company, office supplies vendor, legal counsel, etc.

If additional lines are needed to complete Columns (C) through (E) for this Payee, click the "More Disbursements for This Payee" button in Column (A) of the itemization page. The software will add lines to the itemization page in

increments of ten.

Enter in Column (C) the purpose of the disbursement of $5,000 or more in sufficient detail to determine why the disbursement cannot be allocated to another schedule. For example, printing of election ballots, rental of meeting facilities for a union convention, printing of transcripts of trusteeship hearing, etc.

Enter in Column (D) the date that each individual disbursement of $5,000 or more was made. The format for the date must be mm/dd/yyyy. The date of disbursement for reporting purposes is the date the labor organization actually disbursed the money.

Enter in Column (E) the amount of each individual disbursement of $5,000 or more.

Enter the total of all non-itemized disbursements to this payee (that is, all individual receipts of less than $5,000 each) on the "Total Non-Itemized Transactions with this Payee/Payer" line.

When you have completed entering all of the information for this payee, click the "Save & Calculate" button at the top of the itemization page and the software will add the amounts in Column (E), and enter the sum on the "Total Itemized Transactions with this Payee/Payer" line, and it will complete the "Total of All Transactions with this Payee/Payer for This Schedule" line.

An itemization page must be completed for each payee who met the itemization threshold during the reporting period. Only one payee should be reported per page.

To create a new "Union Administration" itemization page for a new payee, click the "Add More Administration" button at the top of the page and a new itemization page opens. Follow the instructions above to complete any additional "Union Administration" itemization pages.

By clicking the "Show Payee" drop down arrow at the top of the Schedule 30 page, you can select and view all of the Union Administration Itemization pages you have completed.

As you complete each itemization page, click the "Save & Calculate" button at the top of the page and the total itemized transactions will be added to line 1 of Summary Schedule 30 on the Detailed Summary Page and the total non-itemized transactions will be added to Line 2 of the Summary Schedule.

Enter the total amount of all other transactions relating to this schedule made to other payees during the reporting period on Line 3 of Summary Schedule 30. This is the total from your organization's books of all disbursements relating to this schedule made to payees who did not have a single disbursement of $5,000 or more or disbursements that aggregated $5,000 or more.

The software totals Lines 1 through 3 and enters that amount on Line 4 of Summary Schedule 30 and in Item 57 (Union Administration) of Statement B.

SCHEDULE 31 – BENEFITS

[Note: Do not use the Itemization Pages for Schedule 31. Instead use the separate Schedule 31.]

Report the labor organization's direct and indirect disbursements to all entities and individuals during the reporting period associated with direct and indirect benefits for officers, employees, members, and their beneficiaries. Benefit disbursements to be reported in Schedule 31 include, for example, disbursements for life insurance, health insurance, and pensions. Do not include salary bonuses, severance payments, or payments for accrued vacation, which should be reported in Column (D) of Schedule 13 or 14.

Direct benefit disbursements are those made to officers, employees, members, and their beneficiaries from the labor organization's funds. Indirect benefit disbursements are those made from the labor organization's funds to a separate and independent entity, such as a trust or insurance company, which in turn and under certain conditions will pay benefits to the covered individuals. An example of an indirect benefit disbursement is the premium on group life insurance.

If additional lines are required, click the "Add More Benefits" button at the top of the schedule. The software will add lines to the schedule in increments of ten.

Enter in Column (A) the type of benefit, such as pension, welfare, etc.

Enter in Column (B) to whom payment was

made; for example, union members, insurance company, etc. Individual union members and their beneficiaries are not required to be listed by name.

Enter in Column (C) the amount disbursed for each type of benefit.

Click the "Save & Calculate" button at the top of the schedule and the software will enter the total for Column (C) on the "Total of all lines above" line and in Item 58 (Benefits) of Statement B.

STATEMENT A ASSETS AND LIABILITIES

ASSETS

The software pre-fills Columns (A) and (C) (Start of Reporting Period) from your organization's report for the previous fiscal year. If the data is inaccurate, however, it can be edited manually. Be sure to explain any changes in Item 75 (Additional Information).

22. CASH — Enter the total of all the labor organization's cash on hand and on deposit at the start and end of the reporting period in Columns (A) and (B), respectively. Include all cash on hand, such as undeposited cash, checks, and money orders; petty cash; and cash in safe deposit boxes. Cash on deposit includes funds in banks, credit unions, and other financial institutions, such as checking accounts, savings accounts, certificates of deposit, and money market accounts. Also, include any interest credited to the labor organization's account during the reporting period.

NOTE: The checking account balances reported should be obtained from the labor organization's books as reconciled with the balances shown on bank statements.

23. ACCOUNTS RECEIVABLE — Ordinarily, accounts receivable are moneys due for goods sold or services rendered evidenced by notes, statements, invoices, or other written evidence of a present obligation. Enter in Column (A) the total of all gross accounts receivable at the start of the reporting period. The software will enter in Column (B) the total of all gross accounts receivable at the end of the reporting period from Column (B) of Schedule 1 (Accounts Receivable Aging Schedule). If accounts receivable are carried on the labor organization's books at net (gross accounts receivable less the allowance for doubtful accounts), the labor organization may report the allowance for doubtful accounts in Item 75 (Additional Information).

24. LOANS RECEIVABLE — Enter in Column (A) the total of all gross loans receivable at the start of the reporting period, which is also reported in Column (B) of Schedule 2 (Loans Receivable). The software will enter the total of all gross loans receivable at the end of the reporting period in Column (B) from Column (E) of Schedule 2.

25. U.S. TREASURY SECURITIES — Enter the total value of all U.S. Treasury securities as shown on the labor organization's books at the start and end of the reporting period in Columns (C) and (B), respectively. If the value reported is different from the original cost, the original cost must be reported in Item 75 (Additional Information). Other U.S. Government obligations, state and municipal bonds, and foreign government securities must be reported in Schedule 7 (Investments Other Than U.S. Treasury Securities) under "Marketable Securities" and in Item 26 (Investments).

26. INVESTMENTS — Enter in Column (A) the total book value at the start of the reporting period of all investments other than U.S. Treasury securities, which are reported in Item 25 (U.S. Treasury Securities). The software will enter in Column (B) the total reported in Column (D) of Schedule 7 (Investments Other Than U.S. Treasury Securities).

27. FIXED ASSETS — Enter in Column (A) the total value as shown on the labor organization's books at the start of the reporting period of all fixed assets, such as land, buildings, automobiles, and office furniture and equipment. The software will enter in Column (B) the total reported in Column (D) of Schedule 8 (Fixed Assets).

28. OTHER ASSETS — Enter in Column (A) the total value as shown on the labor organization's books at the start of the reporting period of all assets not reported in Items 22 through 27. The software will enter in Column (B) the total reported in Column (B) of Schedule 9 (Other Assets).

29. TOTAL ASSETS — Click the "Save & Calculate" button at the top of Statement A and the software will total Items 22 through 28, Columns (A) and (B), and enter the respective totals in Item 29.

LIABILITIES

30. ACCOUNTS PAYABLE — Ordinarily, accounts payable are those obligations incurred on an open account for goods and services rendered. Enter in Column (C) the total of all gross accounts payable at the start of the reporting period. The software will enter the total of all gross accounts payable at the end of the reporting period in Column (D) from Column (B) of Schedule 10 (Accounts Payable Aging Schedule).

31. LOANS PAYABLE — Enter in Column (C) the total of all gross loans payable at the start of the reporting period, which is also reported in Column (B) of Schedule 11 (Loans Payable). The software will enter the total of all gross loans payable at the end of the reporting period in Column (D) from Column (E) of Schedule 11 (Loans Payable).

32. MORTGAGES PAYABLE — Enter the total amount of the labor organization's obligations that were secured by mortgages or similar liens on real property (land or buildings) at the start and end of the reporting period in Columns (C) and (D), respectively.

33. OTHER LIABILITIES — Enter in Column (C) the total amount as shown on the labor organization's books at the start of the reporting period of all liabilities not reported in Items 30 through 32. The software will enter in Column (D) the total reported in Column (B) of Schedule 12 (Other Liabilities).

34. TOTAL LIABILITIES — Click the "Save & Calculate" button at the top of Statement A and the software will add the amounts in Items 30 through 33, Columns (C) and (D), and enter the respective amounts in Item 34. The software will also complete Item 35 (Net Assets) as explained in the next instruction.

35. NET ASSETS — As indicated in the previous instruction, when Item 34 is completed and the "Save & Calculate" button at the top of Statement A is clicked, the software subtracts Item 34 (Total Liabilities), Column (C) from Item 29 (Total Assets), Column (A) and enters the difference in Item 35, Column (C). The software also subtracts Item 34, Column (D) from Item 29, Column (B) and enters the difference in Item 35, Column (D).

STATEMENT B RECEIPTS AND DISBURSEMENTS

Under Statement B, receipts must be recorded when money is actually received by the labor organization and disbursements must be recorded when money is actually paid out by the labor organization.

The purpose of Statement B is to report the flow of cash in and out of the labor organization during the reporting period. Transfers between separate bank accounts or between special funds of the labor organization, such as vacation or strike funds, do not represent the flow of cash in and out of the labor organization. Therefore, these transfers should not be reported as receipts and disbursements of the labor organization. For example, do not report a transfer of cash from the labor organization's savings account to its checking account. Likewise, the use of funds reported in Item 22 (Cash) of Statement A to purchase certificates of deposit and the redemption of certificates of deposit should not be reported in Statement B.

Since Statement B reports all cash flowing in and out of the labor organization, "netting" is not permitted. "Netting" is the offsetting of receipts against disbursements and reporting only the balance (net) as either a receipt or disbursement. For example, if an officer received $1,000 from the labor organization for convention expenses, used only $800 and returned the remaining $200, the $1,000 disbursement must be reported in Schedule 13 (All Officers and Disbursements to Officers) and the appropriate disbursement Schedule 26 through 32, and the $200 receipt must be reported in Schedule 23 (Other Receipts). It would be incorrect to report only an $800 net disbursement to the officer.

Receipts and disbursements by an agent on behalf of the labor organization are considered receipts and disbursements of the labor organization and must be reported in the same detail as other receipts and disbursements. For example, if the labor organization owns a building managed by a rental agent, the agent's rental receipts and disbursements for expenses must be reported on the labor organization's Form LM-2. Also, if the labor organization's parent body or an intermediate body functions as an agent receiving and disbursing funds of the labor organization to third parties, these receipts

and disbursements must be reported on the labor organization's Form LM-2 LF. For example, if a parent body receives the labor organization's dues and makes disbursements from that money to pay the labor organization's bills (such as payments to an attorney for legal services), those receipts and disbursements must be reported on the labor organization's Form LM-2 LF.

CASH RECEIPTS

36. DUES AND AGENCY FEES – The software will enter the total from Schedule 16 onto Line 4 of Summary Schedule 16 and in Item 36 (Dues and Agency Fees) of Statement B.

37. PER CAPITA TAX —The software will enter the total from Schedule 17 onto Line 4 of Summary Schedule 17 and in Item 37 (Per Capita Tax).

38. FEES, FINES, ASSESSMENTS, WORK PERMITS — The software will enter the total from Schedule 18 onto Line 4 of Summary Schedule 18 and in Item 38 (Fees, Fines, Assessments, Work Permits).

39. SALE OF SUPPLIES — The software will enter the total from Schedule 19 onto Line 4 of Summary Schedule 19 and in Item 39 (Sale of Supplies).

40. INTEREST — Enter your organization's total amount of interest.

41. DIVIDENDS — Enter your organization's total amount of dividends.

42. RENTS — The software will enter the total from Schedule 20 onto Line 4 of Summary Schedule 20 and in Item 41 (Rents).

43. SALE OF INVESTMENTS — The software will enter the total "Net Sales" reported in Column (E) of Schedule 3 (Sale of Investments).

44. SALE OF FIXED ASSETS — The software will enter the total "Net Sales" reported in Column (E) of Schedule 4 (Sale of Fixed Assets).

45. LOANS OBTAINED — The software will enter the total reported in Column (C) of Schedule 11 (Loans Payable).

46. REPAYMENTS OF LOANS MADE — The software will enter the total reported in Column (D)(1) of Schedule 2 (Loans Receivable).

47. ON BEHALF OF AFFILIATES FOR TRANSMITTAL TO THEM — The software will enter the total from Schedule 21 onto Line 4 of Summary Schedule 21 and in Item 41 (On Behalf of Affiliates for Transmittal to Them).

48. FROM MEMBERS FOR DISBURSEMENT ON THEIR BEHALF — The software will enter the total from Schedule 22 onto Line 4 of Summary Schedule 22 and in Item 48 (From Members for Disbursement on Their Behalf).

49. OTHER RECEIPTS — The software will enter the total reported on Summary Schedule 23, Line 4.

50. TOTAL RECEIPTS — Click the "Save & Calculate" button at the top of Statement B and the software will add the amounts in Items 36 through 49 and enter the total in Item 50.

CASH DISBURSEMENTS

51. CONTRACT NEGOTIATION AND ADMINISTRATION – The software will enter the total from Summary Schedule 24, Line 4.

52. ORGANIZING – The software will enter the total from Summary Schedule 25, line 4.

53. POLITICAL ACTIVITIES – The software will enter the total from Summary Schedule 26, Line 4.

54. LOBBYING – The software will enter the total from Summary Schedule 27, Line 4.

55. CONTRIBUTIONS, GIFTS, AND GRANTS – The software will enter the total from Summary Schedule 28, Line 4.

56. GENERAL OVERHEAD – The software will enter the total from Summary Schedule 29, Line 6.

57. UNION ADMINISTRATION – The software will enter the total from Summary Schedule 30, Line 4.

58. BENEFITS – The software will enter the total reported in Column (C.) of Schedule 31 (Benefits).

59. PER CAPITA TAX — Enter your

organization's total amount of per capita tax paid as a condition or requirement of affiliation with your parent national or international union, state and local central bodies, a conference, joint or system board, joint council, federation, or other labor organization.

60. STRIKE BENEFITS – Enter the total amount of all disbursements made to, or on behalf of the members (or agency fee paying nonmembers) of the labor organization, and others, associated with strikes (including recognitional strikes), work stoppages and lockouts during the reporting period.

61. FEES, FINES, ASSESSMENTS, ETC. — Enter the total amount of fees, fines, assessments, and similar disbursements made by the labor organization to a parent body or other labor organization.

62. SUPPLIES FOR RESALE — Enter the labor organization's total disbursements for purchases of supplies such as union logo clothing, lapel pins, bumper stickers, etc. for resale.

63. PURCHASE OF INVESTMENTS — The software will enter the total reported in Column (D) of Schedule 5 (Purchase of Investments).

64. PURCHASE OF FIXED ASSETS – The software will enter the total reported in Column (D) of Schedule 6 (Purchase of Fixed Assets).

65. LOANS MADE — The software will enter the total reported in Column (C) of Schedule 2 (Loans Receivable).

66. REPAYMENT OF LOANS OBTAINED — The software will enter the total reported in Column (D)(1) of Schedule 10 (Loans Payable).

67. TO AFFILIATES OF FUNDS COLLECTED ON THEIR BEHALF — Enter the total disbursements of funds collected on behalf of affiliates by the labor organization. This amount usually is the same as the amount reported in related Item 47 (On Behalf of Affiliates for Transmittal to Them). Any such funds not disbursed by the end of the reporting period are liabilities of the labor organization and must be reported in Schedule 12 (Other Liabilities).

68. ON BEHALF OF INDIVIDUAL MEMBERS — Enter the total disbursements of funds collected from members by the labor organization that were specifically designated by them for disbursement on their behalf. This amount usually is the same as the amount reported in related Item 48 (From Members for Disbursement on Their Behalf). Any such funds not disbursed by the end of the reporting period are liabilities of the labor organization and must be reported in Schedule 12 (Other Liabilities).

69. DIRECT TAXES – Enter all taxes assessed against and paid by your organization, including your organization's FICA taxes as an employer. Do not include disbursements for the transmittal of taxes withheld from the salaries of officers and employees which must be reported in Item 71 (Withholding Taxes and Other Payroll Deductions). Also, do not include indirect taxes, such as sales and excise taxes, for purchases reported in other disbursement items.

70. OFFICERS – The software will enter the total officer disbursements reported in Schedule 13 (All Officers and Disbursements to Officers).

71. EMPLOYEES – The software will enter the total employee disbursements reported in Schedule 14 (Disbursements to Employees).

72. SUBTOTAL — Click the "Save & Calculate" button at the top of Statement B and the software will add the amounts in Items 51 through 69 and enter the subtotal in Item 72.

73. WITHHOLDING TAXES AND OTHER PAYROLL DEDUCTIONS – a. Total Withheld - Enter the total amount of withholding taxes and all other payroll deductions during the reporting period.

b. Total Disbursed - Enter the total amount of withholding taxes and all other payroll deductions that were disbursed by your organization during the reporting period. This includes your organization's total disbursements to Federal, state, county, and municipal government agencies for the transmittal of taxes withheld from the salaries of officers and employees, including officers' and employees' portion of FICA taxes and all disbursements for the transmittal of other payroll deductions.

c. Total Withheld But Not Disbursed – Click the "Save & Calculate" button at the top of

Statement B and the software will subtract Item 73b from Item 73a and enter the difference in Item 71c. The software will also complete Item 74 (Total Disbursements) as explained in the next instruction.

74. TOTAL DISBURSEMENTS – As indicated in the previous instruction, when Item 73c is completed and the "Save & Calculate" button at the top of Statement B is clicked the software subtracts Item 73c from Item 72 and enters the difference in Item 74.

NOTE: *The following worktable may be used to determine that the figures for receipts, disbursements, and cash are correctly reported on the labor organization's Form LM-2 LF:*

F. Cash at Start of Reporting $ Period — Item 22, Column (A)

G. Add: Total Receipts — Item 50 $

H. Total of Lines A and B $

I. Subtract: Total Disbursements $ — Item 74

J. Cash at End of Period $

If Line E does not equal the amount reported in Item 22, Column (B), there is an error in the labor organization's report, which should be corrected.

ADDITIONAL INFORMATION AND SIGNATURES

75. ADDITIONAL INFORMATION — Use Item 75 to provide additional information as indicated on Form LM-2-LF and in these instructions. Enter the number of the item to which the information relates in the Item Number column if the software has not entered the number.

76-77. SIGNATURES — The completed Form LM-2 LF that is filed with OLMS must be signed by both the president and treasurer, or corresponding principal officers, of the labor organization. If an officer other than the president or treasurer performs the duties of the principal executive or principal financial officer, the other officer may sign the report. If an officer other than the president or treasurer signs the report, enter the correct title in the title field next to the signature and explain in Item 75 (Additional Information) why the president or treasurer did not sign the report.

Before signing the form, enter the telephone number at which the signatories conduct official business and the date. Click the Validate button at the top of the form to ensure that the report passes validation.

To sign the form, click the signature spaces provided. Fill in the requested information in the screen that pops up.

XII. LABOR ORGANIZATIONS THAT HAVE CEASED TO EXIST

If a labor organization has gone out of existence as a reporting labor organization, the last president and treasurer or the officials responsible for winding up the affairs of the labor organization must file a terminal financial report for the period from the beginning of the fiscal year to the date of termination. A terminal financial report must be filed if the labor organization has gone out of business by disbanding, merging into another organization, or being merged and consolidated with one or more labor organizations to form a new labor organization. A terminal financial report is not required if the labor organization changed its affiliation but continues to function as a separate reporting labor organization.

The terminal financial report must be filed on Form LM-2 LF if the labor organization filed its previous annual report on Form LM-2 LF and must be submitted within 30 days after the date of termination.

To complete a terminal report on Form LM-2 LF, follow the instructions in Section XI and, in addition:

- Enter the date the labor organization ceased to exist in Item 2 after the word "Through." The format for the date must be mm/dd/yyyy.
- Select Item 3(c) indicating that the labor organization ceased to exist during the reporting period and that this is the labor organization's terminal Form LM-2 LF.
- Provide in Item 75 (Additional Information) a detailed statement of the reason the labor organization ceased to exist. Also report in Item 75 plans for the disposition of the labor organization's cash and other assets, if any (for example, transfer of cash and assets to the parent body). Provide the name and

address of the person or organization that will retain the records of the terminated organization. If the labor organization merged with another labor organization, report that organization's name, address, and 6-digit file number.

Contact the nearest OLMS field office listed below if you have questions about filing a terminal report.

OLMS District Offices

Staff is available to answer questions at OLMS offices in the following areas.

Atlanta-Nashville
Boston-Buffalo
Chicago
Cincinnati-Cleveland
Dallas-New Orleans
Denver-St. Louis
Detroit-Milwaukee
Los Angeles
Philadelphia-Pittsburgh
New York
San Francisco-Seattle
Washington

Consult the OLMS Web site at www.olms.dol.gov or local telephone directory listings under United States Government, Labor Department, Office of Labor-Management Standards, for the address and telephone number of the nearest field office. You may also contact OLMS via email at OLMS-Public@dol.gov.

Copies of labor organization annual financial reports, employer reports, and labor relations consultant reports filed for the year 2000 and after can be viewed and printed at www.unionreports.gov. Copies of reports for the year 1999 and earlier can be ordered through the Web site.

Information about OLMS, including key personnel and telephone numbers, compliance assistance materials, the text of the LMRDA, and related Federal Register and Code of Federal Regulations documents, is also available on the OLMS website at www.olms.dol.gov.

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Part V

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Threatened Species Status With Section 4(d) Rule for Puerto Rican Harlequin Butterfly and Designation of Critical Habitat; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R4–ES–2020–0083; FF09E21000 FXES11110900000 201]

RIN 1018–BE16

Endangered and Threatened Wildlife and Plants; Threatened Species Status With Section 4(d) Rule for Puerto Rican Harlequin Butterfly and Designation of Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 12-month finding on a petition to list the Puerto Rican harlequin butterfly (*Atlantea tulita*), a species from Puerto Rico, as a threatened species and designate critical habitat under the Endangered Species Act of 1973, as amended (Act). After a review of the best available scientific and commercial information, we find that listing the species is warranted. Accordingly, we propose to list the Puerto Rican harlequin butterfly as a threatened species with a rule issued under section 4(d) of the Act (''4(d) rule''). If we finalize this rule as proposed, it would add this species to the List of Endangered and Threatened Wildlife and extend the Act's protections to the species. We also propose to designate critical habitat for the Puerto Rican harlequin butterfly under the Act. In total, approximately 41,266 acres (16,699.8 hectares) in six units in the municipalities of Isabela, Quebradillas, Camuy, Arecibo, Utuado, Florida, Ciales, Maricao, San Germán, Sabana Grande, and Yauco are within the boundaries of the proposed critical habitat designation. We also announce the availability of a draft economic analysis (DEA) of the proposed designation of critical habitat for the Puerto Rican harlequin butterfly.

DATES: We will accept comments received or postmarked on or before December 14, 2020. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. Eastern Time on the closing date. We must receive requests for a public hearing, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by November 27, 2020.

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

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Search box, enter FWS–R4–ES–2020–0083, which is the docket number for this rulemaking. Then, click on the Search button. On the resulting page, in the Search panel on the left side of the screen, under the Document Type heading, check the Proposed Rule box to locate this document. You may submit a comment by clicking on ''Comment Now!''

(2) *By hard copy:* Submit by U.S. mail to: Public Comments Processing, Attn: FWS–R4–ES–2020–0083, U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send comments only by the methods described above. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see Information Requested, below, for more information).

Availability of supporting materials: For the critical habitat designation, the coordinates or plot points or both from which the maps are generated are included in the administrative record and are available at *https://www.fws.gov/southeast/caribbean/* and at *http://www.regulations.gov* under Docket No. FWS–R4–ES–2020–0083. Any additional tools or supporting information that we may develop for the critical habitat designation will also be available at the Service website and field office set out above, and may also be included in the preamble and/or at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Edwin Muñiz, Field Supervisor, U.S. Fish and Wildlife Service, Caribbean Ecological Services Field Office, P.O. Box 491, Road 301 km 5.1, Boquerón, PR 00622; telephone 787–851–7297. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Under the Act, if we determine that a species is an endangered or threatened species throughout all or a significant portion of its range, we are required to promptly publish a proposal in the **Federal Register** and make a determination on our proposal within 1 year. To the maximum extent prudent and determinable, we must designate critical habitat for any species that we determine to be an endangered or threatened species under the Act. Listing a species as an endangered or threatened species and designation of critical habitat can only be completed by issuing a rule.

What this document does.

We propose listing the Puerto Rican harlequin butterfly as a threatened species with a rule issued under section 4(d) of the Act, and we propose designation of critical habitat for the species.

The basis for our action. Under the Act, we may determine that a species is an endangered or threatened species because of any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. We have determined that habitat modification and fragmentation caused by urban development and agriculture, human-induced fires, improperly applied pesticides (insecticides and herbicides), small population size, and climate change are threats to the Puerto Rican harlequin butterfly.

Section 4(a)(3) of the Act requires the Secretary of the Interior (Secretary) to designate critical habitat concurrent with listing to the maximum extent prudent and determinable. Section 3(5)(A) of the Act defines critical habitat as (i) the specific areas within the geographical area occupied by the species, at the time it is listed, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protections; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination by the Secretary that such areas are essential for the conservation of the species. Section 4(b)(2) of the Act states that the Secretary must make the designation on the basis of the best scientific data available and after taking into consideration the economic impact, the impact on national security, and any other relevant impacts of specifying any particular area as critical habitat.

Peer review. In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), and our August 22, 2016, memorandum updating and clarifying the role of peer review of listing actions under the Act, we sought the expert opinions of six appropriate specialists regarding the species status assessment report. We received responses from one specialist, which informed this

proposed rule. The purpose of peer review is to ensure that our listing determinations, critical habitat designations, and 4(d) rules are based on scientifically sound data, assumptions, and analyses. The peer reviewers have expertise in the biology, habitat, and threats to the species.

Because we will consider all comments and information we receive during the comment period, our final determinations may differ from this proposal. Based on the new information we receive (and any comments on that new information), we may conclude that the species is endangered instead of threatened, or we may conclude that the species does not warrant listing as either an endangered species or a threatened species. The new information may also lead us to finalize a 4(d) rule that contains a more narrow set of specific protective measures or additional measures. Finally, the final critical habitat designation may differ from this proposed designation by including additional areas within the historical range of the species, by removing some of the areas in this proposed designation, or by doing both. Such final decisions would be a logical outgrowth of this proposal, as long as we: (1) Base the decisions on the best scientific and commercial data available after considering all of the relevant factors; (2) do not rely on factors Congress has not intended us to consider; and (3) articulate a rational connection between the facts found and the conclusions made, including why we changed our conclusion. As discussed under Information Requested, below, we seek comments from the public related to all of these possible alternatives.

Information Requested

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from other concerned governmental agencies, the scientific community, industry, or any other interested parties concerning this proposed rule.

We particularly seek comments concerning:

(1) The species' biology, range, and population trends, including:

(a) Biological or ecological requirements of the species, including habitat requirements for feeding, breeding, and sheltering;

(b) Genetics and taxonomy;

(c) Historical and current range, including distribution patterns;

(d) Historical and current population levels, and current and projected trends; and

(e) Past and ongoing conservation measures for the species, its habitat, or both.

(2) Factors that may affect the continued existence of the species, which may include habitat modification or destruction, overutilization, disease, predation, the inadequacy of existing regulatory mechanisms, or other natural or manmade factors.

(3) Biological, commercial trade, or other relevant data concerning any threats (or lack thereof) to this species and existing regulations that may be addressing those threats.

(4) Additional information concerning the historical and current status, range, distribution, and population size of this species, including the locations of any additional populations of this species.

(5) Information on regulations that are necessary and advisable to provide for the conservation of the Puerto Rican harlequin butterfly and that the Service can consider in developing a 4(d) rule for the species. In particular, we seek information concerning the extent to which we should include any of the section 9 prohibitions in the 4(d) rule or whether any other forms of take should be excepted from the prohibitions in the 4(d) rule.

(6) The reasons why we should or should not designate habitat as ''critical habitat'' under section 4 of the Act (16 U.S.C. 1531 *et seq.*), including information to inform the following factors that the regulations identify as reasons why designation of critical habitat may be not prudent:

(a) The species is threatened by taking or other human activity and identification of critical habitat can be expected to increase the degree of such threat to the species;

(b) The present or threatened destruction, modification, or curtailment of a species' habitat or range is not a threat to the species, or threats to the species' habitat stem solely from causes that cannot be addressed through management actions resulting from consultations under section 7(a)(2) of the Act;

(c) Areas within the jurisdiction of the United States provide no more than negligible conservation value, if any, for a species occurring primarily outside the jurisdiction of the United States; or

(d) No areas meet the definition of critical habitat.

(7) Whether any of the areas included in this proposed designation of critical should not be included, or whether any additional areas within the historical range of the species should be included, in light of specific information on:

(a) The amount and distribution of Puerto Rican harlequin butterfly habitat;

(b) What areas, that were occupied at the time of listing and that contain the physical or biological features essential to the conservation of the species, should be included in the designation and why;

(c) Special management considerations or protection that may be needed in critical habitat areas we are proposing, including managing for the potential effects of climate change; and

(d) What areas not occupied at the time of listing are essential for the conservation of the species. We particularly seek comments:

(i) Regarding whether occupied areas are adequate for the conservation of the species; and

(ii) Providing specific information regarding whether or not unoccupied areas would, with reasonable certainty, contribute to the conservation of the species and contain at least one physical or biological feature essential to the conservation of the species.

(8) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat.

(9) Any probable economic, national security, or other relevant impacts of designating any area that may be included in the final designation, and the related benefits of including or excluding specific areas.

(10) Information on the extent to which the description of probable economic impacts in the draft economic analysis is a reasonable estimate of the likely economic impacts.

(11) Whether any specific areas we are proposing for critical habitat designation should be considered for exclusion under section 4(b)(2) of the Act, and whether the benefits of potentially excluding any specific area outweigh the benefits of including that area under section 4(b)(2) of the Act.

(12) Whether we could improve or modify our approach to designating critical habitat in any way to provide for greater public participation and understanding, or to better accommodate public concerns and comments.

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include.

Please note that submissions merely stating support for, or opposition to, the action under consideration without providing supporting information, although noted, will not be considered

in making a determination, as section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or a threatened species must be made ''solely on the basis of the best scientific and commercial data available.''

You may submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

If you submit information via *http://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the website. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov.*

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov.*

Public Hearing

Section 4(b)(5) of the Act provides for a public hearing on this proposal, if requested. Requests must be received by the date specified in **DATES**. Such requests must be sent to the address shown in **FOR FURTHER INFORMATION CONTACT**. We will schedule a public hearing on this proposal, if requested, and announce the date, time, and place of the hearing, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing. For the immediate future, we will provide these public hearings using webinars that will be announced on the Service's website, in addition to the **Federal Register**. The use of these virtual public hearings is consistent with our regulations at 50 CFR 424.16(c)(3).

Previous Federal Actions

On February 25, 2009, we were petitioned by Mr. Javier Biaggi-Cabellero to list the Puerto Rican harlequin butterfly as endangered under the Act. On April 26, 2010, we published in the **Federal Register** (75 FR 21568) a document announcing our 90-day finding that the petition presented substantial scientific or commercial information indicating that listing the harlequin butterfly may be warranted. On May 31, 2011, we published in the **Federal Register** (76 FR 31282) a document announcing our 12-month finding that listing the Puerto Rican harlequin butterfly is warranted but precluded by higher priority actions to amend the Lists of Endangered and Threatened Wildlife and Plants. We, therefore, added the Puerto Rican harlequin butterfly to the list of candidate species.

The Puerto Rican harlequin butterfly was included in the annual candidate notices of review (CNORs) we published between 2011 and 2019 (76 FR 66370 October 26, 2011; 77 FR 69994, November 21, 2012; 78 FR 70104, November 22, 2013; 79 FR 72450, December 5, 2014; 80 FR 80584, December 24, 2015; 81 FR 87246, December 2, 2016; 84 FR 54732, October 10, 2019).

On January 15, 2019, the Center for Biological Diversity (CBD) filed a notice of intent to sue due to failure to resubmit the petition finding and subsequently filed suit on March 23, 2019. We are required to review the status of the Puerto Rican harlequin butterfly and resubmit the 12-month finding to the **Federal Register** by September 25, 2020, in accordance with a February 12, 2020, stipulated settlement agreement and subsequent extension granted by the court on August 28, 2020. This document constitutes our resubmitted status review and 12-month finding on the February 25, 2009, petition to list the Puerto Rican harlequin butterfly under the Act, and satisfies that amended provision in the February 2, 2020, stipulated settlement agreement.

Supporting Documents

A species status assessment (SSA) team prepared an SSA report for the Puerto Rican harlequin butterfly. The SSA team was composed of Service biologists, who consulted with other species experts. The SSA report represents a compilation of the best scientific and commercial data available concerning the status of the species, including the impacts of past, present, and future factors (both negative and beneficial) affecting the species. The Service sent the SSA report to six independent peer reviewers and received one response from a peer reviewer at the Fort Worth Zoo who had expertise in Puerto Rican harlequin butterfly biology, habitat, and threats.

I. Proposed Listing Determination

Background

A thorough review of the taxonomy, life history, and ecology of the Puerto Rican harlequin butterfly (*Atlantea tulita*) is presented in the SSA report (version 1.5; Service 2019, pp. 13–22).

The Puerto Rican harlequin butterfly is endemic to Puerto Rico, occurring in the western portion of the island, in the Northern Karst region and in the West-central Volcanic-serpentine region. The life cycle of the Puerto Rican harlequin butterfly includes four distinct anatomical stages: Egg, larva (caterpillar, with several size phases called instars), chrysalis, and imago (butterfly or adult). Completion of the species' life cycle, from egg to butterfly, likely averages 125 days, but can vary based on temperature and humidity. All life stages of the Puerto Rican harlequin butterfly are observed year-round, suggesting that mating and oviposition (egg-laying) may occur at any time during the year.

The Puerto Rican harlequin butterfly has been observed to disperse up to approximately 1 kilometer (km) (0.6 mile (mi)) from one breeding site to another (Monzón 2007, p. 42). Eggs and larvae are found only on *Oplonia spinosa* (prickly bush). First instars feed only on this plant (Carrión-Cabrera 2003, p. 40; Biaggi-Caballero 2009, p. 4). While *O. spinosa* is essential to Puerto Rican harlequin butterfly viability, the plant occurs throughout the species' range and, unless removed for land clearing, is not a limited resource. Active during the daytime, the butterflies feed on the nectar of several tree species (Barber 2018, p. 71) and also drink water. The species has been found only within 1 km (0.6 mi) of a water source (*e.g.,* creek, river, pond, puddle).

Relative to other butterfly species, the Puerto Rican harlequin butterfly is medium-sized. The male butterfly's abdomen is brownish-black on the dorsal side and has orange and brown bands on the ventral side, while the female's abdomen is brownish-black with white bands. Wings of both sexes are largely brownish-black with sub-marginal rows of deep orange spots and beige cells. The caterpillar is dark orange with a brownish-black to black thin line, over a thin intermittent white line along each side of the body from the head to hind end. Each body segment of the caterpillar has several evenly-spaced pairs of spines covered in hairs.

Regulatory and Analytical Framework

Regulatory Framework

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species is an ''endangered species'' or a ''threatened species.'' The Act defines an ''endangered species'' as a species that is in danger of extinction throughout all

or a significant portion of its range, and a ''threatened species'' as a species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act requires that we determine whether any species is an ''endangered species'' or a ''threatened species'' because of any of the following factors:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

These factors represent broad categories of natural or human-caused actions or conditions that could have an effect on a species' continued existence. In evaluating these actions and conditions, we look for those that may have a negative effect on individuals of the species, as well as other actions or conditions that may ameliorate any negative effects or may have positive effects.

We use the term ''threat'' to refer in general to actions or conditions that are known to or are reasonably likely to negatively affect individuals of a species. The term ''threat'' includes actions or conditions that have a direct impact on individuals (direct impacts), as well as those that affect individuals through alteration of their habitat or required resources (stressors). The term ''threat'' may encompass—either together or separately—the source of the action or condition or the action or condition itself.

However, the mere identification of any threat(s) does not necessarily mean that the species meets the statutory definition of an ''endangered species'' or a ''threatened species.'' In determining whether a species meets either definition, we must evaluate all identified threats by considering the expected response by the species, and the effects of the threats—in light of those actions and conditions that will ameliorate the threats—on an individual, population, and species level. We evaluate each threat and its expected effects on the species, then analyze the cumulative effect of all of the threats on the species as a whole. We also consider the cumulative effect of the threats in light of those actions and conditions that will have positive effects on the species, such as any existing regulatory mechanisms or conservation efforts. The Secretary determines whether the species meets the definition of an ''endangered species'' or a ''threatened species'' only after conducting this cumulative analysis and describing the expected effect on the species now and in the foreseeable future.

The Act does not define the term ''foreseeable future,'' which appears in the statutory definition of ''threatened species.'' Our implementing regulations at 50 CFR 424.11(d) set forth a framework for evaluating the foreseeable future on a case-by-case basis. The term ''foreseeable future'' extends only so far into the future as the Service can reasonably determine that both the future threats and the species' responses to those threats are likely. In other words, the foreseeable future is the period of time in which we can make reliable predictions. ''Reliable'' does not mean ''certain''; it means sufficient to provide a reasonable degree of confidence in the prediction. Thus, a prediction is reliable if it is reasonable to depend on it when making decisions.

It is not always possible or necessary to define foreseeable future as a particular number of years. Analysis of the foreseeable future uses the best scientific and commercial data available and should consider the timeframes applicable to the relevant threats and to the species' likely responses to those threats in view of its life-history characteristics. Data that are typically relevant to assessing the species' likely responses to threats include species-specific factors such as lifespan, reproductive rates or productivity, certain behaviors, and other demographic factors.

Analytical Framework

The SSA report documents the results of our comprehensive biological review of the best scientific and commercial data regarding the status of the Puerto Rican harlequin butterfly, including an assessment of the potential threats to the species. The SSA report does not represent a decision by the Service on whether the species should be proposed for listing as an endangered or threatened species under the Act. It does, however, provide the scientific basis that informs our regulatory decisions, which involve the further application of standards within the Act and its implementing regulations and policies. The following is a summary of the key results and conclusions from the SSA report; the full SSA report can be found at *http://www.regulations.gov* under Docket No. FWS–R4–ES–2020–0083.

To assess Puerto Rican harlequin butterfly viability, we used the three conservation biology principles of resiliency, redundancy, and representation (Shaffer and Stein 2000, pp. 306–310). Briefly, resiliency supports the ability of the species to withstand environmental and demographic stochasticity (for example, wet or dry, warm or cold years), redundancy supports the ability of the species to withstand catastrophic events (for example, droughts, large pollution events), and representation supports the ability of the species to adapt over time to long-term changes in the environment (for example, climate changes). In general, the more resilient and redundant a species is and the more representation it has, the more likely it is to sustain populations over time, even under changing environmental conditions. Using these principles, we identified the species' ecological requirements for survival and reproduction at the individual, population, and species levels, and described the beneficial and risk factors influencing the species' viability.

The SSA process can be categorized into three sequential stages. During the first stage, we evaluated the individual species' life-history needs. The next stage involved an assessment of the historical and current condition of the species' demographics and habitat characteristics, including an explanation of how the species arrived at its current condition. The final stage of the SSA involved making predictions about the species' responses to positive and negative environmental and anthropogenic influences. Throughout all of these stages, we used the best available information to characterize viability as the ability of a species to sustain populations in the wild over time. We use this information to inform our regulatory decision.

Summary of Biological Status and Threats

In this discussion, we review the biological condition of the species and its resources, and the threats that influence the species' current and future condition, in order to assess the species' overall viability and the risks to that viability.

Species Needs

Puerto Rican harlequin butterflies need the tender new growth of the host plant, *Oplonia spinosa,* for egg laying by adults and feeding by caterpillars. Adults rely on particular types of woody plants for nectar feeding (at least 24 have been identified as plants upon which they feed (Morales and Estremera 2018, entire)), and a water source within 1 km (0.6 mi) for hydration. Suitable

habitat consists of forests that may vary in stage of succession and age, with 50 to 85 percent canopy cover. The species occurs both in large blocks of undisturbed forest and in forest patches interspersed with agricultural lands, houses, and roads. In areas that are a mix of developed lands and forest, the species needs forested corridors (with *O. spinosa* covering more than 30 percent) connecting breeding sites (Velez 2014, entire).

Current Conditions

Currently, the Puerto Rican harlequin butterfly populations occur in six areas: (1) Isabela, Quebradillas, and Camuy (hereafter referred to as the IQC population); (2) Guajataca; (3) Río Abajo Commonwealth Forest; (4) Río Encantado; (5) Maricao Commonwealth Forest; and (6) Susúa Commonwealth Forest. The IQC, Guajataca, Río Abajo, and Río Encantado populations occur in the northwestern portion of Puerto Rico, in the Northern Karst physiographic region. The Maricao and Susúa populations occur in the west-central portion of the island, in the West-central Volcanic-serpentine physiographic region. A seventh population occurred in Tallaboa, in southwestern Puerto Rico, in the Sothern Karst physiographic region, but has not been observed since 1926 (Biaggi-Caballero and López 2010, p. 4) and is presumed extirpated.

We considered an area to have an extant population if at least two of the four life stages (egg, caterpillar, chrysalis, adult) were observed in the course of repeated surveys conducted in one year. All populations have been observed as recently as 2018. Each of the six populations likely functions as a metapopulation, a discrete population composed of local populations (subpopulations) with individuals that can move infrequently from one subpopulation to another (Hanski and Gilpin 1991, pp. 4, 7).

Population size is an important component of resiliency. However, quantitative population size estimates (statistically derived) for the Puerto Rican harlequin butterfly are not available. There have been several surveys for the species since 2003, although survey methods and objectives have varied. Most data consist of counts of the various life stages during single survey events. In some areas, there are valid reports of species occurrence (by species experts) but no count data. Thus, the estimated abundance of the species per population varies according to the methodology implemented during the survey and the source of information.

We did not assess resiliency of the Guajataca population, which was discovered on July 15, 2019, and thereafter verified by Service biologists, after we had completed our SSA in June 2019 (Rodriquez 2019, pers. comm.). Including the initial discovery of 3 adults, two more visits of the site were made in the summer of 2019. In one of those visits, 43 caterpillars were observed and in the other visit, 9 caterpillars and 3 chrysalides were observed (Pacheco 2020, pers. com.). Habitat metrics that, in combination with relative population size estimates enable estimates of resiliency, have not yet been analyzed. Therefore, in the resiliency discussion below, where we refer to five populations instead of six, we are omitting the Guajataca population.

Because quantitative population size estimates are lacking, we assessed the resiliency for five Puerto Rican harlequin butterfly populations using habitat quality and estimates of relative population size (see Table 1, below) in our SSA report (Service 2019, entire). We weighted a single population metric (relative population size) such that it had equal influence on resiliency as four habitat metrics combined, to yield a numerical score to classify population condition as ''high,'' ''medium,'' or ''low'' for five butterfly populations (see Table 2, below). As such, a population with the highest level of resiliency would garner a score of 24 and a population with the lowest level of resiliency would garner a score of 8.

TABLE 1—HABITAT AND POPULATION METRICS TO SCORE PUERTO RICAN HARLEQUIN BUTTERFLY RESILIENCY

Habitat score	Habitat metrics				Population metric	Population score
	Habitat protection	Connectivity	Vegetation clearing/ pesticide use	Other natural or manmade factors	Population size	
1 point each; 4 points total.	<34 percent protected.	Isolated subpopulations greater than 1 km apart; habitat between populations highly disturbed.	Areas subjected to vegetation clearing (including use of herbicides) and use of pesticides for mosquito control or agriculture.	Subpopulations located in areas more vulnerable to stochastic events (e.g., fire, severe drought, hurricanes).	0–5 adults and <100 larvae observed per ha.	4
2 points each; 8 points total.	34–66 percent protected.	Subpopulations within 1 km of each other; habitat between subpopulations moderately disturbed.	Areas where vegetation clearing and use of herbicides and pesticides occur rarely.	Subpopulations in areas with moderate vulnerability to stochastic events.	6–20 adults and 100–500 larvae observed per ha.	8
3 points each; 12 points total.	>66 percent protected.	Subpopulations within 1 km of each other; undisturbed habitat between subpopulations.	Areas where vegetation clearing and use of herbicides and pesticides are not expected.	Subpopulations located in areas with lower vulnerability to stochastic events.	>20 adults and >500 larvae per ha.	12

TABLE 2—CURRENT POPULATION CONDITION AND RESILIENCY SCORES

Population condition	Resiliency score (habitat metrics + population metric)
Low: None	<11
Moderately Low: Susúa population	11–13
Moderate: IQC, Río Abajo, Río Encantado populations	14–18
Moderately High: Maricao population	19–21
High: None	>21

Of the five Puerto Rican harlequin butterfly populations we assessed for resiliency, one is in moderately high condition, three are in moderate condition, and one is in moderately low condition. The population with moderately high resiliency (Maricao Commonwealth Forest) occurs in land managed for conservation, but in this forest the species occurs at edges of trails and roads where vegetation is frequently removed and herbicides applied. The population in IQC has moderate resiliency because, although it occurs in a region that is among the most heavily developed, it has the largest number of known subpopulations and population size. The populations in Río Abajo Commonwealth Forest and the Río Encantado area have moderate resiliency because they occur partly in habitats managed for conservation that are protected from development and other anthropogenic activities, although both populations are small in size. The Susúa population has moderately low resiliency. While the Susúa Commonwealth Forest is managed for conservation, the species occurs along, or at the edges of, trails where vegetation is frequently removed and herbicides applied, and the population size is very low. Averaging the resiliency of the five populations, we estimated that species resiliency (rangewide) of the Puerto Rican harlequin butterfly is currently moderate.

We assessed redundancy and representation based on the number and spatial arrangement of populations. Current redundancy of the Puerto Rican harlequin butterfly is low. The species is narrow ranging, with all six populations likely to incur similar effects of a stochastic event such as a severe storm or drought. In addition, with the exception of the IQC and Maricao populations, the populations range in size from small to very small. Data to assess genetic diversity and the adaptive capacity it may confer are lacking for the Puerto Rican harlequin butterfly. However, representation appears to be moderate to high because the butterfly occurs in two physiographic provinces and four ecological settings or life zones (Service 2019, p. 25).

Threats

Threats to the Puerto Rican harlequin butterfly include habitat loss and modification by development, mechanical clearing of vegetation, use of pesticides (insecticides and herbicides), human-induced fires, changing climate, and insufficient enforcement of existing regulatory mechanisms. There is evidence that the species has been collected for private entomology collections and unauthorized investigations, but there is no indication that private collecting is a widespread activity.

Urban Development, Habitat Modification and Fragmentation

Habitat loss caused by urban development and agricultural practices is a primary factor influencing the decline of the Puerto Rican harlequin butterfly, and it poses a continuing threat to the species' viability (Barber 2019, p. 2). The species' small range may reflect a remnant population of a once more widely distributed forest dwelling butterfly whose habitat was diminished as forest was converted for other land uses in Puerto Rico (Monzon 2007, pp. 11–13; DRNA 2011, p.1; Carrión-Cabrera 2003, entire). More than 90 percent of native forest in Puerto Rico had been cleared at one point in time (Miller and Lugo 2009, p. 33). The loss or degradation of the species' habitat continues in the present time and results from conversion of native forest for agriculture or urbanization; increased construction and use of highways and roads (vehicle traffic); and land management regimes (vegetation clearance, grazing, and haying).

The IQC population faces significant threats from the existing and imminent destruction, modification, and curtailment of its habitat, especially loss of the host plant, *Oplonia spinosa.* Historically in the IQC area, forests were converted to farms, pastures, or cropland. Currently these forests are being converted to urban developments, roads, recreational parks, and golf courses. Most of the suitable habitat for the species, particularly in the municipality of Quebradillas, is fragmented by residential and tourist development. In rural areas, forest clearing to increase grassland for cattle grazing is a threat to the IQC population. Currently in the IQC, occupied habitat is within an area classified as a ''Zone of Tourist Interest'' (PRPB 2009, website data), which is an area identified as having the potential to be developed to promote tourism due to its natural features and historic value. In 2010, 11 residential development projects were under evaluation around the species' habitat, possibly affecting 72.6 ac (29.4 ha) in Quebradillas (PRPB 2010, website data). By 2019, three houses had been constructed, and another is under construction at Puente Blanco (Pacheco 2019, pers. obs.). While it is uncertain whether these single homes will be constructed in the near future, land owners have removed vegetation from the proposed project sites, affecting the suitability of the habitat for the butterfly (Pacheco, 2019, pers. obs.).

While 99.7 percent of the land where the IQC population occurs is privately owned, the other five populations occupy areas where substantial portions are managed for conservation (see Table 4, below, under Proposed Critical Habitat Designation), ranging from 13 percent in Río Encantado to 77 percent in Río Abajo. Development adjacent to conservation lands in Puerto Rico is increasing. For example, from 2000 to 2010, 90 percent of protected areas showed increases in housing in surrounding lands (Castro-Prieto et al. 2017, p. 477). Housing has increased in the Northern Karst region: in 1980, there were 762,485 housing units, and in 2010, the number of units had increased to 1,101,041 (PRPB 2014, p. 19). New housing and the development of rural communities requires construction of additional infrastructure (*e.g.,* access roads, power and energy service, water service, and communication, among others), compounding habitat loss and fragmentation. Communications infrastructure for cellular phone and related technologies has proliferated in Puerto Rico, including towers for cellular communication, radio, television, military, and governmental purposes. These towers are a threat to plant species, including the host plant *Oplonia spinosa,* that happen to occur on top of mogotes (limestone hills) or mountaintops.

Human-Induced Fire

In addition to land development, human-induced fires are a threat to the Puerto Rican harlequin butterfly. Although fire is not a natural event in Puerto Rico's subtropical dry or moist forests (Robbins et al. 2008, p. 530), which are the only forest types where the Puerto Rican harlequin butterfly occurs, wildfires resulting from natural or anthropogenic origin are growing in size and frequency across Puerto Rico (Brandeis and Woodall 2008, p. 558; Pacheco 2019, pers. obs.). In the Maricao Commonwealth Forest on February 25, 2005, a human-induced fire (likely arson) burned more than 400 acres, with unknown effects on the Puerto Rican harlequin butterfly population (Biaggi-Caballero 2010, p. 10). In Quebradillas, the species' habitat in the area where the largest subpopulation occurs (Puente Blanco) is threatened by fires associated with illicit garbage dumps (DNER, unpublished data 2010, p. 23). In the Susúa Commonwealth Forest, a garbage

dump fire recently burned approximately 25 square meters (269 square feet) of occupied butterfly habitat (Pacheco 2019, pers. obs.). This increase in fires destroys and further limits the availability of habitat for the butterfly. Depending on the scale of the fires and the size of the population where the fires happen, deaths of significant numbers of the butterfly population may occur. For example, if a fire damages a patch of forest such that less than 1 square mile remains, that forest patch will no longer be large enough to sustain a viable subpopulation of the butterfly. In the Susúa fire, although only 25 square meters of forest were destroyed, any killing of individuals would reduce the likelihood of sustained viability of the very small Susúa population. In other areas with a larger population, such as IQC, a similarly small fire would not have a significant impact on viability.

Pesticides, Herbicides, and Other Mechanisms of Vegetation Control

Regardless of the method, efforts to clear vegetation or to eliminate pests are a significant threat to the Puerto Rican harlequin butterfly. Herbicides are used by conservation agencies, public agencies, and private organizations to control vegetation in an array of areas. The use of herbicides is a current threat to the Puerto Rican harlequin butterfly and *Oplonia spinosa,* which is found on the edges of roads and open areas. Herbicides are frequently used to control woody vegetation and weeds along access roads and on private properties. Mechanical removal of vegetation also impacts the Puerto Rican harlequin butterfly. Even in areas used for recreation, *O. spinosa* is trimmed or completely removed along trails and in picnic areas. Homeowners often clear vegetation to have unobstructed views of the landscape.

Although *Oplonia spinosa* is a commonly occurring plant in Puerto Rico, cutting down the plant or killing the plant with herbicides will result in death of eggs or caterpillars that are on it because, even if the plant remains on the ground, it will no longer provide the tender new growth needed for caterpillars to feed. Additionally, clearing *O. spinosa* reduces reproductive output because it reduces the number of viable sites for egg laying, and removing other plant species that are nectar sources likely increases stress on adult butterflies.

Pesticides, which include insecticides and herbicides, are commonly used throughout the range of the Puerto Rican harlequin butterfly, on crop fields, along public roads, and on private properties to control animal and plant pests (Biaggi-Caballero and López 2010, p. 9; Barber 2019, p. 72; Pacheco 2019, pers. obs.). Puerto Rico also has a long history of using pesticides, mostly insecticides, for mosquito control in and around urban areas. Fumigation programs are implemented by local government authorities to control mosquito-borne diseases, but pesticide use guidelines have not been developed for application in areas where the Puerto Rican harlequin butterfly occurs (Biaggi-Caballero and López 2010, p. 9), and toxicity thresholds for the species are unknown. The toxicological effects of pesticides to non-target butterfly species has been documented within the families Nymphalidae (which includes the Puerto Rican harlequin butterfly), Lycaenidae, Papilionidae, Hesperiidae, and Pieridae (Mulé et al. 2017, Salvato 2001, Hoang et al. 2011, Eliazar and Emmel 1991, Hoang and Rand 2015, Bargar 2012, Davis et al. 1991).

Recent and Current Climate

The 2018 U.S. Global Change Research Program (USGCRP, entire) reported that the impacts of climate change are already influencing the environment through more frequent and more intense extreme weather and climate-related events, as well as changes in average climate conditions. Globally, numerous long-term climate changes have been observed, including changes in arctic temperatures and ice, and widespread changes in precipitation amounts, ocean salinity, wind patterns, and aspects of extreme weather, including droughts, heavy precipitation, heat waves, and the intensity of tropical cyclones (IPCC 2007b, p. 2). In addition, the aforementioned vegetation removal and road construction can elevate local temperatures.

Although we do not have information showing Puerto Rican harlequin butterflies harmed due to elevated high temperatures, species such as the Puerto Rican harlequin butterfly, which are dependent on specialized habitat types, are limited in distribution, or have become restricted in their range, are most susceptible to the impacts of climate change. As indicated by studies on other butterflies in the family Nymphalidae (*e.g.,* monarch butterfly (*Danaus plexippus*)), temperature likely has a significant influence on adult and larval metabolism, growth rate, and metamorphosis and may affect seasonal colonization and migrations (Rawlins and Lederhouse 1981, p. 403; Wong et al. 2015, p. 15; Koda and Nakamura 2010, p. 29; Franke et al. 2019, p. 1). These same effects may occur to the Puerto Rican harlequin butterfly and the Puerto Rican monarch subspecies (*Danaus plexippus portoricensis*) which are members of this same family. Exposure to high temperature may cause dehydration in butterflies and is a serious threat because of the butterflies' large surface-to-volume ratio (Pometto 2014, p. 18). Day-fliers, such as the Puerto Rican harlequin butterfly, likely have a high need for water because they are active during the warmest time of the day, from 9 a.m. to 4 p.m. (Pacheco 2019, pers. obs.). Temperature data from the Puerto Rican harlequin butterfly's range suggest the species may be adapted to average daily maximum temperatures ranging from 28 to 32 degrees Celsius (°C) (82 to 90 degrees Fahrenheit (°F)) (Service 2019, p. 56).

Future Conditions

In our SSA, we used the same habitat and population metrics to project future resiliency of the five populations that were known at the time the SSA was completed. We chose 25 years as the time frame for the Puerto Rican harlequin butterfly future conditions analysis because this time frame includes at least 25 generations, thus allowing adequate time to forecast trends in threats, populations, and habitat conditions. We projected the future changes in habitat based on climate projections and by extrapolating land development trends (*e.g.,* housing and urbanization) to 2045, and we estimated changes in population demographics based on the anticipated changes to the condition of the habitat. Unlike in our analysis of current condition, relative population size could not be directly assessed. The habitat metrics are the drivers that may promote changes in future population (unless the current population size is so small that extirpation risk of a single stochastic event is high). Therefore, because there was more certainty in projecting habitat changes than demographic changes, we weighted habitat to have twice as much influence as population on resiliency scores (Service 2019, p. 86).

We projected population resiliency based on three plausible scenarios: Worst case, best case, and most likely. We selected these scenarios to match the most recent climate change scenarios described for Puerto Rico (Henareh Khalyani et al. 2016, entire), and we focused on temperature and precipitation projections, which are important environmental variables for Puerto Rican harlequin butterfly viability. The models in this publication used the mid-high (A2), mid-low (A1B), and low (B1) Intergovernmental Panel

on Climate Change (IPCC) global emissions scenarios, which were precursors to the current IPCC scenarios and encompass ''representative concentration pathways'' (RCPs) 4.5 and 8.5. Based on our future climate projections, temperatures are expected to increase by 2.8 to 3.3 °C (5.04 to 5.94 °F) (best case scenario) to 4.6 to 5.5 °C (8.28 to 9.9 °F) (worst case scenario). In the most likely scenario temperatures would increase 3.9 to 4.6 °C (7.02 to 8.28 °F), resulting in temperatures ranging from approximately 31 °C (88 °F) to 36 °C (97 °F) for all known Puerto Rican harlequin butterfly populations by 2045. This projected increase in maximum temperatures is significantly greater than the current 28 to 32 °C (82 to 90 °F) maximum temperatures to which the butterfly is adapted. Together with temperature increases, the Caribbean is expected to get more frequent and more severe droughts from reduced precipitation and to have an increased evapotranspiration ratio. Although overall precipitation is expected to decrease, the amount of precipitation produced during hurricane events is expected to increase (Herrera et al. 2018, p. 1). Climate models consistently project that significant drying in the U.S. Caribbean region will occur by the middle of the century (USGCRP 2018, p. 820). The reductions in annual precipitation and increases in drying are expected to cause shifts in several life zones in Puerto Rico, with potential loss of subtropical rainforest, moist forest and wet forest, and the appearance of tropical dry forest and very dry forest during this century (Henareh Khalyani et al. 2016, p. 275). Such shifts in life zones would likely further reduce the range of the Puerto Rican harlequin butterfly.

To forecast land development, we used the most recent trend data (2000–2010) for housing and human population growth (Castro-Prieto et al. 2017, pp. 477–479). For the region where each of the five butterfly populations occurs, we projected development trends at current rates, half of current rates, and no growth (representing the worst-case, most-likely, and best-case scenarios, respectively).

Resiliency metric scoring for each scenario and population is presented in our SSA report (Service 2019, pp. 86–90). In summary, three populations (Río Abajo, Río Encantado, and Susúa) are projected to become extirpated in the foreseeable future under both the worst-case and most-likely scenarios (see Table 3, below). Under the best-case scenario, the condition of the Maricao population decreases slightly, from moderately high to moderate, and the Susúa population improves slightly, from low to moderately low, while the condition of the other three populations is unchanged. In Susúa, declines in habitat and the small size of the population increase the likelihood of future extirpation. Given the currently very small populations in Río Abajo and Río Encantado, even small declines in habitat condition are likely to result in extirpation under the worst-case and most-likely scenarios.

TABLE 3—SUMMARY OF PUERTO RICAN HARLEQUIN BUTTERFLY RESILIENCY UNDER THREE FUTURE SCENARIOS

Population	Current	Worst-case scenario	Most-likely scenario	Best-case scenario	Percentage of total population [1]
IQC	Moderate	Low	Low	Moderate	53
Río Abajo	Moderate	Extirpated	Extirpated	Moderate	<5
Río Encantado	Moderate	Extirpated	Extirpated	Moderate	<5
Maricao	Moderately High	Low	Moderately Low	Moderate	21
Susúa	Low	Extirpated	Extirpated	Moderately Low	16

[1] Current estimate, based on counts of adults (Barber 2018).

According to our most-likely and worst-case scenarios, all areas and life zones that currently harbor Puerto Rican harlequin butterfly populations are expected to become drier and warmer, with some (*i.e.,* Río Abajo and Río Encantado) progressing from tropical moist forest to tropical dry forest. Under these scenarios, and with only two remaining populations, the species would suffer a substantial decline in representation (with or without survival of the recently discovered Guajataca population, for which there is insufficient information to forecast its resiliency). Given the predicted extirpation of most (three of five) populations under our most-likely and worst-case scenarios, population redundancy will most likely be reduced in the future. Moreover, the only remaining populations in IQC and Maricao will most likely become smaller, more fragmented, and subject to greater environmental stress.

We note that, by using the SSA framework to guide our analysis of the scientific information documented in the SSA report, we have not only analyzed individual effects on the species, but we have also analyzed their potential cumulative effects. We incorporate the cumulative effects into our SSA analysis when we characterize the current and future condition of the species. Our assessment of the current and future conditions is iterative and encompasses and incorporates the threats individually and cumulatively because it accumulates and evaluates the effects of all the factors that may be influencing the species, including threats and conservation efforts. Because the SSA framework considers not just the presence of the factors, but to what degree they collectively influence risk to the entire species, our assessment integrates the cumulative effects of the factors and replaces a standalone cumulative effects analysis.

Determination of Puerto Rican Harlequin Butterfly's Status

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species meets the definition of an endangered species or a threatened species. The Act defines ''endangered species'' as a species in danger of extinction throughout all or a significant portion of its range, and ''threatened species'' as a species likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act requires that we determine whether a species meets the definition of ''endangered species'' or ''threatened species'' because of any of the following factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory

mechanisms; or (E) other natural or manmade factors affecting its continued existence.

Status Throughout All of Its Range

After evaluating threats to the species and assessing the cumulative effect of the threats under the section 4(a)(1) factors, we determined that the species' distribution and abundance has been reduced across its range, as demonstrated by the extirpation of one of seven known populations. In addition, the best scientific and commercial data available indicate that the species' range and abundance has been reduced because many areas that were once suitable habitat, and therefore likely to have harbored populations, have been developed and altered (deforested and host plant removed or reduced), such that they are no longer habitable.

The condition of one population, discovered approximately one year ago, has not been assessed. Of the other five populations, one currently has moderately high resiliency, three have moderate resiliency, and one has moderately low resiliency. Although the species' range is naturally narrow, the six populations are distributed in two physiographic provinces and four life zones. Given the distance between the six populations and limited dispersal ability of the species, there is virtually no interpopulation connectivity. Three of five populations are single, without multiple subpopulations. The other two populations have 3 subpopulations (Río Encantado) and 13 subpopulations (IQC) that are connected to their closest neighboring subpopulations.

Current and ongoing threats from habitat degradation or loss (Factor A), as well as improper application of pesticides (insecticides and herbicides), human-induced fires, and climate change (Factor E), contribute to the fragmentation and isolation of populations. Regarding existing regulatory mechanisms (Factor D), the DNER designated the Puerto Rican harlequin butterfly as critically endangered under Commonwealth Law No. 241 and Regulation 6766 (DNER 2004, p. 42; DNER 2010, unpublished data, p. 1). Article 2 of Regulation 6766 includes all prohibitions and states that the designation as ''critically endangered'' prohibits any person from taking the species; to ''take'' includes to harm, possess, transport, destroy, import, or export individuals, eggs, or juveniles without previous authorization from the Secretary of the DNER (DNER 2004, p. 28). The DNER has not designated critical habitat for the species under Regulation 6766, but Law No. 241 prohibits modification of any natural habitat without a permit from the DNER Secretary. Law No. 241 and Regulation 6766 could provide adequate protection for the species. Although these laws and regulations are in place, the species' habitat continues to be modified, destroyed, or fragmented by urban development and vegetation clearing (Biaggi-Caballero 2010, p. 9). Because the host plant is considered a common species associated with edges of forested lands, it is not directly protected by Law No. 241 or Regulation 6766. Therefore, despite existing regulatory mechanisms that could ameliorate them, the threats of habitat degradation or loss, the improper application of pesticides, and human-induced fires continue to negatively impact the viability of the Puerto Rican harlequin butterfly.

Neither Factor B (overutilization for commercial, recreational, scientific, or educational purposes) nor Factor C (disease or predation) appears to be a significant threat to the butterfly. Regarding Factor B, an undetermined number of Puerto Rican harlequin butterflies have been collected for scientific purposes and deposited in universities and private collections (Biaggi-Caballero 2011, pers. comm.). However, at present, few researchers are working with the species, and its collection is regulated by the DNER. There is also evidence that the species has been collected for private entomology collections and unauthorized investigations, but there is no indication that this is a widespread activity. Therefore, effects on the species due to collection for commercial, recreational, scientific or educational purposes (Factor B) likely are minimal. Similarly, spiders, ants, lizards, and birds have been observed preying on the Puerto Rican harlequin butterfly (Service 2019, p. 59), but there are no data indicating predation is a significant threat. Likewise, there is no information indicating impacts on the species from disease. Therefore, we do not find Factor C to be a threat to the species.

As noted previously, six populations occur in the presence of current threats and are dispersed across different ecotones (four life zones) and two physiographic regions. Of the five populations assessed in the SSA report, three have moderate resiliency and one has moderately high resiliency. As such, the resiliency, redundancy, and representation of the species are not optimal because a few populations with reduced resiliency could become extirpated due to a catastrophe. However, the resiliency, redundancy, and representation of the species are sufficient to sustain populations if stochastic or catastrophic events occur within its range. It is unlikely that all of the ''moderately'' and ''moderately high'' resiliency populations would simultaneously become extirpated under current conditions. Thus, after assessing the best available information, we conclude that the Puerto Rican harlequin butterfly is not currently in danger of extinction. We, therefore, proceed with determining whether the Puerto Rican harlequin butterfly is a threatened species—likely to become endangered within the foreseeable future—throughout all of its range.

The threats currently acting on the species include habitat loss and degradation, in addition to pesticide use and human-induced fires, all of which contribute to fragmentation and isolation of populations. The best available information indicates that current threats will continue, and the magnitude of the climate change threat will increase in the foreseeable future. We anticipate that this increase in threats from climate change will result in increased daily high temperatures, decreases in annual precipitation, and shifts to drier life zones—which, when coupled with the continuation of current threats, will reduce habitat, further fragment populations, and likely cause extirpations. Two of three of our plausible future scenarios project the extirpation of three of the five assessed populations and a decline in resiliency of the remaining two populations. Thus, we conclude that the Puerto Rican harlequin butterfly is likely to become in danger of extinction within the foreseeable future throughout all of its range.

Status Throughout a Significant Portion of Its Range

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so in the foreseeable future throughout all or a significant portion of its range. In 2014, the Service and the National Marine Fisheries Service (jointly, the Services) developed a ''Policy on Interpretation of the Phrase 'Significant Portion of Its Range' in the Endangered Species Act's Definitions of 'Endangered Species' and 'Threatened Species' '' (2014 Policy; 79 FR 37578, July 1, 2014). However, the court in *Center for Biological Diversity* v. *Everson,* 2020 WL 437289 (D.D.C. January 28, 2020), vacated the aspect of the 2014 Policy that provided that the Services do not undertake an analysis of significant portions of a species' range if the species warrants listing as

threatened throughout all of its range. Therefore, we proceed to evaluating whether the species is endangered in a significant portion of its range—that is, whether there is any portion of the species' range for which both (1) the portion is significant, and (2) the species is in danger of extinction in that portion. Depending on the case, it might be more efficient for us to address the ''significance'' question or the ''status'' question first. We can choose to address either question first. Regardless of which question we address first, if we reach a negative answer with respect to the first question that we address, we do not need to evaluate the other question for that portion of the species' range.

Following the court's holding referenced above, we now consider whether there are any significant portions of the species' range where the species is in danger of extinction now (*i.e.,* endangered). In undertaking this analysis for the Puerto Rican harlequin butterfly, we choose to address the significance question first. After evaluating whether any portions of the species' range are significant, we address the status question, considering information pertaining to the geographic distribution of both the species and the threats that the species faces to determine whether the species is endangered in any of those significant portions of the range.

Throughout the range of the Puerto Rican harlequin butterfly, there are two portions that may be significant: The Northern Karst Region and the West-central Volcanic-serpentine Region. The two regions may be significant because, within each one, the physiography and life zones are unique, and the populations contained in each region may harbor adaptations specific to their regional environment. We therefore consider information pertaining to the geographic distribution of the species and of the threats to the species in both of those significant portions of its range to determine whether the species is endangered in either portion.

The statutory difference between an endangered species and a threatened species is the time horizon in which the species becomes in danger of extinction; an endangered species is in danger of extinction now while a threatened species is not in danger of extinction now but is likely to become so in the foreseeable future. In neither potential significant portion of its range is the Puerto Rican harlequin butterfly in danger of extinction now. Thus, we considered the time horizon for the threats that are driving the Puerto Rican harlequin butterfly to warrant listing as a threatened species throughout all of its range. We examined the following threats: Urban and agricultural development causing habitat loss or degradation, pesticide use (including insecticides and herbicides), human-induced fire, and climate change. While most of these threats are current and are expected to continue, the species will experience the majority of the effects of climate change in the foreseeable future. Collectively these threats will contribute to additional habitat loss, fragmentation of populations, and reductions in population resiliency, including likely extirpation of three populations.

The threat of development and habitat degradation or loss is concentrated in the Northern Karst region, particularly in the areas of Isabela, Quebradillas, and Camuy (IQC) (see *Threats,* above). Although there is a concentration of threats in the IQC, it contains the greatest number of subpopulations and the largest population size among the six Puerto Rican harlequin butterfly populations, so it has moderate resiliency to environmental disturbance. The remainder of the Northern Karst region (portion of the range) includes the Río Abajo and Río Encantado areas, each with a moderately resilient population, and the Guajataca population, whose status is currently undetermined. Given the known current status (moderate resiliency) of the populations in three occupied areas in the Northern Karst portion of the range (IQC, Río Abajo, and Río Encantado), plus an additional area with a population of undetermined status (Guajataca), the species in this portion is not currently in danger of extinction. The species also is not currently in danger of extinction in the West-central Volcanic-serpentine region, because the condition of the population in this portion of the range is sufficient to maintain viability in the presence of ongoing threats. Additional factors reducing the current or near-term likelihood of extirpation in the West-central Volcanic-serpentine region are: (1) The occurrence of the species on lands with large portions managed for conservation, and (2) the absence of intense development (which would itself present a concentration of threats) like that occurring in the Northern Karst region. The two significant portions of the range (the Northern Karst region and the West-central Volcanic-serpentine region) together compose the entire range of the species, and the populations in each of those portions are likely to become in danger of extinction in the foreseeable future. Therefore, the status of the species in each of those portions, as well as rangewide, is threatened.

The best scientific and commercial data available indicate that the time horizon on which the species' response to the combined threats is likely to affect the viability of the species is the foreseeable future. In addition, the best scientific and commercial data available do not indicate that any of the threats to the species and the species' responses to those threats are more immediate in any portions of the species' range. Therefore, we determine that the Puerto Rican harlequin butterfly is not in danger of extinction now in any portion of its range, but that the species is likely to become in danger of extinction within the foreseeable future throughout all of its range. This analysis is consistent with the courts' holdings in *Desert Survivors* v. *Department of the Interior,* No. 16–cv–01165–JCS, 2018 WL 4053447 (N.D. Cal. Aug. 24, 2018), and *Center for Biological Diversity* v. *Jewell,* 248 F. Supp. 3d, 946, 959 (D. Ariz. 2017).

Determination of Status

Our review of the best available scientific and commercial information indicates that the Puerto Rican harlequin butterfly meets the definition of a threatened species. Therefore, we propose to list the Puerto Rican harlequin butterfly as a threatened species in accordance with sections 3(20) and 4(a)(1) of the Act.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened species under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness, and conservation by Federal, State, Tribal, and local agencies, private organizations, and individuals. The Act encourages cooperation with the States and other countries and calls for recovery actions to be carried out for listed species. The protection required by Federal agencies and the prohibitions against certain activities are discussed, in part, below.

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. Section 4(f) of the Act calls for the Service to develop and implement recovery plans for the conservation of endangered and threatened species. The recovery

planning process involves the identification of actions that are necessary to halt or reverse the species' decline by addressing the threats to its survival and recovery. The goal of this process is to restore listed species to a point where—as secure, self-sustaining, and functioning components of their ecosystems—they no longer meet the definition of an endangered species or a threatened species.

Recovery planning consists of preparing draft and final recovery plans, beginning with the development of a recovery outline and making it available to the public within 30 days of a final listing determination. The recovery outline guides the immediate implementation of urgent recovery actions and describes the process to be used to develop a recovery plan. Revisions of the plan may be done to address continuing or new threats to the species, as new substantive information becomes available. The recovery plan also identifies recovery criteria for review of when a species may be ready for reclassification from endangered to threatened (''downlisting'') or removal from protected status (''delisting''), and methods for monitoring recovery progress. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. Recovery teams (composed of species experts, Federal and State agencies, nongovernmental organizations, and stakeholders) are often established to develop recovery plans. When completed, the recovery outline, draft recovery plan, and the final recovery plan will be available on our website (*http://www.fws.gov/endangered*).

Implementation of recovery actions generally requires the participation of a broad range of partners, including other Federal agencies, States, Commonwealths, Tribes, nongovernmental organizations, businesses, and private landowners. Examples of recovery actions include habitat restoration (*e.g.,* restoration of native vegetation), research, captive propagation and reintroduction, and outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands because their range may occur primarily or solely on non-Federal lands. To achieve recovery of these species requires cooperative conservation efforts on private, State, and Tribal lands.

If this species is listed, funding for recovery actions will be available from a variety of sources, including Federal budgets, State programs, and cost-share grants for non-Federal landowners, the academic community, and nongovernmental organizations. In addition, pursuant to section 6 of the Act, Puerto Rico would be eligible for Federal funds to implement management actions that promote the protection or recovery of the Puerto Rican harlequin butterfly. Information on our grant programs that are available to aid species recovery can be found at: *http://www.fws.gov/grants.*

Although the Puerto Rican harlequin butterfly is only proposed for listing under the Act at this time, please let us know if you are interested in participating in recovery efforts for this species. Additionally, we invite you to submit any new information on this species whenever it becomes available and any information you may have for recovery planning purposes (see **FOR FURTHER INFORMATION CONTACT**).

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as an endangered or threatened species and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service.

Federal agency actions within the species' habitat that may require conference or consultation or both as described in the preceding paragraph include management and any other landscape-altering activities funded or authorized by the U.S. Fish and Wildlife Service, Natural Resources Conservation Service, Animal and Plant Health Inspection Service, Federal Highway Administration, and Federal Communications Commission.

It is our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of a proposed listing on proposed and ongoing activities within the range of the species proposed for listing. The discussion below regarding protective regulations under section 4(d) of the Act complies with our policy (see Provisions of the Proposed 4(d) Rule).

II. Proposed Rule Issued Under Section 4(d) of the Act

Background

Section 4(d) of the Act contains two sentences. The first sentence states that the Secretary shall issue such regulations as he deems necessary and advisable to provide for the conservation of species listed as threatened. The U.S. Supreme Court has noted that statutory language like ''necessary and advisable'' demonstrates a large degree of deference to the agency (see *Webster* v. *Doe,* 486 U.S. 592 (1988)). Conservation is defined in the Act to mean the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Additionally, the second sentence of section 4(d) of the Act states that the Secretary may by regulation prohibit with respect to any threatened species any act prohibited under section 9(a)(1), in the case of fish or wildlife, or section 9(a)(2), in the case of plants. Thus, the combination of the two sentences of section 4(d) provides the Secretary with wide latitude of discretion to select and promulgate appropriate regulations tailored to the specific conservation needs of the threatened species. The second sentence grants particularly broad discretion to the Service when adopting the prohibitions under section 9.

The courts have recognized the extent of the Secretary's discretion under this standard to develop rules that are appropriate for the conservation of a particular species. For example, courts have upheld rules developed under section 4(d) as a valid exercise of agency authority where they prohibited take of threatened wildlife, or include a limited taking prohibition (see *Alsea Valley Alliance* v. *Lautenbacher,* 2007 U.S. Dist. Lexis 60203 (D. Or. 2007); *Washington Environmental Council* v. *National Marine Fisheries Service,* 2002 U.S. Dist. Lexis 5432 (W.D. Wash. 2002)). Courts have also upheld 4(d) rules that do not address all of the threats a species faces (see *State of Louisiana* v. *Verity,* 853 F.2d 322 (5th Cir. 1988)). As noted in the legislative history when the Act was initially enacted, ''once an animal is on the threatened list, the Secretary has an

almost infinite number of options available to him with regard to the permitted activities for those species. He may, for example, permit taking, but not importation of such species, or he may choose to forbid both taking and importation but allow the transportation of such species'' (H.R. Rep. No. 412, 93rd Cong., 1st Sess. 1973).

Exercising this authority under section 4(d), we have developed a proposed rule that is designed to address the Puerto Rican harlequin butterfly's specific threats and conservation needs. Although the statute does not require us to make a ''necessary and advisable'' finding with respect to the adoption of specific prohibitions under section 9, we find that this rule as a whole satisfies the requirement in section 4(d) of the Act to issue regulations deemed necessary and advisable to provide for the conservation of the Puerto Rican harlequin butterfly. As discussed above under Summary of Biological Status and Threats, we have concluded that the Puerto Rican harlequin butterfly is likely to become in danger of extinction within the foreseeable future primarily due to urban development, habitat modification and fragmentation, human-induced fire, pesticide use (including insecticides and herbicides), and climate change. The provisions of this proposed 4(d) rule would promote conservation of the Puerto Rican harlequin butterfly by encouraging management of the landscape in ways that meet both land management considerations and the species' conservation needs. The provisions of this proposed rule are one of many tools that we would use to promote the conservation of the Puerto Rican harlequin butterfly. This proposed 4(d) rule would apply only if and when we make final the listing of the Puerto Rican harlequin butterfly as a threatened species.

Provisions of the Proposed 4(d) Rule

This proposed 4(d) rule would provide for the conservation of the Puerto Rican harlequin butterfly by prohibiting the following activities, except as otherwise authorized or permitted: Importing or exporting; take; possession and other acts with unlawfully taken specimens; delivering, receiving, transporting, or shipping in interstate or foreign commerce in the course of commercial activity; or selling or offering for sale in interstate or foreign commerce.

Threats to the species are noted above in this section and described in detail under Summary of Biological Status and Threats. These threats are expected to affect the species in the foreseeable future by fragmenting and reducing habitat, the critical component of which is *Oplonia spinosa,* the sole host plant species for egg laying and larval feeding.

A range of activities have the potential to affect the Puerto Rican harlequin butterfly. In particular, activities that remove the host plant or clear forested land can harm or kill Puerto Rican harlequin butterflies, reducing population size and viability. There is evidence that the butterfly has been taken for private collections (Service 2019, p. 45), although there is no indication that this is a widespread activity or is a major threat. Therefore, regulating activities that remove host plant or forested habitat—including construction or maintenance of roads or trails, buildings, utility corridors, or communications towers—would help preserve remaining populations by slowing the butterfly's rate of decline, and decrease synergistic, negative effects from other threats.

Under the Act, ''take'' means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. Some of these provisions have been further defined in regulations at 50 CFR 17.3. Take can result knowingly or otherwise, by direct and indirect impacts, intentionally or incidentally. Regulating incidental and intentional take would help the species maintain population size and resiliency.

We may issue permits to carry out otherwise prohibited activities, including those described above, involving threatened wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.32. With regard to threatened wildlife, a permit may be issued for the following purposes: For scientific purposes, to enhance propagation or survival, for economic hardship, for zoological exhibition, for educational purposes, for incidental taking, or for special purposes consistent with the purposes of the Act.

There are also certain statutory exceptions from the prohibitions, which are found in sections 9 and 10 of the Act, and other standard exceptions from the prohibitions, which are found in our regulations at 50 CFR part 17, subparts C and D. Below, we describe these exceptions to the prohibitions that we are proposing for the Puerto Rican harlequin butterfly.

Under our proposed 4(d) rule, take of the Puerto Rican harlequin butterfly would not be prohibited in the following instances:

- Take is authorized by a permit issued in accordance with 50 CFR 17.32;
- Take results from actions of an employee or agent of one of the Services or of a State conservation agency that is operating under a conservation program pursuant to the terms of a cooperative agreement with the Service;
- Take is in defense of human life; and
- Take results from actions taken by representatives of one of the Services or of a State conservation agency to aid a sick specimen or to dispose of, salvage, or remove a dead specimen that is reported to the Office of Law Enforcement.

We also propose to allow Federal and State law enforcement officers to possess, deliver, carry, transport or ship any Puerto Rican harlequin butterflies taken in violation of the Act as necessary in performing their official duties.

In part, these exceptions to the prohibitions recognize the special and unique relationship with our Commonwealth natural resource agency partners in contributing to conservation of listed species. Commonwealth agencies often possess scientific data and valuable expertise on the status and distribution of endangered, threatened, and candidate species of wildlife and plants. Commonwealth agencies, because of their authorities and their close working relationships with local governments and landowners, are in a unique position to assist the Services in implementing all aspects of the Act. In this regard, section 6 of the Act provides that the Service shall cooperate to the maximum extent practicable with the Commonwealth in carrying out programs authorized by the Act. Therefore, any qualified employee or agent of a Commonwealth conservation agency that is a party to a cooperative agreement with the Service in accordance with section 6(c) of the Act, who is designated by his or her agency for such purposes, would be able to conduct activities designed to conserve the Puerto Rican harlequin butterfly that may result in otherwise prohibited take for wildlife without additional authorization.

In addition to the exceptions to the prohibitions described above, we propose certain species-specific exceptions to the prohibitions to provide for the conservation of the Puerto Rican harlequin butterfly. Under our proposed 4(d) rule, take of the Puerto Rican harlequin butterfly that is incidental to the following otherwise lawful activities would not be prohibited:

(1) Normal agricultural practices, including pesticide use, which are carried out in accordance with any

existing regulations, permit and label requirements, and best management practices, as long as the practices do not include clearing or disturbing forest or *Oplonia spinosa* to create or expand agricultural areas, or applying pesticides illegally (*i.e.,* in violation of label restrictions) in or adjacent to habitat known to be occupied by Puerto Rican harlequin butterfly that may result in death or injury of adults, eggs, larvae, or pupae.

(2) Normal residential and urban activities, such as mowing, weeding, edging, and fertilizing.

(3) Maintenance of recreational trails in Commonwealth Forests by mechanically clearing vegetation, only when approved by or under the auspices of the DNER, or conducted on lands established by private organizations or individuals solely for conservation or recreation.

(4) Habitat management or restoration activities expected to provide a benefit to Puerto Rican harlequin butterfly or other sensitive species, including removal of nonnative, invasive plants. These activities must be coordinated with and reported to the Service in writing and approved the first time an individual or agency undertakes them.

(5) Projects requiring removal of the host plant to access and remove illicit garbage dumps that are potential sources of intentionally set fires, provided such projects are conducted in coordination with and reported to the Service.

(6) Fruit fly trapping by the U.S. Department of Agriculture's Animal and Plant Health Inspection Service, provided trapping activities do not disturb the host plant.

These activities, on rare occasion, may result in a limited amount of take. For example, a branch of *Oplonia spinosa* with butterfly eggs may be trimmed off the plant during lawn maintenance, or a plant with caterpillars on it might get trampled during habitat restoration. While such actions would affect individuals of the species, effects to populations would be minimal. Additionally, habitat restoration activities and garbage dump removal, which may cause limited take, would contribute to conservation of Puerto Rican harlequin butterfly populations by expanding habitat suitable for the species.

Based on the best available information, the following activities may potentially result in violation of section 9 of the Act; this list is not comprehensive:

(1) Unauthorized collecting, handling, possessing, selling, delivering, carrying, or transporting of the species (adults, eggs, caterpillars, or chrysalises), including transport across State lines and international boundaries, except for properly documented antique specimens of these taxa at least 100 years old, as defined by section 10(h)(1) of the Act;

(2) Unauthorized modification, removal, or destruction of *Oplonia spinosa* plants that are occupied by the Puerto Rican harlequin butterfly and that may result in death or injury of adults, eggs, larvae, or pupae; and

(3) Illegal pesticide applications (*i.e.,* in violation of label restrictions) in or adjacent to (due to spray drift concerns) habitat known to be occupied by Puerto Rican harlequin butterfly that may result in death or injury of adults, eggs, larvae, or pupae.

Questions regarding whether specific activities would constitute a violation of section 9 of the Act should be directed to the Caribbean Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Nothing in this proposed 4(d) rule would change in any way the recovery planning provisions of section 4(f) of the Act, the consultation requirements under section 7 of the Act, or the ability of the Service to enter into partnerships for the management and protection of the Puerto Rican harlequin butterfly. However, interagency cooperation may be further streamlined through planned programmatic consultations for the species between Federal agencies and the Service, where appropriate. We ask the public, particularly Commonwealth agencies and other interested stakeholders that may be affected by the proposed 4(d) rule, to provide comments and suggestions regarding additional guidance and methods that the Service could provide or use, respectively, to streamline the implementation of this proposed 4(d) rule (see Information Requested, above).

III. Critical Habitat

Background

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(a) Essential to the conservation of the species, and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Our regulations at 50 CFR 424.02 define the geographical area occupied by the species as an area that may generally be delineated around species' occurrences, as determined by the Secretary (*i.e.,* range). Such areas may include those areas used throughout all or part of the species' life cycle, even if not used on a regular basis (*e.g.,* migratory corridors, seasonal habitats, and habitats used periodically, but not solely by vagrant individuals).

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Designation also does not allow the government or public to access private lands, nor does designation require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the Federal agency would be required to consult with the Service under section 7(a)(2) of the Act. However, even if the Service were to conclude that the proposed activity would result in destruction or adverse modification of the critical habitat, the Federal action agency and the landowner are not required to abandon the proposed activity, or to restore or recover the species; instead, they must implement ''reasonable and prudent alternatives'' to avoid destruction or adverse modification of critical habitat.

Under the first prong of the Act's definition of critical habitat, areas within the geographical area occupied by the species at the time it was listed are included in a critical habitat designation if they contain physical or biological features (1) which are essential to the conservation of the species and (2) which may require special management considerations or protection. For these areas, critical habitat designations identify, to the extent known using the best scientific data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat). In identifying those physical or biological features that occur in specific occupied areas, we focus on the specific features that are essential to support the life-history needs of the species, including, but not limited to, water characteristics, soil type, geological features, prey, vegetation, symbiotic species, or other features. A feature may be a single habitat characteristic or a more complex combination of habitat characteristics. Features may include habitat characteristics that support ephemeral or dynamic habitat conditions. Features may also be expressed in terms relating to principles of conservation biology, such as patch size, distribution distances, and connectivity.

Under the second prong of the Act's definition of critical habitat, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. When designating critical habitat, the Secretary will first evaluate areas occupied by the species. The Secretary will only consider unoccupied areas to be essential where a critical habitat designation limited to geographical areas occupied by the species would be inadequate to ensure the conservation of the species. In addition, for an unoccupied area to be considered essential, the Secretary must determine that there is a reasonable certainty both that the area will contribute to the conservation of the species and that the area contains one or more of those physical or biological features essential to the conservation of the species. This requirement is contained in the regulations at 50 CFR 424.12(b)(2) and helps to ensure that all unoccupied areas that are included in a critical habitat designation constitute habitat for the species, in accordance with the recent Supreme Court opinion in *Weyerhaeuser Co.* v. *U.S. Fish & Wildlife Serv.,* 586 U.S. ____ (November 27, 2018).

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information from the SSA report and information developed during the listing process for the species. Additional information sources may include any generalized conservation strategy, criteria, or outline that may have been developed for the species; the recovery plan for the species; articles in peer-reviewed journals; conservation plans developed by Commonwealths and municipalities; scientific status surveys and studies; biological assessments; other unpublished materials; or experts' opinions or personal knowledge.

Habitat is dynamic, and species may move from one area to another over time. We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be needed for recovery of the species. Areas that are important to the conservation of the species, both inside and outside the critical habitat designation, will continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act; (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to ensure their actions are not likely to jeopardize the continued existence of any endangered or threatened species; and (3) the prohibitions found in section 9 of the Act. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. These protections and conservation tools will continue to contribute to recovery of this species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available at the time of these planning efforts calls for a different outcome.

Prudency Determination

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary shall designate critical habitat at the time the species is determined to be an endangered or threatened species. Our regulations (50 CFR 424.12(a)(1)) state that the Secretary may, but is not required to, determine that a designation would not be prudent in the following circumstances:

(i) The species is threatened by taking or other human activity and identification of critical habitat can be expected to increase the degree of such threat to the species;

(ii) The present or threatened destruction, modification, or curtailment of a species' habitat or range is not a threat to the species, or threats to the species' habitat stem solely from causes that cannot be addressed through management actions resulting from consultations under section 7(a)(2) of the Act;

(iii) Areas within the jurisdiction of the United States provide no more than negligible conservation value, if any, for a species occurring primarily outside the jurisdiction of the United States;

(iv) No areas meet the definition of critical habitat; or

(v) The Secretary otherwise determines that designation of critical habitat would not be prudent based on the best scientific data available.

We have concluded that none of those five circumstances is present with respect to the Puerto Rican harlequin butterfly. As discussed earlier in this document, there is currently no significant imminent threat of collection or vandalism identified under Factor B for this species, and identification and mapping of critical habitat is not expected to initiate any such threat. In our SSA and proposed listing determination for the Puerto Rican harlequin butterfly, we determined that

the present or threatened destruction, modification, or curtailment of habitat or range is a threat to the Puerto Rican harlequin butterfly and that threat in some way can be addressed by section 7(a)(2) consultation measures. The species occurs wholly in the jurisdiction of the United States, and we are able to identify areas that meet the definition of critical habitat. Finally, there are no other circumstances the Secretary has identified for which this designation of critical habitat would be not prudent. Therefore, because none of the circumstances enumerated in our regulations at 50 CFR 424.12(a)(1) have been met, we have determined that the designation of critical habitat is prudent for the Puerto Rican harlequin butterfly.

Critical Habitat Determinability

Having determined that designation is prudent, under section 4(a)(3) of the Act we must find whether critical habitat for the Puerto Rican harlequin butterfly is determinable. Our regulations at 50 CFR 424.12(a)(2) state that critical habitat is not determinable when one or both of the following situations exist:

(i) Data sufficient to perform required analyses are lacking, or

(ii) The biological needs of the species are not sufficiently well known to identify any area that meets the definition of ''critical habitat.''

When critical habitat is not determinable, the Act allows the Service an additional year to publish a critical habitat designation (16 U.S.C. 1533(b)(6)(C)(ii)).

We reviewed the available information pertaining to the biological needs of the species and habitat characteristics where this species is located and conclude that the designation of critical habitat is determinable for the Puerto Rican harlequin butterfly.

Physical or Biological Features Essential to the Conservation of the Species

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12(b), in determining which areas we will designate as critical habitat from within the geographical area occupied by the species at the time of listing, we consider the physical or biological features that are essential to the conservation of the species and that may require special management considerations or protection. The regulations at 50 CFR 424.02 define ''physical or biological features essential to the conservation of the species'' as the features that occur in specific areas and that are essential to support the life-history needs of the species, including, but not limited to, water characteristics, soil type, geological features, sites, prey, vegetation, symbiotic species, or other features. A feature may be a single habitat characteristic or a more complex combination of habitat characteristics. Features may include habitat characteristics that support ephemeral or dynamic habitat conditions. Features may also be expressed in terms relating to principles of conservation biology, such as patch size, distribution distances, and connectivity. For example, physical features essential to the conservation of the species might include gravel of a particular size required for spawning, alkaline soil for seed germination, protective cover for migration, or susceptibility to flooding or fire that maintains necessary early-successional habitat characteristics. Biological features might include prey species, forage grasses, specific kinds or ages of trees for roosting or nesting, symbiotic fungi, or a particular level of nonnative species consistent with conservation needs of the listed species. The features may also be combinations of habitat characteristics and may encompass the relationship between characteristics or the necessary amount of a characteristic essential to support the life history of the species.

In considering whether features are essential to the conservation of the species, the Service may consider an appropriate quality, quantity, and spatial and temporal arrangement of habitat characteristics in the context of the life-history needs, condition, and status of the species. These characteristics include, but are not limited to, space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, or rearing (or development) of offspring; and habitats that are protected from disturbance.

To identify the specific physical and biological needs of the Puerto Rican harlequin butterfly, we evaluated current conditions at locations where the species exists and best information available on the species' biology. We derive the physical features required for the species from the general description of the ecological regions where the species occurs, models for climatic boundaries that characterize the areas where the species occurs, and the forest types inhabited by the species (Service 2019, entire). A crucial biological feature for the Puerto Rican harlequin butterfly is the host plant (*Oplonia spinosa*), which is the only species upon which it lays its eggs and then feeds on as a caterpillar (Service 2019, pp. 17–20).

As described earlier in this document (see Summary of Biological Status and Threats), the Puerto Rican harlequin butterfly is known from four populations in the Northern Karst region and two populations in the West-central Volcanic-serpentine region of Puerto Rico. These two ecological regions are delineated by their geology. Soils in the Northern Karst region are derived from limestone, and soils in the West-central Volcanic serpentine region are derived from serpentine rock (Miller and Lugo 2009, p. 23). Physical properties specific to each substrate foster the development of unique natural areas that harbor distinctive forest types and wildlife habitat, which, in turn, promote high levels of biological diversity (Cedeño and Breckon 1996, p. 348; Lugo et al. 2001, p. 6).

Across these two regions, the Puerto Rican harlequin butterfly inhabits four life zones: (1) Subtropical moist forest on limestone-derived soil; (2) subtropical wet forest on limestone-derived soil; (3) subtropical wet forest on serpentine-derived soil; and (4) subtropical moist forest on serpentine-derived soil (Ewel and Whitmore 1973, p. 25; Helmer et al. 2002, p. 169). These life zones are distinguished by mean annual precipitation and mean annual temperature (Holdridge 1947, entire; Ewel and Whitmore 1973, p. 4). Regardless of life zone and forest type, the patches of native forest that the Puerto Rican harlequin butterfly occupies are characterized by canopy cover ranging from 50 to 85 percent, an average canopy height of 6 meters (m) (20 feet (ft)), and the host plant covering more than 30 percent of the understory (Vargas 2019, entire).

Adults of the Puerto Rican harlequin butterfly have been observed feeding on flowers of several native trees (see Summary of Biological Status and Threats, above, and 76 FR 31282, May 31, 2011). All the sites where the Puerto Rican harlequin butterfly occurs have a close (within a 1-km (0.6-mi) radius) water source (*e.g.,* creek, river, pond, puddle, etc.). Suitable sites must contain the right temperature range that supports the biological needs of the Puerto Rican harlequin butterfly. Average daily maximum temperatures where the species occurs range from 28 to 32 °C (82 to 90 °F), suggesting that the species' ecological niche has evolved within this range of upper thermal tolerance (Service 2019, p. 80). Moreover, exposure to high temperature may cause dehydration in adults, which is a serious threat due to their large

surface-to-volume ratio (Pometto 2014, p. 18). As a day-flier, the Puerto Rican harlequin butterfly likely has a high need for water because the species is active during the warmest time of the day, from 9 a.m. to 4 p.m. (Service 2019, p. 55).

The capacity for Puerto Rican harlequin butterfly populations to grow and expand is limited by the quantity and quality of the habitat and the connectivity among habitat patches. Healthy Puerto Rican harlequin butterfly populations rely on discrete high-quality habitat patches as small as 1 ac (0.4 ha), separated by less than 1 km (0.6 mi), and embedded in a landscape with few barriers for dispersal of the species (Monzón 2007, p. 53; Morales and Estremera 2018, p. 1; Barber 2019, p. 1). Populations in patches this small likely rely on the existence of populations in nearby patches to ensure their long-term persistence.

Connectivity must be adequate not only for an individual's foraging needs, but to connect individual butterflies to a larger interbreeding population, enhancing subpopulation resilience through both the rescue effect and maintenance of genetic diversity. Moreover, forest connectivity among suitable patches and water sources is essential for dispersal. Three factors are likely essential to ensure a healthy interaction among populations: Short distances between patches, high-quality habitat, and few or no dispersal barriers. The Puerto Rican harlequin butterfly may not typically move greater than 1 km (0.6 mi) between habitat patches separated by structurally similar natural habitats, or through a mosaic of disturbed habitat including houses, roads, and grass-dominated fields or pasture. Hence, habitat quality—indicated by factors including density of *Oplonia spinosa,* amount and quality of adult food sources, and water sources—plays an important role in Puerto Rican harlequin butterfly colonization success.

Summary of Essential Physical or Biological Features

We derive the specific physical or biological features essential to the conservation of the Puerto Rican harlequin butterfly from studies of the species' habitat, ecology, and life history as described in this document. Additional information can be found in the SSA report (Service 2019, entire; available on *http://www.regulations.gov* under Docket No. FWS–R4–ES–2020–0083). We have determined that the following physical or biological features are essential to the conservation of the Puerto Rican harlequin butterfly:

1. *Forest habitat types in the Northern Karst region in Puerto Rico:* Mature secondary moist limestone evergreen and semi-deciduous forest, or young secondary moist limestone evergreen and semi-deciduous forest, or both forest types, in subtropical moist forest or subtropical wet forest life zones.

2. *Forest habitat types in the West-central Volcanic-serpentine region in Puerto Rico:* Mature secondary dry and moist serpentine semi-deciduous forest, or young secondary dry and moist serpentine semi-deciduous forest, or both forest types, in subtropical moist forest or subtropical wet forest life zones.

3. *Components of the forest habitat types.* The forest habitat types described in 1. and 2., above, contain:

(i) Native forest area greater than 1 acre that is within 1 km (0.6 mi) of a water source (stream, pond, puddle, etc.) and other forested area.

(ii) Canopy cover between 50 to 85 percent and canopy height ranging from 4 to 8 m (13.1 to 26.2 ft).

(iii) *Oplonia spinosa* covering more than 30 percent of the understory.

Special Management Considerations or Protection

When designating critical habitat, we assess whether the specific areas within the geographical area occupied by the species at the time of listing contain features which are essential to the conservation of the species and which may require special management considerations or protection.

The features essential to the conservation of the Puerto Rican harlequin butterfly may require special management considerations or protections to reduce or mitigate the following threats: Land conversion for urban and commercial use, road construction and maintenance, utility and communications structures and corridors, and agriculture; fires and garbage dumps (which are often the source of fires); and climate change and drought. In particular, habitat that has at any time supported a subpopulation will require protection from land use change that would permanently remove host plant patches and nectar sources, or that would destroy habitat containing adult nectar sources that connects such host plant patches through which adults are likely to move. These management activities will protect from losses of habitat large enough to preclude conservation of the species.

Other special management protection considerations include conservation efforts that have been directed towards land acquisition and conservation easements by government and nongovernment organizations (PRPB 2014, p. 19). In recent years, protection and management of the habitat that the Puerto Rican harlequin butterfly shares with other federally and Commonwealth listed species (*e.g.,* the endangered Puerto Rican parrot (*Amazona vittata*), threatened elfin-woods warbler (*Setophaga angelae*), and several plants, among others) has become a high priority. For example, the Maricao Commonwealth Forest comprises 3,996.2 ha (9,874.8 ac) of public land managed for conservation (Caribbean LLC 2016, website data) that harbors habitat for the Puerto Rican harlequin butterfly. Moreover, in 2000, DNER acquired through the U.S. Forest Service (USFS) Forest Legacy Program a parcel of land of 107 ha (264.4 ac), locally known as ''Finca Busigó,'' adjacent to the Maricao Commonwealth Forest. This parcel is located approximately 1 km (0.6 mi) from currently occupied Puerto Rican harlequin butterfly habitat and is managed for conservation (Caribbean LLC 2016, website data). In addition, over 64,683.4 ha (159,836.4 ac) of native forest along the northern karst belt are covered by the Karst Protection Law (Law for Protection and Conservation of the Karst Physiography of Puerto Rico, Law No. 292) providing protection of that habitat.

Criteria Used To Identify Critical Habitat

As required by section 4(b)(2) of the Act, we use the best scientific data available to designate critical habitat. In accordance with the Act and our implementing regulations at 50 CFR 424.12(b), we review available information pertaining to the habitat requirements of the species and identify specific areas within the geographical area occupied by the species at the time of listing and any specific areas outside the geographical area occupied by the species to be considered for designation as critical habitat. The areas proposed for designation as critical habitat provide sufficient habitat for breeding, nonbreeding, and dispersing adults of the Puerto Rican harlequin butterfly, as well as the habitat needs for all larval stages of this butterfly. The proposed critical habitat areas contain all the physical and biological features defined for the species. We are not currently proposing to designate any areas outside the geographical area occupied by the species because the occupied areas are sufficient to promote conservation of the species and because we have not identified any unoccupied areas that meet the definition of critical habitat.

In summary, for areas within the geographic area occupied by the species

at the time of listing, we delineated critical habitat unit boundaries using the following criteria:

1. Forested habitat is currently occupied and contains some or all of the physical or biological features.

2. Forested habitat is located between the breeding sites, and a 1-km (0.6-mi) radius around each subpopulation both serves as an extension of the habitat within the geographic area of an occupied unit and promotes connectivity among the breeding sites in an occupied unit, which will foster genetic exchange between subpopulations.

We evaluated those occupied forested habitats in criterion 1 and refined the boundaries of the critical habitat area by evaluating the presence or absence of appropriate physical or biological features in criterion 2. We selected the forested habitat boundary cutoff points (the edges or endpoints of the habitat with the physical or biological features) to exclude areas that are highly degraded, already developed, or not likely restorable; for example, areas permanently deforested by urban development or frequently deforested for agricultural practices (*e.g.,* cattle rearing). Additionally, we used the forested habitat cutoff points at the 2-km (1.2-mi) buffer zone around the species' breeding sites to mark the boundary of a patch of land proposed for designation because 1 km (0.6 mi) is the maximum distance the butterfly has been observed to disperse to a mating site (Monzon 2007, p. 42).

When determining proposed critical habitat boundaries, we made every effort to avoid including developed areas such as lands covered by buildings, pavement, and other structures because such lands lack physical or biological features necessary for the Puerto Rican harlequin butterfly. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. There are developed areas (single houses and access roads) within the proposed designation, which could affect the suitability of habitat for the species. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this proposed rule have been excluded by text in the proposed rule and are not proposed for designation as critical habitat. Therefore, if the critical habitat is finalized as proposed, a Federal action involving these lands would not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification unless the specific action would affect the physical or biological features in the adjacent critical habitat.

We propose to designate as critical habitat lands that we have determined are occupied at the time of listing (*i.e.,* currently occupied), and that contain one or more of the physical or biological features that are essential to support life-history processes of the species and that may require special management considerations.

We are proposing to designate six units as critical habitat based on one or more of the physical or biological features being present to support the Puerto Rican harlequin butterfly's life-history processes. All proposed units contain all of the identified region-specific forest habitat types and components of the forest habitat types that are the physical or biological features essential to the conservation of the Puerto Rican harlequin butterfly and support multiple life-history processes.

The critical habitat designation is defined by the maps, as modified by any accompanying regulatory text, presented at the end of this document under Proposed Regulation Promulgation. We include more detailed information on the boundaries of the critical habitat designation in the preamble of this document. We will make the coordinates or plot points or both on which each map is based available to the public on *http://www.regulations.gov* at Docket No. FWS–R4–ES–2020–0083 and our internet site at *https://www.fws.gov/southeast/caribbean.*

Proposed Critical Habitat Designation

We are proposing six units as critical habitat for the Puerto Rican harlequin butterfly. The critical habitat areas we describe below constitute our current best assessment of areas that meet the definition of critical habitat for the Puerto Rican harlequin butterfly. The six areas we propose as critical habitat are: (1) Isabela, Quebradillas and Camuy (IQC), (2) Guajataca, (3) Río Abajo, (4) Río Encantado, (5) Maricao, and (6) Susúa. Table 4 shows the proposed critical habitat units and the approximate area of each unit. All six units of proposed critical habitat are considered occupied by the species.

TABLE 4—PROPOSED CRITICAL HABITAT UNITS FOR THE PUERTO RICAN HARLEQUIN BUTTERFLY

[Area estimates reflect all land within critical habitat unit boundaries.]

Critical habitat unit	Land ownership by type	Size of unit in acres (hectares)	Occupied?
1. IQC	Public	5.0 (2.0)	Yes.
	Private	1,670.7 (676.1)	
	Total	1,675.7 (678.1)	
2. Guajataca	Public	583.5 (236.1)	Yes.
	Private	3,255.5 (1,317.5)	
	Total	3,839.0 (1,553.6)	
3. Río Abajo	Public	4,544.4 (1,839.1)	Yes.
	Private	1,394.8 (564.5)	
	Total	5,939.2 (2,403.6)	
4. Río Encantado	Public	204.8 (82.9)	Yes.
	Private *	12,570.8 (5,087.2)	
	Total	12,775.6 (5,170.1)	
5. Maricao	Public	7,883.1 (3,190.2)	Yes.
	Private	2,971.5 (1,202.5)	
	Total	10,854.6 (4,392.7)	
6. Susúa	Public	3,171.5 (1,283.5)	Yes.
	Private	3,010.4 (1,218.3)	
	Total	6,181.9 (2,501.8)	

TABLE 4—PROPOSED CRITICAL HABITAT UNITS FOR THE PUERTO RICAN HARLEQUIN BUTTERFLY—Continued

[Area estimates reflect all land within critical habitat unit boundaries.]

Critical habitat unit	Land ownership by type	Size of unit in acres (hectares)	Occupied?
Totals	Public	16,392.3 (6,633.8)	
	Private	24,873.7 (10,066.0)	
	Total	41,266.0 (16,699.8)	

* 1,442.6 private ac owned by Para La Naturaleza (PLN) and managed for conservation.
Note: Area sizes may not sum due to rounding.

We present brief descriptions of all units, and reasons why they meet the definition of critical habitat for the Puerto Rican harlequin butterfly, below.

Unit 1: IQC

Unit 1 consists of 1,675.7 ac (678.1 ha) located along the northern coastal cliff among the municipalities of Isabela, Quebradillas, and Camuy (IQC), 23 km (15 mi) west of Arecibo. The proposed critical habitat is bound on the east by the community La Yeguada and Membrillo in Camuy, on the west by the community Villa Pesquera and Pueblo in Isabela, on the north by the Atlantic Ocean, and on the south by urban developments, State road PR–2, the Royal Isabela Golf Course, and some deforested areas used for agricultural practices such as cattle grazing. In this unit, all life stages of the species (*i.e.,* imago, egg, larva, chrysalis, and adults) and the species' host plant have been found in 115 sites.

Unit 1 is in the subtropical moist forest life zone. The forested habitat is composed of young secondary lowland moist limestone evergreen and semideciduous forest and mature secondary lowland moist limestone evergreen and semideciduous forest (Gould et al. 2008, p. 14). Plant species in this unit include *Oplonia spinosa* and several others that are sources of nectar for adult Puerto Rican harlequin butterflies. The presence of rare plant taxa in this unit suggests it contains relict and mature forest that survived the massive deforestation of the 19th century (Morales and Estremera 2018, p. 1) and has persisted as a refuge for the Puerto Rican harlequin butterfly. Unit 1 contains all the Northern Karst region forest habitat types and components of those habitat types that are the essential physical and biological features for the species.

A combination of habitat fragmentation and high road density is a current and future threat to the Puerto Rican harlequin butterfly in Unit 1. Habitat in Unit 1 has been lost to single land parcels segregated for houses, and large-scale residential and tourist projects, which are planned within and around northern Puerto Rico. Special management considerations or protections in Unit 1 may be required to address land conversion for urban and commercial use, road construction and maintenance, utility and communications structures and corridors, and agriculture; fires and garbage dumps (which are often the source of fires); and climate change and drought.

Unit 2: Guajataca

Unit 2 consists of 3,839 ac (1,553.6 ha) south of PR 2, between the municipalities Isabela and Quebradillas, 25 km (15.6 mi) southwest of Arecibo. The proposed critical habitat is bounded on the east by the San Antonio ward in Quebradillas, on the west by PR 446 at Galateo ward in Isabela, on the north by Llanadas ward in Isabela and Cacao ward in Quebradillas, and on the south by Montañas de Guarionex, between the Planas ward in Isabela and Charcas ward in Quebradillas.

The Puerto Rican harlequin butterfly was first found in Unit 2 in July 2019. All life stages of the species and its host plant have been found at six sites. Unit 2 is in the subtropical moist/wet-northern limestone forest life zone (Helmer et al. 2002, p. 169). Habitat in Unit 2 is composed of mature secondary moist limestone evergreen and semideciduous forest (Gould et al. 2008, p. 14). Fifteen percent of the proposed critical habitat in this unit overlaps Guajataca Commonwealth Forest, an area managed by the DNER for conservation. The other 85 percent is private land subjected to agriculture or rural development. Unit 2 contains all the Northern Karst region forest habitat types and components of those habitat types that are the essential physical and biological features for the species. Special management considerations or protections in Unit 2 may be required to address land conversion for rural development, road construction and maintenance, utility and communications structures and corridors, and agriculture, as well as climate change and drought.

Unit 3: Río Abajo

Unit 3 consists of 5,939.2 ac (2,403.6 ha) located 14.5 km (9 mi) south of Arecibo. The proposed critical habitat is bound on the east by the Río Grande de Arecibo, on the west by Santa Rosa Ward in Utuado, on the north by Hato Viejo Ward in Arecibo, and on the south by Caguana and Sabana Grande Wards in Utuado. In this unit, all life stages of the species and the host plant have been found at four sites. Unit 3 is in the subtropical moist/wet-northern limestone forest life zone (Helmer et al. 2002, p. 169). The species' habitat in Unit 3 is composed of mature secondary moist limestone evergreen and semideciduous forest (Gould et al. 2008, p. 14). The Río Abajo Commonwealth Forest, managed for conservation, occupies 77 percent of the unit. The other 23 percent is a mosaic of highways, roads, and private lands subject to agriculture or rural development. Unit 3 contains all the Northern Karst region forest habitat types and components of those habitat types that are the essential physical and biological features for the species. Special management considerations or protections in Unit 3 may be required to address land conversion for rural development, road construction and maintenance, utility and communications structures and corridors, and agriculture, as well as climate change and drought.

Unit 4: Río Encantado

Unit 4 consists of 12,775.6 ac (5,170.1 ha) located among the municipalities of Arecibo, Florida, and Ciales, 17 km (10.5 mi) southeast of Arecibo. The proposed critical habitat is bound on the east by Hato Viejo Ward in Ciales, on the west by the Río Grande de Arecibo, on the north by Arrozales Ward in Arecibo and Pueblo Ward in Florida, and on the south by the PR 146 along of the Limón Ward in Utuado and Frontón Ward in Ciales. All life stages of the species and the host plant have been found in nine sites. The unit is in the subtropical moist/wet-northern limestone forest life zone (Helmer et al. 2002, p. 169). The species' habitat in

Unit 4 is composed of mature secondary moist limestone evergreen and semideciduous forest (Gould et al. 2008, p. 14). Thirteen percent of the proposed critical habitat is in areas managed by Para La Naturaleza (PLN), a private organization, or by the DNER for conservation. The other 87 percent consists of private lands subject to agriculture or rural developments. Unit 4 contains all the Northern Karst region forest habitat types and components of those habitat types that are the essential physical and biological features for the species. Special management considerations or protections in Unit 4 may be required to address land conversion for rural developments, road construction and maintenance, utility and communications structures and corridors, and agriculture, as well as climate change and drought.

Unit 5: Maricao

Unit 5 consists of 10,854.6 ac (4,392.7 ha) on the west end of the Cordillerra Central, among the municipalities of Maricao, San Germán, and Sabana Grande, 16.1 km (10 mi) southeast of Mayagüez. The proposed critical habitat is bound on the east by Tabonuco Ward in Sabana Grande, on the west by Rosario Ward in San Germán, on the north by Pueblo Ward of Maricao, and on the south by the Guamá and Santana Ward of San Germán. All life stages of the species and its host plant have been found at seven sites in the unit. Unit 5 is in the subtropical wet forest life zone on serpentine-derived soil and contains three types of forest: (1) Mature secondary montane wet serpentine evergreen forest, (2) wet serpentine shrub and woodland forest, and (3) mature secondary montane wet non-calcareous evergreen forest (Gould et al. 2008, p. 14). The Maricao Commonwealth Forest, managed for conservation by DNER, occupies 72 percent of the unit. The other 28 percent is private land consisting of a mosaic of agriculture, rural developments, and forest. Unit 5 contains all the West-central Volcanic-serpentine region forest habitat types and components of those habitat types that are the essential physical and biological features for the species. Special management considerations or protections in Unit 5 may be required to address land conversion for rural developments, road construction and maintenance, utility and communications structures and corridors, and agriculture; fires and garbage dumps (which are often the source of fires); and climate change and drought.

Unit 6: Susúa

Unit 6 consists of 6,181.9 ac (2,501.8 ha) between the municipalities of Sabana Grande and Yauco, 33.6 km (21 mi) northwest of Ponce. The proposed critical habitat is bound on the east by the PR 371 in Almacigo Alto and Collores Wards in Yauco, on the west by Pueblo Ward in Sabana Grande, on the north by Frailes Ward in Yauco, and on the south by PR 368 in Susúa Ward in Sabana Grande. All life stages of the species and its host plant have been found at three sites in this unit. Unit 6 is in the subtropical moist and subtropical wet forest life zones, and contains mature secondary dry and moist serpentine semi-deciduous forest and young secondary moist serpentine evergreen and semi-deciduous forest. The Susúa Commonwealth Forest, managed by DNER for conservation, occupies 51 percent of the proposed critical habitat in this unit. The other 49 percent is on private lands subjected to agriculture or rural developments. Unit 6 contains all the West-central Volcanic-serpentine region forest habitat types and components of those habitat types that are the essential physical and biological features for the species. Special management considerations or protections in Unit 6 may be required to address land conversion for rural developments, road construction and maintenance, utility and communications structures and corridors, and agriculture; fires and garbage dumps (which are often the source of fires); and climate change and drought.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species. In addition, section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed under the Act or result in the destruction or adverse modification of proposed critical habitat.

We published a final rule revising the definition of destruction or adverse modification on August 27, 2019 (84 FR 44976). Destruction or adverse modification means a direct or indirect alteration that appreciably diminishes the value of critical habitat as a whole for the conservation of a listed species.

If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Examples of actions that are subject to the section 7 consultation process are actions on Commonwealth, local, or private lands that require a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from the Service under section 10 of the Act) or that involve some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency). Federal actions not affecting listed species or critical habitat—and actions on Commonwealth, State, Tribal, local, or private lands that are not federally funded, authorized, or carried out by a Federal agency—do not require section 7 consultation.

Compliance with the requirements of section 7(a)(2) is documented through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect, and are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species and/or destroy or adversely modify critical habitat, we provide reasonable and prudent alternatives to the project, if any are identifiable, that would avoid the likelihood of jeopardy and/or destruction or adverse modification of critical habitat. We define ''reasonable and prudent alternatives'' (at 50 CFR 402.02) as alternative actions identified during consultation that:

(1) Can be implemented in a manner consistent with the intended purpose of the action,

(2) Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,

(3) Are economically and technologically feasible, and

(4) Would, in the Service Director's opinion, avoid the likelihood of jeopardizing the continued existence of the listed species and/or avoid the likelihood of destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or

relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 set forth requirements for Federal agencies to reinitiate formal consultation on previously reviewed actions. These requirements apply when the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law) and, subsequent to the previous consultation, we have listed a new species or designated critical habitat that may be affected by the Federal action, or the action has been modified in a manner that affects the species or critical habitat in a way not considered in the previous consultation. In such situations, Federal agencies sometimes may need to request reinitiation of consultation with us, but the regulations also specify some exceptions to the requirement to reinitiate consultation on specific land management plans after subsequently listing a new species or designating new critical habitat. See the regulations for a description of those exceptions.

Application of the ''Destruction or Adverse Modification'' Standard

The key factor related to the ''destruction or adverse modification'' determination is whether implementation of the proposed Federal action directly or indirectly alters the designated critical habitat in a way that appreciably diminishes the value of the critical habitat as a whole for the conservation of the listed species. As discussed above, the role of critical habitat is to support physical or biological features essential to the conservation of a listed species and provide for the conservation of the species.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, activities involving a Federal action that may violate section 7(a)(2) of the Act by destroying or adversely modifying such habitat, or that may be affected by such designation.

Activities that the Service may, during a consultation under section 7(a)(2) of the Act, find are likely to destroy or adversely modify critical habitat include, but are not limited to:

(1) Removal of *Oplonia spinosa* host plants harboring eggs, caterpillars, or chrysalises;

(2) Removal of a significant amount of *O. spinosa* or nectar source plants, such that the value of the critical habitat as a whole for the conservation of the Puerto Rican harlequin butterfly is appreciably diminished; or

(3) Removal of native forest resulting in fragmentation such that remaining forest patches are greater than 1 km (0.6 mi) apart or less than 1 ac (0.4 ha) in size.

Such activities could include, but are not limited to, residential and commercial development, and conversion to agricultural fields or pasture. Any of these activities could permanently eliminate or reduce the habitat necessary for the growth and reproduction of the Puerto Rican harlequin butterfly.

Exemptions

Application of Section 4(a)(3) of the Act

Section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) provides that the Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan (INRMP) prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation. There are no Department of Defense (DoD) lands with a completed INRMP within the proposed critical habitat designation.

Consideration of Impacts Under Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making the determination to exclude a particular area, the statute on its face, as well as the legislative history, are clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

We describe below the process that we undertook for taking into consideration each category of impacts and our analyses of the relevant impacts.

Consideration of Economic Impacts

Section 4(b)(2) of the Act and its implementing regulations require that we consider the economic impact that may result from a designation of critical habitat. To assess the probable economic impacts of a designation, we must first evaluate specific land uses or activities and projects that may occur in the area of the critical habitat. We then must evaluate the impacts that a specific critical habitat designation may have on restricting or modifying specific land uses or activities for the benefit of the species and its habitat within the areas proposed. We then identify which conservation efforts may be the result of the species being listed under the Act versus those attributed solely to the designation of critical habitat for this particular species. The probable economic impact of a proposed critical habitat designation is analyzed by comparing scenarios both ''with critical habitat'' and ''without critical habitat.''

The ''without critical habitat'' scenario represents the baseline for the analysis, which includes the existing regulatory and socio-economic burden imposed on landowners, managers, or other resource users potentially affected by the designation of critical habitat (*e.g.,* under the Federal listing as well as other Federal, State, and local regulations). The baseline, therefore, represents the costs of all efforts that provide protection to the species and its habitat even absent a critical habitat designation (*i.e.,* conservation of the species and its habitat incurred regardless of whether critical habitat is designated). The ''with critical habitat'' scenario describes the incremental impacts associated specifically with the designation of critical habitat for the species. The incremental conservation efforts and associated impacts would not be expected without the designation of critical habitat for the species. In other words, the incremental costs are those attributable solely to the designation of critical habitat, above and beyond the baseline costs. These are the costs we use when evaluating the benefits of inclusion and exclusion of particular areas from the final designation of critical habitat should we choose to conduct a discretionary 4(b)(2) exclusion analysis.

For this particular designation, we developed an incremental effects memorandum (IEM) considering the probable incremental economic impacts that may result from this proposed designation of critical habitat. The information contained in our IEM was

then used to develop a screening analysis of the probable effects of the designation of critical habitat for the Puerto Rican harlequin butterfly (IEc 2020, entire). We began by conducting a screening analysis of the proposed designation of critical habitat in order to focus our analysis on the key factors that are likely to result in incremental economic impacts. The purpose of the screening analysis is to filter out particular geographic areas of critical habitat that are already subject to such protections and are, therefore, unlikely to incur incremental economic impacts. In particular, the screening analysis considers baseline costs (*i.e.,* absent critical habitat designation) and includes probable economic impacts where land and water use may be subject to conservation plans, land management plans, best management practices, or regulations that protect the habitat area as a result of the Federal listing status of the species. Ultimately, the screening analysis allows us to focus our analysis on evaluating the specific areas or sectors that may incur probable incremental economic impacts as a result of the designation. If there are any unoccupied units in the proposed critical habitat designation, the screening analysis also assesses whether any additional management or conservation efforts may incur incremental economic impacts. This screening analysis combined with the information contained in our IEM are what we consider our draft economic analysis (DEA) of the proposed critical habitat designation for the Puerto Rican harlequin butterfly; our DEA is summarized in the narrative below.

Executive Orders (E.O.s) 12866 and 13563 direct Federal agencies to assess the costs and benefits of available regulatory alternatives in quantitative (to the extent feasible) and qualitative terms. Consistent with the E.O. regulatory analysis requirements, our effects analysis under the Act may take into consideration impacts to both directly and indirectly affected entities, where practicable and reasonable. If sufficient data are available, we assess to the extent practicable the probable impacts to both directly and indirectly affected entities. As part of our screening analysis, we considered the types of economic activities that are likely to occur within the areas likely affected by the critical habitat designation. In our evaluation of the probable incremental economic impacts that may result from the proposed designation of critical habitat for the Puerto Rican harlequin butterfly, first we identified, in the IEM dated April 7, 2020, probable incremental economic impacts associated with the following categories of activities: (1) Construction and maintenance of highways, roads, powerlines, and communications towers; and (2) conservation projects conducted by the U.S. Department of Agriculture's Natural Resources Conservation Service and Farm Service Agency, and the Service's Partners for Fish and Wildlife program. We considered each industry or category individually. Additionally, we considered whether their activities have any Federal involvement. Critical habitat designation generally will not affect activities that do not have any Federal involvement; under the Act, designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies. If we list the species, in areas where the Puerto Rican harlequin butterfly is present, Federal agencies would be required to consult with the Service under section 7 of the Act on activities they fund, permit, or implement that may affect the species. If, when we list the species, we also finalize this proposed critical habitat designation, consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process.

In our IEM, we attempted to clarify the distinction between the effects that will result from the species being listed and those attributable to the critical habitat designation (*i.e.,* difference between the jeopardy and adverse modification standards) for the Puerto Rican harlequin butterfly's critical habitat. Because the designation of critical habitat for the Puerto Rican harlequin butterfly is proposed concurrently with the listing, it has been our experience that it is more difficult to discern which conservation efforts are attributable to the species being listed and those which would result solely from the designation of critical habitat. However, the following specific circumstances in this case help to inform our evaluation: (1) The essential physical or biological features identified for critical habitat are the same features essential for the life-history requirements of the species, and (2) any actions that would adversely affect the essential physical or biological features of critical habitat would also likely result in jeopardy to the Puerto Rican harlequin butterfly The IEM outlines our rationale concerning this limited distinction between baseline conservation efforts and incremental impacts of the designation of critical habitat for this species. This evaluation of the incremental effects has been used as the basis to evaluate the probable incremental economic impacts of this proposed designation of critical habitat.

The proposed critical habitat designation for the Puerto Rican harlequin butterfly includes 41,266 ac (16,699.8 ha) in six units, all which are occupied by the species. The proportion of private and public ownership by unit is listed above in Table 4. All public ownership consists of Commonwealth Forests managed by the DNER for conservation, except 5 ac (2 ha) managed for recreation in Unit 1. Recreation is restricted to hiking trails and, in a few areas, camping. In these areas, it is unlikely that any additional conservation efforts would be recommended to address the adverse modification standard over and above those recommended as necessary to avoid jeopardizing the continued existence of the Puerto Rican harlequin butterfly. Therefore, only administrative costs are expected throughout the proposed critical habitat designation. While this additional analysis will require time and resources by both the Federal action agency and the Service, in most circumstances, these costs would predominantly be administrative in nature and would not be significant.

The entities most likely to incur incremental costs are parties to section 7 consultations, including Federal action agencies and, in some cases, third parties, most frequently State agencies or municipalities. Activities we expect would be subject to consultations that may involve private entities as third parties are residential and commercial development on private lands. However, based on coordination efforts with Commonwealth and local agencies, the cost to private entities within these sectors is expected to be relatively minor (administrative costs of less than $10,000 per consultation effort, year 2020 dollars); therefore, they would not be significant.

As previously mentioned, the probable incremental economic impacts of the Puerto Rican harlequin butterfly critical habitat designation are expected to be limited to additional administrative effort. In addition, there may be minor costs of conservation efforts resulting from a small number of future section 7 consultations. This is due to the species occupying all of the critical habitat units—because the species occupies all of the designated units of critical habitat, any action that would adversely modify any of the units would also likely cause take of the species and jeopardize its continued existence. From 2015 to 2019, there were 4 technical assistance efforts, 14

informal consultations, and 1 formal consultation for three listed species that overlap the range of the Puerto Rican harlequin butterfly (IEc 2020, p. 11). The cost for each of these categories of action related to section 7 was approximately $420, $2,500, and $5,300, respectively. We do not expect designating critical habitat to result in an increase in the number of these categories of action under section 7 to consider only impacts on critical habitat because all of the units are occupied. However, the cost of each action under section 7 may increase because of the additional time and resources needed to consider the impacts on critical habitat and not just the impact on the continued existence of the species. We anticipate that the additional cost per year for all three of the categories of actions related to section 7 to consider impacts on critical habitat for the Puerto Rico harlequin butterfly—and therefore the incremental economic impact of designating critical habitat—would be $42,300 (IEc 2020, p. 12). Thus, the annual administrative burden will not reach $100 million.

We are soliciting data and comments from the public on the DEA discussed above, as well as all aspects of this proposed rule and our required determinations. During the development of a final designation, we will consider the information presented in the DEA and any additional information on economic impacts we receive during the public comment period to determine whether any specific areas should be excluded from the final critical habitat designation under authority of section 4(b)(2) of the Act and our implementing regulations at 50 CFR 424.19. In particular, we may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area, provided the exclusion will not result in the extinction of this species.

Consideration of National Security Impacts

Section 4(a)(3)(B)(i) of the Act may not cover all DoD lands or areas that pose potential national-security concerns (*e.g.,* a DoD installation that is in the process of revising its INRMP for a newly listed species or a species previously not covered). If a particular area is not covered under section 4(a)(3)(B)(i), national-security or homeland-security concerns are not a factor in the process of determining what areas meet the definition of ''critical habitat.'' Nevertheless, when designating critical habitat under section 4(b)(2), the Service must consider impacts on national security, including homeland security, on lands or areas not covered by section 4(a)(3)(B)(i). Accordingly, we will always consider for exclusion from the designation areas for which DoD, Department of Homeland Security (DHS), or another Federal agency has requested exclusion based on an assertion of national-security or homeland-security concerns.

We cannot, however, automatically exclude requested areas. When DoD, DHS, or another Federal agency requests exclusion from critical habitat on the basis of national-security or homeland-security impacts, it must provide a reasonably specific justification of an incremental impact on national security that would result from the designation of that specific area as critical habitat. That justification could include demonstration of probable impacts, such as impacts to ongoing border-security patrols and surveillance activities, or a delay in training or facility construction, as a result of compliance with section 7(a)(2) of the Act. If the agency requesting the exclusion does not provide us with a reasonably specific justification, we will contact the agency to recommend that it provide a specific justification or clarification of its concerns relative to the probable incremental impact that could result from the designation. If the agency provides a reasonably specific justification, we will defer to the expert judgment of DoD, DHS, or another Federal agency as to: (1) Whether activities on its lands or waters, or its activities on other lands or waters, have national-security or homeland-security implications; (2) the importance of those implications; and (3) the degree to which the cited implications would be adversely affected in the absence of an exclusion. In that circumstance, in conducting a discretionary section 4(b)(2) exclusion analysis, we will give great weight to national-security and homeland-security concerns in analyzing the benefits of exclusion.

In preparing this proposal, we have determined that the lands within the proposed designation of critical habitat for the Puerto Rican harlequin butterfly are not owned, managed, or used by the DoD or DHS, and, therefore, we anticipate no impact on national security or homeland security. However, during the development of a final designation we will consider any additional information received through the public comment period on the impacts of the proposed designation on national security or homeland security to determine whether any specific areas should be excluded from the final critical habitat designation under authority of section 4(b)(2) and our implementing regulations at 50 CFR 424.19.

Consideration of Other Relevant Impacts

During the development of a final designation, we will consider any information currently available or received during the public comment period regarding other relevant impacts of the proposed designation and will determine whether any specific areas should be excluded from the final critical habitat designation under authority of section 4(b)(2) and our implementing regulations at 50 CFR 424.19.

Exclusions

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in addition to economic impacts and impacts on national security discussed above. We consider a number of factors—including whether there are permitted conservation plans covering the species in the area such as HCPs, safe harbor agreements (SHAs), or candidate conservation agreements with assurances (CCAAs), or whether there are non-permitted conservation agreements and partnerships that would be encouraged by designation of, or exclusion from, critical habitat. In addition, we look at the existence of Tribal conservation plans and partnerships and consider the government-to-government relationship of the United States with Tribal entities. We also consider any social impacts that might occur because of the designation.

In preparing this proposal, we have determined that there are currently no HCPs or other management plans for the Puerto Rican harlequin butterfly, and the proposed designation does not include any Tribal lands or trust resources. Thus, we anticipate no impact on Tribal lands, partnerships, or HCPs from this proposed critical habitat designation.

During the development of a final designation, we will consider any additional information we receive through the public comment period regarding other relevant impacts to determine whether any specific areas should be excluded from the final critical habitat designation under authority of section 4(b)(2) of the Act and our implementing regulations at 50 CFR 424.19.

Required Determinations

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the

Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(1) Be logically organized;

(2) Use the active voice to address readers directly;

(3) Use clear language rather than jargon;

(4) Be divided into short sections and sentences; and

(5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all significant rules. OIRA has waived their review regarding their significance determination of this proposed rule.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this proposed rule in a manner consistent with these requirements.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; 5 U.S.C. 801 *et seq.*), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.,* small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

According to the Small Business Administration, small entities include small organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine whether potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

Under the RFA, as amended, and as understood in the light of recent court decisions, Federal agencies are required to evaluate the potential incremental impacts of rulemaking on those entities directly regulated by the rulemaking itself; in other words, the RFA does not require agencies to evaluate the potential impacts to indirectly regulated entities. The regulatory mechanism through which critical habitat protections are realized is section 7 of the Act, which requires Federal agencies, in consultation with the Service, to ensure that any action authorized, funded, or carried out by the agency is not likely to destroy or adversely modify critical habitat. Therefore, under section 7, only Federal action agencies are directly subject to the specific regulatory requirement (avoiding destruction and adverse modification) imposed by critical habitat designation. Consequently, only Federal action agencies would be directly regulated if we adopt the proposed critical habitat designation. There is no requirement under the RFA to evaluate the potential impacts to entities not directly regulated. Moreover, Federal agencies are not small entities. Therefore, because no small entities would be directly regulated by this rulemaking, the Service certifies that, if made final as proposed, the proposed critical habitat designation will not have a significant economic impact on a substantial number of small entities.

In summary, we have considered whether the proposed designation would result in a significant economic impact on a substantial number of small entities. For the above reasons and based on currently available information, we certify that, if made final, the proposed critical habitat designation will not have a significant economic impact on a substantial number of small business entities. Therefore, an initial regulatory flexibility analysis is not required.

Executive Order 13771

We do not believe this rule is an E.O. 13771 (''Reducing Regulation and Controlling Regulatory Costs'') (82 FR 9339, February 3, 2017) regulatory action because we believe this proposed rule is not significant under E.O. 12866; however, the Office of Information and Regulatory Affairs has waived their review regarding their E.O. 12866 significance determination of this proposed rule.

Energy Supply, Distribution, or Use—Executive Order 13211

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. In our economic analysis, we did not find that this proposed critical habitat designation would significantly affect energy supplies, distribution, or use. There are currently not any new planned power line or pipeline corridors in the proposed critical habitat units. If there is a Federal nexus for maintenance of existing power supply structures and rights-of-way under section 7 of the Act, any section 7 consultation for potential effects to critical habitat would also be undertaken due to the presence of the Puerto Rican harlequin butterfly as a threatened species and several other federally listed species that occupy the critical habitat. Therefore, any activities to preclude destruction of adverse

modification of critical habitat—such as larval host plant and adult nectar source plant surveys, avoidance of host plants that may have eggs or larvae of the Puerto Rican harlequin butterfly, and avoidance of insecticide and pesticide applications at project sites—would also be needed to avoid jeopardy. Thus, costs of considering critical habitat alone for a section 7 consultation would be entirely administrative and less than $10,000 (IEc, 2020), with the burden solely on the Service and Federal action agency. As such, energy supply, distribution, or use would not be affected significantly if we adopt this proposed critical habitat designation. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following finding:

(1) This proposed rule would not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or Tribal governments, or the private sector, and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or Tribal governments'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and Tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding,'' and the State, local, or Tribal governments ''lack authority'' to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly affected because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(2) We do not believe that this rule would significantly or uniquely affect small governments because it will not produce a Federal mandate of $100 million or greater in any year; that is, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. Therefore, a Small Government Agency Plan is not required.

Takings—Executive Order 12630

In accordance with E.O. 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating critical habitat for the Puerto Rican harlequin butterfly in a takings implications assessment. The Act does not authorize the Service to regulate private actions on private lands or confiscate private property as a result of critical habitat designation. Designation of critical habitat does not affect land ownership, or establish any closures, or restrictions on use of or access to the designated areas. Furthermore, the designation of critical habitat does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. However, Federal agencies are prohibited from carrying out, funding, or authorizing actions that would destroy or adversely modify critical habitat. A takings implications assessment has been completed for the proposed designation of critical habitat for the Puerto Rican harlequin butterfly, and it concludes that, if adopted, this designation of critical habitat does not pose significant takings implications for lands within or affected by the designation.

Federalism—Executive Order 13132

In accordance with E.O. 13132 (Federalism), this proposed rule does not have significant Federalism effects. A federalism summary impact statement is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of this proposed critical habitat designation with, appropriate State resource agencies. From a federalism perspective, the designation of critical habitat directly affects only the responsibilities of Federal agencies. The Act imposes no other duties with respect to critical habitat, either for States and local governments, or for anyone else. As a result, the proposed rule does not have substantial direct effects either on the States, or on the relationship between the national government and the States, or on the distribution of powers and responsibilities among the various levels of government. The proposed designation may have some benefit to these governments because the areas that contain the features essential to the conservation of the species are more clearly defined, and the physical or biological features of the habitat necessary for the conservation of the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist State and local governments in long-range planning because they no longer have to wait for case-by-case section 7 consultations to occur.

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) of the Act would be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly affected by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

Civil Justice Reform—Executive Order 12988

In accordance with Executive Order 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule would not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have proposed designating critical habitat in accordance with the provisions of the Act. To assist the public in understanding the habitat needs of the species, this proposed rule identifies the elements of physical or biological features essential to the conservation of the species. The proposed areas of designated critical habitat are presented on maps, and the proposed rule provides options for the interested public to obtain more detailed location information, if desired.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain information collection requirements, and a submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) is not required. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses pursuant to the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We have determined that no Tribal lands fall within the boundaries of the proposed critical habitat for the Puerto Rican harlequin butterfly, so no Tribal lands would be affected by the proposed designation.

References Cited

A complete list of references cited in this rulemaking is available on the internet at *http://www.regulations.gov* and upon request from the Caribbean Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this proposed rule are the staff members of the Fish and Wildlife Service's Species Assessment Team and the Caribbean Ecological Services Field Office.

Signing Authority

The Director, U.S. Fish and Wildlife Service, 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 U.S. Fish and Wildlife Service. Aurelia Skipwith, Director, U.S. Fish and Wildlife Service, approved this document on September 25, 2020, for publication.

Dated: September 25, 2020.

Madonna Baucum,

Regulations and Policy Chief, Division of Policy, Economics, Risk Management, and Analytics, Joint Administrative Operations, U.S. Fish and Wildlife Service.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

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

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

■ 2. Amend § 17.11(h) by adding an entry for ''Butterfly, Puerto Rican harlequin'' to the List of Endangered and Threatened Wildlife in alphabetical order under INSECTS to read as set forth below:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
*	*	*	*	* * *
INSECTS				
*	*	*	*	* * *
Butterfly, Puerto Rican harlequin.	*Atlantea tulita*	Wherever found	T	[**Federal Register** citation when published as a final rule]; 50 CFR 17.47(d);[4d] 50 CFR 17.95(i).[CH]
*	*	*	*	* * *

■ 3. Amend § 17.47 by adding a paragraph (d) to read as set forth below:

§ 17.47 Special rules—insects.

* * * * *

(d) Puerto Rican harlequin butterfly (*Atlantea tulita*).

(1) *Prohibitions.* The following prohibitions that apply to endangered wildlife also apply to the Puerto Rican harlequin butterfly. Except as provided under paragraph (d)(2) of this section and §§ 17.4 and 17.5, it is unlawful for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit,

or cause to be committed, any of the following acts in regard to this species:

(i) Import or export, as set forth at § 17.21(b).

(ii) Take, as set forth at § 17.21(c)(1).

(iii) Possession and other acts with unlawfully taken specimens, as set forth at § 17.21(d)(1).

(iv) Interstate or foreign commerce in the course of commercial activity, as set forth at § 17.21(e).

(v) Sale or offer for sale, as set forth at § 17.21(f).

(2) *Exceptions from prohibitions.* In regard to this species, you may:

(i) Conduct activities as authorized by a permit under § 17.32.

(ii) Take, as set forth at § 17.21(c)(2) through (c)(4) for endangered wildlife.

(iii) Take as set forth at § 17.31(b).

(iv) Take incidental to an otherwise lawful activity caused by:

(A) Normal agricultural practices, including pesticide use, which are carried out in accordance with any existing regulations, permit and label requirements, and best management practices, as long as the practices do not include clearing or disturbing forest or *Oplonia spinosa* to create or expand agricultural areas; or applying pesticides illegally (*i.e.,* in violation of label restrictions) in or adjacent to habitat known to be occupied by Puerto Rican harlequin butterfly that may result in death or injury of adults, eggs, larvae, or pupae.

(B) Normal residential and urban activities, such as mowing, weeding, edging, and fertilizing.

(C) Maintenance of recreational trails in Commonwealth Forests by mechanically clearing vegetation, only when approved by or under the auspices of the Puerto Rico Department of Natural and Environmental Resources, or conducted on lands established by private organizations or individuals solely for conservation or recreation.

(D) Habitat management or restoration activities expected to provide a benefit to Puerto Rican harlequin butterfly or other sensitive species, including removal of nonnative, invasive plants. These activities must be coordinated with and reported to the Service in writing and approved the first time an individual or agency undertakes them.

(E) Projects requiring removal of the host plant to access and remove illicit garbage dumps that are potential sources of intentionally set fires, provided such projects are conducted in coordination with and reported to the Service.

(F) Fruit fly trapping by the U.S. Department of Agriculture's Animal and Plant Health Inspection Service, provided trapping activities do not disturb the host plant.

(v) Possess and engage in other acts with unlawfully taken wildlife, as set forth at § 17.21(d)(2) for endangered wildlife.

■ 4. Amend § 17.95(i) by adding an entry for ''Puerto Rican Harlequin Butterfly (*Atlantea tulita*)'' in the same alphabetical order that it appears in the table at § 17.11(h), to read as set forth below:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(i) *Insects.*

* * * * *

Puerto Rican Harlequin Butterfly (*Atlantea tulita*)

(1) Critical habitat units are depicted for Isabela, Quebradillas, Camuy, Arecibo, Florida, Ciales, Utuado, Maricao, Yauco, Sabana Grande, and San Germán municipalities, Puerto Rico, on the maps in this entry.

(2) Within these areas, the physical or biological features essential to the conservation of the Puerto Rican harlequin butterfly consist of the following components:

(i) *Forest habitat types in the Northern Karst region in Puerto Rico:* Mature secondary moist limestone evergreen and semi-deciduous forest, or young secondary moist limestone evergreen and semi-deciduous forest, or both forest types, in subtropical moist forest or subtropical wet forest life zones.

(ii) *Forest habitat types in the West-central Volcanic-serpentine region in Puerto Rico:* Mature secondary dry and moist serpentine semi-deciduous forest, or young secondary dry and moist serpentine semi-deciduous forest, or both forest types, in subtropical moist forest or subtropical wet forest life zones.

(iii) *Components of forest habitat types:* The forest habitat types described in paragraphs (2)(i) and (ii) of this entry contain:

(A) Forest area greater than 1 acre that is within 1 kilometer of a water source (stream, pond, puddle, etc.) and other forested area;

(B) Canopy cover between 50 to 85 percent and average canopy height ranging from 4 to 8 meters (13.1 to 26.2 feet); and

(C) *Oplonia spinosa* covering more than 30 percent of the understory.

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on the effective date of the rule.

(4) *Critical habitat map units.* Data layers defining map units were created by delineating habitats that contain at least one or more of the physical or biological features defined in paragraph (2) of this entry. We use the digital landcover layer created by the Puerto Rico GAP Analysis Project over a U.S. Department of Agriculture 2007 digital orthophoto mosaic. The resulting critical habitat unit was then mapped using State Plane North American Datum 83 coordinates. The maps in this entry, as modified by any accompanying regulatory text, establish the boundaries of the critical habitat designation. The coordinates or plot points or both on which each map is based are available to the public at the Service's internet site at *https://www.fws.gov/southeast/caribbean,* at *http://www.regulations.gov* at Docket No. FWS–R4–ES–2020–0083, and at the field office responsible for this designation. You may obtain field office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

(5) *Note:* Index map follows:

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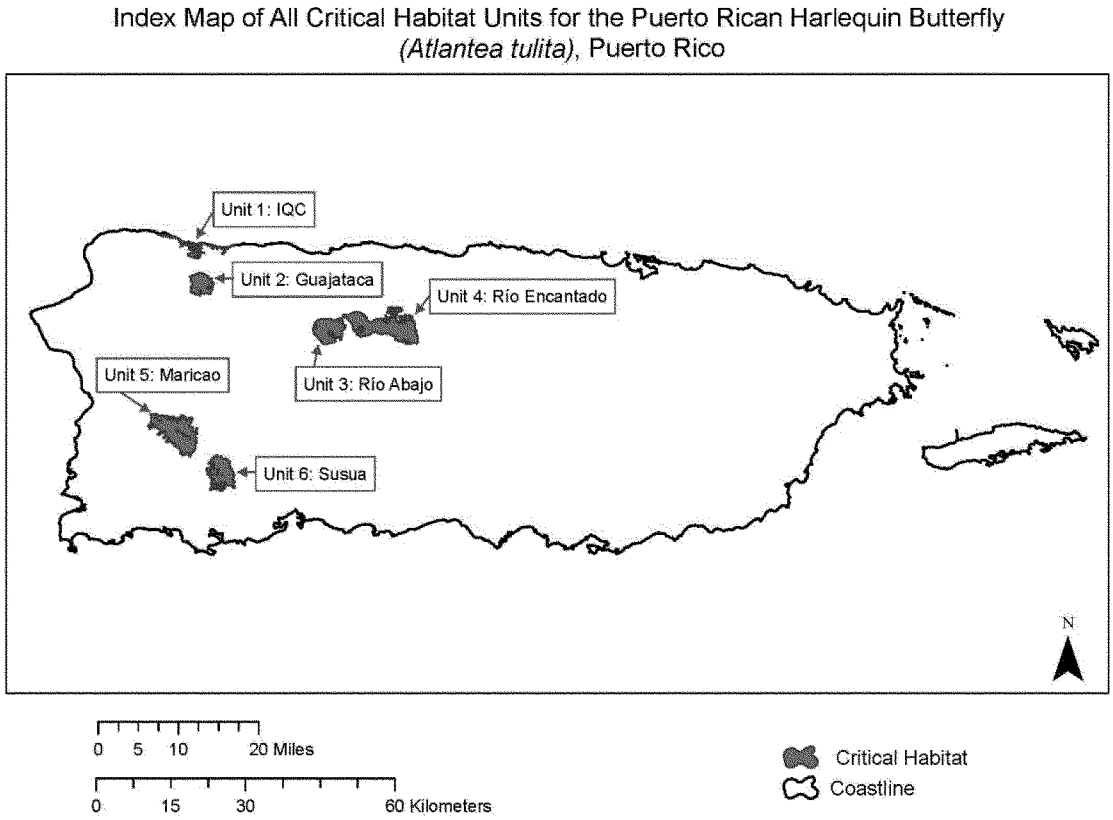
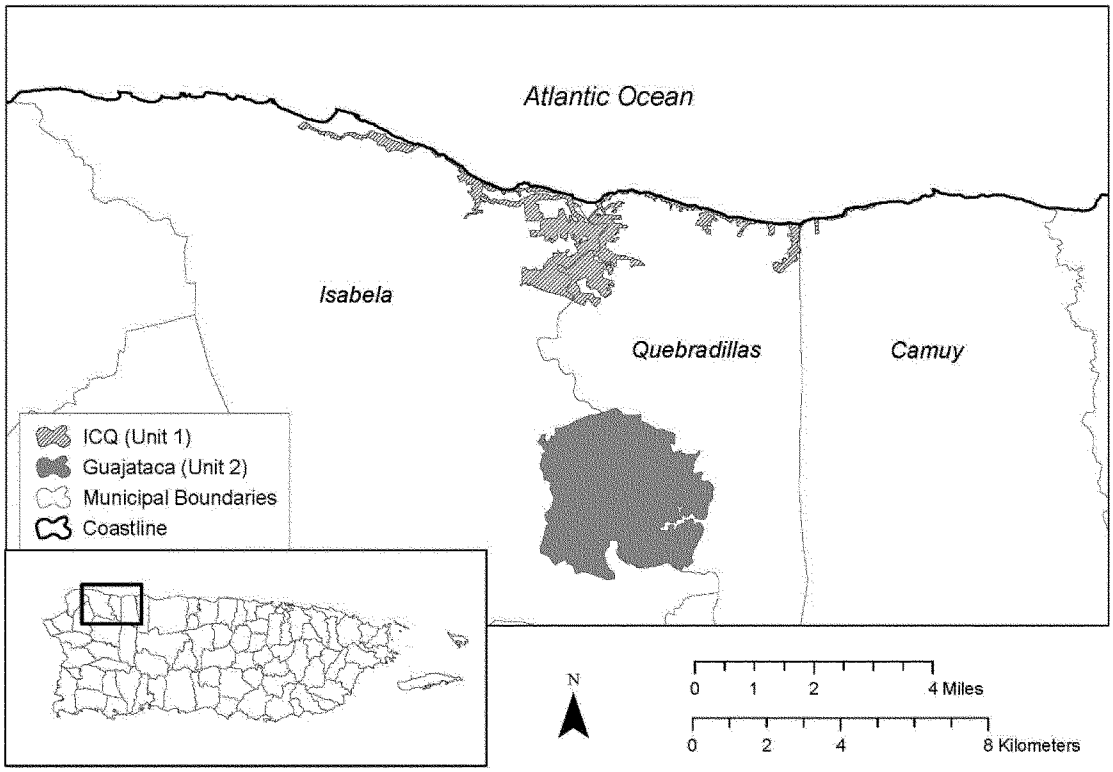


(6) Unit 1: IQC; Isabela, Quebradillas, and Camuy Municipalities, Puerto Rico.

(i) *General description:* Unit 1 consists of 1,675.7 acres (678.1 hectares) located along the northern coastal cliff among the municipalities of Isabela, Quebradillas, and Camuy (IQC), 23 kilometers (15 miles) west of Arecibo. The critical habitat is bounded on the east by the community La Yeguada and Membrillo in Camuy, on the west by the community Villa Pesquera and Pueblo in Isabela, on the north by the Atlantic Ocean, and on the south by urban developments, State road PR–2, the Royal Isabela Golf Course, and some deforested areas utilized for agricultural practices such as cattle grazing. All but 5 acres (2 hectares) of Unit 1 are in private ownership.

(ii) Map of Units 1 and 2 follows:

Critical Habitat Map for Unit 1: IQC and Unit 2: Guajataca for the Puerto Rican Harlequin Butterfly *(Atlantea tulita)*, Puerto Rico



(7) Unit 2: Guajataca; Isabela and Quebradillas Municipalities, Puerto Rico.

(i) *General description:* Unit 2 consists of 3,839 acres (1,553.6 hectares) south of PR 2, between the municipalities Isabela and Quebradillas, 25 kilometers (15.6 miles) southwest of Arecibo. The critical habitat is bounded on the east by the San Antonio ward in Quebradillas, on the west by PR 446 at Galateo Ward in Isabela, on the north by Llanadas Ward in Isabela and Cacao Ward in Quebradillas, and on the south by Montañas de Guarionex, between Planas Ward in Isabela and Charcas Ward in Quebradillas. In Unit 2, 583.5 acres (236.1 hectares) are public land, the Guajataca Commonwealth Forest, managed by the Puerto Rico Department of Natural and Environmental Resources for conservation. Private land in Unit 2 is 3,255.5 acres (1,317.5 hectares) that is a mosaic of agricultural land, roads, rural developments, and forest.

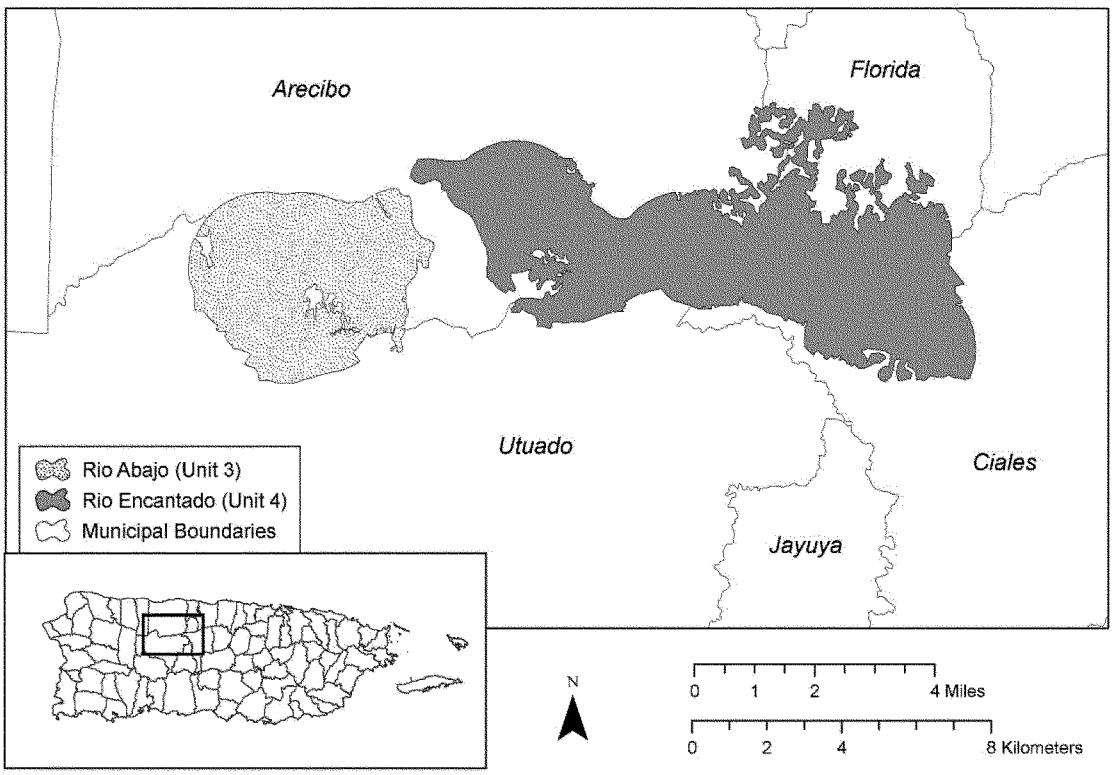
(ii) Map of Unit 2 is set forth at paragraph (6)(ii) of this entry.

(8) Unit 3: Río Abajo; Arecibo and Utuado Municipalities, Puerto Rico.

(i) *General description:* Unit 3 consists of 5,939.2 acres (2,403.6 hectares) located 14.5 kilometers (9 miles) south of Arecibo. The critical habitat is bound on the east by the Río Grande de Arecibo, on the west by Santa Rosa Ward in Utuado, on the north by Hato Viejo Ward in Arecibo, and on the south by Caguana and Sabana Grande Wards in Utuado. The Río Abajo Commonwealth Forest, managed for conservation by the Puerto Rico Department of Natural and Environmental Resources, occupies 77 percent (4,544.4 acres (1,839.1 hectares)) of the unit. The other 23 percent (1,394.8 acres (564.5 hectares)) is privately owned and is a mosaic of highways, roads, agriculture, or rural development.

(ii) Map of Units 3 and 4 follows:

Critical Habitat Map for Unit 3: Río Abajo and Unit 4: Río Encantado for the Puerto Rican Harlequin Butterfly *(Atlantea tulita)*, Puerto Rico



(9) Unit 4: Río Encantado; Arecibo, Florida, Ciales, and Utuado Municipalities, Puerto Rico.

(i) *General description:* Unit 4 consists of 12,775.6 acres (5,170.1 hectares) located among the municipalities of Arecibo, Florida, Ciales, and Utuado, 17 kilometers (10.5 miles) southeast of Arecibo. The critical habitat is bound on the east by Hato Viejo Ward in Ciales, on the west by the Río Grande de Arecibo, on the north by Arrozales Ward in Arecibo and Pueblo Ward in Florida, and on the south by PR 146 along Limón Ward in Utuado and Frontón Ward in Ciales. Thirteen percent of the critical habitat (204.8 acres (82.9 hectares)) is managed by Para La Naturaleza or by the Puerto Rico Department of Natural and Environmental Resources for conservation. The other 87 percent (12,570.8 acres (5,087.2 hectares)) consists of private lands, some of which are agricultural fields, roads, and rural developments, but a majority of which is mature native forest.

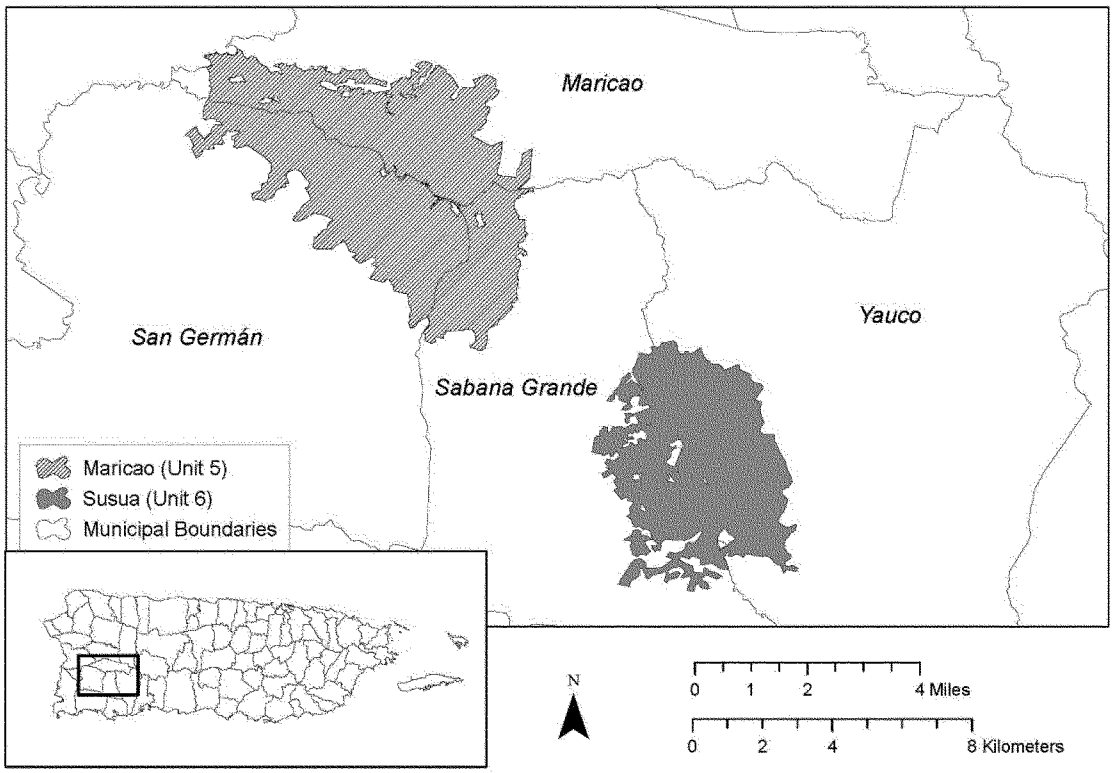
(ii) Map of Unit 4 is set forth at paragraph (8)(ii) of this entry.

(10) Unit 5: Maricao; Maricao, Sabana Grande, and San Germán Municipalities, Puerto Rico.

(i) *General description:* Unit 5 consists of 10,854.6 acres (4,392.7 hectares) on the west end of the Cordillerra Central, among the municipalities of Maricao, San Germán, and Sabana Grande, 16.1 kilometers (10 miles) southeast of Mayagüez. The critical habitat is bound on the east by Tabonuco Ward in Sabana Grande, on the west by Rosario Ward in San Germán, on the north by Pueblo Ward in Maricao, and on the south by Guamá and Santana Wards in San Germán. The Maricao Commonwealth Forest, managed for conservation by the Puerto Rico Department of Natural and Environmental Resources, occupies 72 percent (7,883.1 acres (3,190.2 hectares)) of the unit. The other 28 percent (2,971.5 acres (1,202.5 hectares)) is private land consisting of a mosaic of agriculture, rural developments, and forest.

(ii) Map of Units 5 and 6 follows:

Critical Habitat Map for Unit 5: Maricao and Unit 6: Susua for the Puerto Rican Harlequin Butterfly *(Atlantea tulita)*, Puerto Rico



(11) Unit 6: Susúa; Sabana Grande and Yauco Municipalities, Puerto Rico.

(i) *General description:* Unit 6 consists of 6,181.9 acres (2,501.8 hectares) between the municipalities of Sabana Grande and Yauco, 33.6 kilometers (21 miles) northwest of Ponce. The critical habitat is bound on the east by the PR 371 in Almacigo Alto and Collores Wards in Yauco, on the west by Pueblo Ward in Sabana Grande, on the north by Frailes Ward in Yauco, and on the south by PR 368 in Susúa Ward in Sabana Grande. The Susúa Commonwealth Forest, managed by the Puerto Rico Department of Natural and Environmental Resources for conservation, occupies 51 percent (3,171.5 acres (1,283.5 hectares)) of the critical habitat in this unit. The other 49 percent (3,010.4 acres (1,218.3 hectares)) is on private lands that are a mosaic of agriculture, rural developments, and forest.

(ii) Map of Unit 6 is set forth at paragraph (10)(ii) of this entry.

* * * * *

[FR Doc. 2020–21620 Filed 10–9–20; 8:45 am]

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FEDERAL REGISTER

Vol. 85 Tuesday,

No. 198 October 13, 2020

Part VI

The President

Notice of October 8, 2020—Continuation of the National Emergency With Respect to the Situation in and in Relation to Syria

Federal Register
Vol. 85, No. 198
Tuesday, October 13, 2020

Presidential Documents

Title 3—

The President

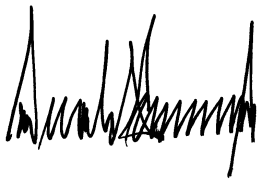
Notice of October 8, 2020

Continuation of the National Emergency With Respect to the Situation in and in Relation to Syria

On October 14, 2019, by Executive Order 13894, I declared a national emergency pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States constituted by the situation in and in relation to Syria.

The situation in and in relation to Syria, and in particular the actions by the Government of Turkey to conduct a military offensive into northeast Syria, undermines the campaign to defeat the Islamic State of Iraq and Syria, or ISIS, endangers civilians, and further threatens to undermine the peace, security, and stability in the region, and continues to pose an unusual and extraordinary threat to the national security and foreign policy of the United States. For this reason, the national emergency declared on October 14, 2019, must continue in effect beyond October 14, 2020. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency declared in Executive Order 13894 with respect to the situation in and in relation to Syria.

This notice shall be published in the *Federal Register* and transmitted to the Congress.



THE WHITE HOUSE,
October 8, 2020.

[FR Doc. 2020–22769
Filed 10–9–20; 11:15 am]
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